

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.897 OF 1995
IN
WRIT PETITION NO.2811 OF 1991
WITH
CHAMBER SUMMONS NO.339 OF 2018**

The Board of Trustees of the Port
of Bombay & Ors.

...Appellants

Vs.

Jijaba Namdeo Borude (through his legal
heirs) Kamal Jijaba Borude & Ors.

...Respondents

Mr.R.S. Pai with Mr.Anand Pai, Ms.Rama Nageshwaran i/b. M/s.Mulla
and Mulla for Appellant.

Mr.D.R. Shah for Respondent Nos.2, 3 & 4.

Mr.Jaiprakash Sawant for Respondent Nos.1-A to 1-C.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 26th JULY 2018

Oral Judgment (Per Naresh H. Patil, J.):

This appeal is directed against the order dated 23rd February 1995 passed by the learned Single Judge of this Court. The respondent was working with the appellant-Bombay Port Trust since 1989. While discharging his duties as officiating Labour Supervisor at Uncleared Warehouse No.1, he was charge-sheeted for the alleged misconduct. It is submitted that on 1st January 1986 at about 03.40 p.m. one lorry bearing registration No.9468 parked near the B.P.T. wall side was found loaded with cargo wooden boxes. As driver of the lorry was asked to

produce the documents in support of cargo loaded in the lorry, he failed to produce any document in respect of cargo loaded in the lorry. On inquiry, some wooden boxes containing video games were found in it. The police was informed. On inquiry by the police, the driver pointed out one person who happened to be the present respondent, who was working as a Supervisor at the relevant time. On complaint, FIR was registered being case No.453 P/86. The respondent was prosecuted for an offence under Section 380 read with Section 34 of the Indian Penal Code. After trial, trial Court acquitted the respondent by a judgment and order dated 12th June 1987.

2. Appellant conducted domestic enquiry against the respondent. After completion of inquiry, report was submitted to the appellant. Appellant accepted the report of the office and dismissed the respondent from services by an order dated 2nd January 1990. Appeal, which was filed by the respondent against the said order, came to be dismissed by respondent No.6. The respondent challenged the said order of dismissal passed by the respondent No.6. By a judgment and order dated 23rd February 1995 the learned Single Judge of this Court allowed the petition and the dismissal order was quashed and set aside with direction to the respondent No.2 to reinstate the respondent on his original post with all back wages and consequential benefits.

3. The appellant preferred the present appeal against the said order dated 23rd February 1995. The appeal came to be admitted in the year 1995 and notice of motion No.3136 of 1995 was preferred. On 22nd April 1996, the appellate Court passed the following order:-

“P.C.: No stay in regard to reinstatement. Respondent No.1 be reinstated within one week from today. As far as back wages is concerned the appellant board is directed to deposit 50% this court. Liberty to the Respondent to withdraw the same on furnishing undertaking to bring back the amount in case the appeal is allowed.

Certified copy be expedited.”

4. The learned Counsel appearing for the appellants submits that acquittal of respondent is not relevant as he was found guilty in the domestic inquiry. The appreciation of evidence in the domestic inquiry is required to be considered and weighed in different parameters. It is submitted that in the domestic inquiry, there is sufficient material placed on record in the shape of statements recorded against the respondent which point out at the guilt of the respondent. Being a supervisor, he was in charge of the godown and certain material was found in the lorry without there being permission, appropriate inward and outward entry. It is the responsibility of the respondent to have explained such a lapse on his part. As the respondent has failed to give explanation, inquiry officer punished him keeping in view the disciplinary standards

maintained by the appellants. It is submitted that the order passed in the motion has been fully complied with.

5. The learned Counsel appearing for the respondents submits that there is no direct evidence of whatsoever nature against the involvement of the respondent. Somebody pointed out towards the respondent on the basis of information provided by another person and the respondent was involved in a criminal case. He was found guilty during the domestic inquiry. The learned Counsel further submits that without considering acquittal in the criminal court, if material placed during domestic inquiry is independently considered, no case is made out to interfere in the appeal filed by the appellants herein. The learned Counsel submits that the order passed by the learned Single Judge is reasonable and proper and does not call for any interference of this Court.

6. With the assistance of the learned Counsel appearing for the appellants, for the limited purpose, we looked into the evidence of the material witnesses. We do find any substance in the submissions of the learned Counsel for respondent that there is no direct evidence involving the respondent in the alleged charge of he being responsible for transporting the goods (video games) illegally or unauthorisedly from

the custody of the Bombay Port Trust to third party.

7. The learned Single Judge, while appreciating case, has observed in paragraph 3 of the order as under:-

“3. Further, it reveals from the record that there was no direct evidence against the petitioner-delinquent regarding the alleged theft committed by him. The witnesses have deposed that only the driver of the lorry has pointed out at the petitioner-delinquent and stated before the officer that the articles were loaded in the lorry by the petitioner-delinquent. In other words, it is no a direct evidence but hearsay evidence.”

8. We have perused the written submission placed on record and the judgments cited by the learned Counsel. Each case has to be weighed in its factual background and the material on record.

9. During the course of hearing, the learned Counsel appearing for the appellants has informed that the respondent retired in the year 2007 and expired on 13th July 2016. It is submitted that 50% of back wages has already been paid. Taking into consideration the record placed before us and the findings reached by the learned Single Judge, we are not inclined to interfere under the letters patent jurisdiction. There is no merit in the appeal.

10. The appeal stands dismissed.

11. The order passed by the learned Single Judge be implemented expeditiously, preferably within a period of four weeks.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]