

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.265 of 2019

M/s. Goa Shipyard Ltd., Vaddem,
Vasco-da-Gama, Goa. Through
Additional GM (Legal) Mr K.
Samant.

... Petitioner.

Versus

Shri Mariano L. A. Araujo,
Santa Cruz, Cabessa, Ilhas, Goa.

.... Respondent.

**WITH
CIVIL APPLICATION NO. 1423 OF 2023 (F)
IN
WRIT PETITION NO.265 OF 2019**

Goa Shipyard Ltd.

...Applicant

Versus

Mariano L.A. Araujo

...Respondent

**Mr M. Bandodkar, Advocate with Mr Pulkit Bandodkar,
*Advocate for the Petitioner.***

**Mr Arunkumar Nigalye, Advocate with Mr Omkar Kulkarni,
*Advocate for Respondent.***

**CORAM:
DATED :**

**PRAKASH D. NAIK, J
31st OCTOBER 2023**

JUDGMENT:

1. The petitioner challenges Award dated 16.03.2018 passed by Presiding Officer, Industrial Tribunal And Labour Court in Reference No.IT/43/95.

2. The respondent-workman was a member of Union. He was chargesheeted. The chargesheet was served upon him on 31.07.1991. The charge against the respondent was that on 11.07.1991, the respondent unauthorisedly entered the Yard. At about 10:35am he again entered the electronic workshop along with others and gheraoed one person, grabbed his personal belongings and threatened to kill him. On the morning of 16.07.1991, he entered the company's premises without recording his attendance either at the security office nor at the Time Office. He proceeded to the Yard premises along with one Shri Vincente Dias, accosted the workers to and coerced them to sign on a register. He incited a group of workers to indulge in acts of indiscipline and called out some workers armed with pipes, rods, etc which provoked serious disturbances and disruption of work in the yard and consequent loss of production. These acts led to incidents of violence and assault resulting in one of the workman Shri Avinash Volvoikar to sustain grievous injuries, resulting in his death in the hospital.

In the afternoon, he clandestinely entered the Shipyard and later unauthorisedly occupied the company's ambulance and attempted to leave the premises. While leaving the premises, suspension order was served on him. He refused to accept the official communication. The acts constitute misconduct under the company's Certified Standing Orders.

3. Following charges were levelled against the respondent:-

Clause No.29 (I) :Wilful insubordination or disobedience (whether or not in combination with another) of any lawful and reasonable order of a superior.

Clause No.29 (II) :Going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof or resorting to obstruction aimed at or resulting in paralysing the normal conduct of work of the Company.

Clause No.29 (XI): Drunkenness, riotous, disorderly, indecent or improper behaviour on the premises of the Establishment or outside the premises of the Establishment of it adversely affects or is likely to affect the working or discipline of the Establishment.

Clause No.29 (XII) : Commission of any act subversive of discipline or good behaviour on the premises or precincts of the Establishment.

Clause No.29 (XXIV) :Refusal to accept a chargesheet, order or other communication from the Management served in accordance with these standing orders.

Clause No.29 (XXXII): Restraining or detaining or gheraoing any representative/employees of the Company either inside or outside the premises of the Company.

Clause No.29 (XXXVII): Use of impolite, insulting language or abusive language, assault or threat of assault, intimidation and coercion within the premises of the Company against any employee of the Company or any other person authorised to work in the Company if it directly affects or is likely to affect the discipline or work or business of the Company.

4. Enquiry was conducted against the respondent and other workmen who faced similar charges. The respondent filed his reply to the charge-sheet denying the charges. The Enquiry Officer vide Report dated 03.05.1993 concluded that the management of Goa Shipyard Limited (petitioner) has proved the following misconducts on the part of respondent as per Certified Standing Orders and held him guilty for the following misconducts:-

Clause No.29 (I):Wilful insubordination of the lawful and reasonable order of the superior.

Clause No.29 (II) : Inciting the workers resulting in paralysing the normal work of the Company.

Clause No.29 (XI) : Riotous, disorderly indecent and improper behaviour on the premises of the establishment adversely affecting the working and discipline of the establishment.

Clause No.29 (XII): Commission of acts subversive of discipline and good behaviour on the premises of the establishment.

Clause No.29 (XXIV): Refusal to accept order from the Management served in accordance with the standing orders.

Clause No.29 (XXXII): Gheraoing the employees of the company inside the premises of the Company.

Clause No.29 (XXXVII): Use of impolite, insulting and abusive language. Threat of assault, intimidation and coercion within the premises of the Company against the employee and the person authorised to work in the Company.

5. The Competent Authority issued show cause notice to the respondent on 01.02.1994. The respondent gave written explanation. The respondent was dismissed. The respondent raised an Industrial Dispute and the Government made reference under Section 10(1)(d) referring the dispute to Industrial Tribunal. The Government by its order dated 07.09.1995 referred the following dispute before the Industrial Tribunal.

“Whether the action of the management of M/s. Goa Shipyard Ltd., Vaddem, Vasco da Gama, in dismissing Shri. Mariano Araujo from services w.e.f. 03.05.1994 is legal and justified ? If not, to what relief the workman is entitled ?”

6. The respondent filed a Statement of Claim on 06.02.1996. The petitioner filed written statement in reply to Statement of Claim dated 06.02.1996.

7. The Tribunal framed the issues whether the party -I proves that the domestic enquiry held against him is not fair, proper and impartial ? Whether the charges of misconduct

levelled against party-I are proved to the satisfaction of the Tribunal by the acceptable evidence ? Whether the party-I proves that his dismissal from service by the party-II is by way of unfair labour practice and discrimination ? Whether the party-I proves that action of party-II in dismissing him from service with effect from 03.05.1994 is illegal and unjustified ? Whether the party-I is entitled to any relief ? What Award ?

8. The Industrial Tribunal vide order dated 23.06.2005 gave a findings on preliminary Issues No.1 and 2. It was held that the domestic enquiry held against the workman/respondent is fair, proper and impartial. The only charge of entering the Yard unauthorisedly on 11.07.1991 at about 10:35am and 16.07.1991 in the morning is proved which is misconduct under Clause 29(I) and 29(XII) of the Certified Standing Orders of the employer. The findings of the Inquiry Officer to the extent of holding that charges of unauthorisedly entering the electronic workshop and gheraoing one person, coercing and forcing the workers to sign a register, provoking serious disturbances and disruption of work in the Yard, causing loss of production, indulging in acts of indiscipline and calling out some workers armed with pipes, rods, etc., committing violence and assault resulting in grievous injuries to the workman Shri Avinash

Volvoikar and then resulting in his death and refusing to accept the suspension order served on him are proved against the workman, were set aside.

9. On 12th August, 2009 the Presiding Officer, Industrial Tribunal-cum-Labour Court gave finding on preliminary Issue No.2. i.e. whether the action of management of M/s. Goa Shipyard Ltd. In dismissing Shri. Pedro Vincente Dias w.e.f. 05.10.1993 is legal and justified and held that the findings of Inquiry officer are based on evidence on record and hence, the Issue No.2 is answered in the affirmative.

10. The Petitioner led evidence of two witnesses i.e. Prakash Naik and Sadanand Sail. The affidavit on the evidence of Prakash Naik who was working with the petitioner was adduced before the Industrial Tribunal on 04.08.2008. He was cross-examined. Affidavit in evidence of Sadanand Sail who was working with M/s Goa Shipyard Limited was tendered on 03.01.2009. He was cross-examined. Affidavit on the evidence of the workman/respondent was filed on 16.04.2009. He was cross-examined at the instance of the petitioner. The respondent filed second affidavit on 01.10.2009. He was cross-examined on 14.10.2009.

11. The Industrial Tribunal-cum-Labour Court passed Award dated 16.03.2018. The reference was partly allowed. The action of the management of M/s. Goa shipyard Limited in dismissing the respondent from services w.e.f. 03.05.1994 was declared illegal and unjustified. The petitioner was directed to pay 75% of the back-wages with all consequential benefits to the workman/respondent from the date of dismissal till date within 60 days of the publication of the Award, failing which, the petitioners were directed to pay interest @9% per annum.

12. The Award dated 16.03.2018 passed by the Industrial Tribunal was published on 16.04.2018 as required by Section 17 of the Industrial Disputes Act, 1947.

13. Learned advocate Mr Bandodkar appearing for the petitioner submitted as under:-

(i) The Industrial Tribunal did not consider the evidence of witnesses recorded in a common inquiry.

(ii) The evidence of Shri Prakash Naik was believed on all references except the present reference. It is not known as to why the evidence is disbelieved in the present reference.

(iii) Solitary evidence which has not been contradicted by the respondent should have been accepted.

(iv) The reference has to be decided on the basis of the evidence in the enquiry and on preponderance of probabilities. No corroboration is required if the witness is not cross-examined by the respondent on the aspect of the charges against him.

(v) The workman was charged with serious charges of assault and threatening the superior officers of the company and grant of 75% back-wages would amount to premium over the act of assault.

(vi) The respondent has admitted in his affidavit of evidence that he is gainfully employed and therefore, the petitioner did not cross-examine him on that aspect. Hence, the respondent could not have been allowed 75% back-wages just because he changed his stance of not being gainfully employed in a subsequent affidavit of evidence.

(vii) It cannot be believed that the respondent was unemployed for 30 years. The respondent has to show what attempts he made for the procurement of new employment. On this ground, the grant of 75% back-

wages shows lack of application of mind and hence the Award should be set aside.

(viii) The Industrial Tribunal failed to consider that there is no logic behind the grant of 75% back-wages. No reasons were assigned by the Tribunal for the same.

(ix) The Tribunal failed to consider the evidence on record. The charges were proved. The petitioner had examined witnesses. Their evidence remain uncontroverted.

(x) The cross-examination of the witnesses was conducted only on the aspect of victimisation.

(xi) The evidence of witness Prakash Naik was not considered on the point of lack of cooperation. There was no reason to disbelieve the said witnesses. He has deposed about the role played by the respondent. His evidence was sufficient to establish the charges against the appellant. The Court is required to consider the charges on the basis of preponderance of probability.

14. Learned advocate for the respondent petitioner has relied upon the following decisions:-

a. Hamdard Dawakhana Wakf v/s. ITS Workmen and

others¹.

- b. Management of Regional Chief Engineer P.H.E.D. Ranchi v/s. Their Workmen rep. By District Secretary².
- c. R. Srinivasa Reddy v/s. The Hon'ble Labour Court-II, Hyderabad & another³.
- d. Automobile Association of Upper India v/s. P.O. Labour Court II & Anr⁴.
- e. Kendriya Vidyalaya Sanghathan And Anr. v/s. S.C. Sharma⁵.
- f. Management of Coimbatore District Central Co-operative Bank v/s. Secretary, Coimbatore District Central Co-operative Bank Employees' Association and Another⁶.
- g. National Gandhi Museum v/s. Sudhir Sharma⁷.
- h. Jagdish Singh v/s. Punjab Engineering College & ors⁸.
- i. Divisional Controller, Maharashtra State Transport Corpn., Mumbai, Dhule Division, Dhule & Anr. v/s. Ravindra Adhar Gosavi, Dist. Dhule⁹.
- j. Messrs Bharat Iron Works v/s. Bhagubhai Balubhai Patel and Others¹⁰.
- k. Divisional Manager, Rajasthan State Road Transport

1 1963 (6) FLR 86=1962 (2) LLJ 772

2 2018 III CLR 679

3 2013 1 ALD 441; 2013 2 ALT 586; 2012 0 Supreme (AP) 785

4 2006 LLR 851

5 2005 LLR 275

6 2007 (3) L.L.N. 128

7 2021 LLR 1040

8 2009 II CLR 514

9 2023 II CLR 241

10 1976 AIR 98

Corporation v/s. Kamruddin¹¹

l. Thermax Ltd. v/s. Vishwanath N. Jadhav and Others¹².

m. R. Srinivasa Reddy v/s. Hon'ble Labour Court-II, rep. y its Presiding Officer, Hyderabad.¹³

n. Ramesh Chand v/s. Management of Delhi Transport Corporation¹⁴.

15. Learned Advocate for respondent submitted that, the Tribunal can alter the punishment. The finding given by the enquiry Officer were not based on the evidence on record. Section 11-A of the Industrial Disputes Act, 1947 empowers the Tribunal to reconsider the entire evidence and come to the conclusion whether charges of misconduct levelled against workman are proved or not and not to the limited extent as to the conclusion arrived at by the Inquiry Officer were plausible or not which was the case prior to introduction of Section 11-A of the Act. There is no perversity in the impugned Award. The burden of proving the charges was on the management. The management had not examined the officers to support the charge. The management had not produced the acceptable

11 2009 LLR 945

12 2009 LLR 707

13 2013 LLR 443

14 2023 LLR 827

evidence. The powers of the Tribunal are wide. The respondent was employed with the petitioner for over 9 years. The alleged incidents had occurred on 11.07.1991 and 16.07.1991. The respondent was dismissed on 03.05.1994. The management had not shown that there was blameworthy conduct in respect of the services of the petitioner. The Tribunal had considered the mitigating circumstances. There is no reason to set aside the Award.

16. Learned advocate for the respondent has relied upon the following decisions:-

- a. **Uttar Pradesh State Road Transport Corporation v/s. Gajadhar Nath¹⁵.**
- b. **Krushna Narayan Wanjari v/s. Jai Bharti Shikshan Sanstha, Hinganghat through its Secretary And Another¹⁶.**
- c. **E.Merck (India) Limited, v/s. V. N. Parulekar and others¹⁷.**
- d. **Central Board of Dawoodi Bohra Community And Another v/s. State of Maharashtra And Another¹⁸.**
- e. **State of Bihar v/s. Kalika Kuer alias Kalika Singh And others.¹⁹.**

15 (2022) 3 SCC 190

16 (2018) 12 SCC 620

17 1991 LAB I.C. 1555

18 2005 0 AIR(SC) 752.

19 (2003) 5 SCC 448.

- f. Trimurthi Fragrances (P) Ltd. Through its Director Shri Pradeep Kumar Agrawal v/s. Government of N.C.T of Delhi, through its Principal Secretary (Finance) and Others.²⁰.
- g. The Workmen of M/s Firestone Tyre And Rubber Co. Of India (Pvt) Ltd. v/s. The Management And others²¹.
- h. Krushna Narayan Wanjari v/s. Jai Bharti Shikshan Sanstha, Hinganghat through its Secretary And Anr.²².
- i. Shashikant Gangaram Narkar v/s. Advance Transformers & Equipments Pvt. Ltd & Anr.²³
- j. Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D.ED) And Others²⁴.

17. The respondent was a workman and the petitioner was the employer. Vide order dated 07.09.1995 the Government of Goa in exercise of powers conferred by Section 10(1) (d) of the Indian Evidence Act, 1947 has referred the dispute to the Tribunal for adjudication. The question before the Industrial Tribunal and Labour Court was whether the action of the management of M/s. Goa Shipyard Limited in dismissing the respondent from service w.e.f. 03.05.1994 is legal and justified? If not, to what relief the workman is entitled? The Tribunal

20 2022 SCC OnLine 1247

21 (1973) 1 SCC 813

22 (2018) 12 SCC 620

23 2014 III CLR 829

24 (2013) 10 SCC 324.

partly allowed the reference. It was held that the action of the management in dismissing respondent from services w.e.f. 03.05.1994 is illegal and unjustified. The management was directed to pay 75% of back-wages with all consequential benefits from the date of dismissal till date within 60 days of the publication of the Award and in default to pay interest @9% per annum.

18. The case of the workman is that he was a member Union activist and was aligned with President of Shipyard employees Union, Shri Pedro Vincente Dias under whose leadership several serious allegations of corruption and security threats to the country by the management were raised and hence the management went about in systematic way to replace the leadership. In the general elections, the Union led by Shri Dias and his panel were retained much to the dislike of the management. The management sponsored reign of terror within the Goa Shipyard Limited workplace and absolute breakdown in the law and order situation inside the yard culminating into violent attack by mob lead by Shri Cyril Fernandes which resulted in the death of one Avinash Volvoikar. The management seized the opportunity and instead of

punishing the real culprit, prepared a plan to take revenge against all the supporters of Mr Dias group. The management without trying to serve chargesheet on the workman published in the newspaper the suspension notice to demoralise, defame and to put the workers at a psychological disadvantage. The workman were chargesheeted. Empty formality of an enquiry was conducted and he was dismissed. The attitude of Inquiry Officer was biased. The Inquiry Officer did not allow the workman to lead any evidence or examine any witness in his support and did not allow to submit arguments. A copy of the findings were furnished and the workman was asked to show cause against penalty of dismissal. The order of dismissal is bad as the findings are based on wrong appreciation of evidence.

19. The case of the management is that the reference is not maintainable as the company had conducted full fledged inquiry giving opportunity to the workman. The workman has committed serious acts of misconduct and therefore it was decided to dismiss him from the services of the company.

20. The Tribunal framed the following issues:

- (i) Whether the Party-I (workman) proved that the domestic inquiry held against him is not fair, proper and impartial?
- (ii) Whether the charges of misconduct levelled against the workman are proved to the satisfaction of the Tribunal by acceptable evidence?
- (iii) Whether the Party-I proves that his dismissal from service by Party-II(employer) is by way of unfair labour practice and discrimination?
- (iv) Whether the Party-I (workman) proves that action of the Party-II in dismissing him from service w.e.f. 03.05.1994 is illegal and unjustified?

21. Vide order dated 23.06.2005 the preliminary issues no.1 and 2 were answered and it was held that the domestic inquiry conducted against the workman is fair, proper and impartial. It was further held that the charge of entering the yard unauthorisedly on 11.07.1991 and 16.07.1991 is proved which is misconduct under Clause 29(I) and 29(XII) of the Certified Standing Orders of the employer. The findings of the Inquiry Officer to the extent of holding that the charges of unauthorisedly entering the workshop and gheraoing Mr

Prakash Naik, coercing and forcing the workers to sign the register, provoking serious disturbances and disruption of work in the Yard, causing loss of production, indulging in acts of indiscipline and calling out some workers armed with pipes, rods, etc., committing violence and assault resulting in grievous injuries to the workman Shri Avinash Volvoikar and then resulting in his death and refusing to accept the suspension order served on him are proved against the workman, were set aside. Thus, the charge under Clause 29(I), 29(XII) of the Certified Standing Orders of the company were proved and the other charges under Clause 29(II), 29(XI), 29(XXIV), 29(XXXII) and 29(XXXVIII) of the Certified Standing Orders remained unproved and the Party-II in terms of their request in paragraph 23 of the written statement was allowed to lead additional evidence to justify the charges which has not been proved as observed in order dated 22.06.2005. The employer examined Shri Prakash Naik who identified the complaint dated 11.07.1991. The employer also examined Shri Sadanand Sail as witness. The workman examined himself and produced on record his Exhibit 23 and Exhibit 24. The Tribunal considered the records of inquiry proceedings and the evidence of management witnesses Shri Prakash Naik and Sadanand Sail

and found that the management has failed to support the charge. That on 11.07.1991 the workman along with other workers entered the electronic workshop and gheraoed Shri Prakash Naik, removed his personal belongings and threatened to kill him. The management failed to prove the second charge against the workman that on 16.07.1991 the workman entered the company's premises at the security office and proceeded to the Yard along with Vincente Dias, accosted workers and coerced them to sign on the register, inciting a group to indulge in acts of indiscipline, called out some workers armed with pipes, rods, etc, which provoked serious disturbances and disruption of work in the yard and consequent loss of production and that the said acts led to incidents of violence and assault resulting in grievous injuries and death of a workman. However, the Tribunal held that the workman entered the Yard unauthorisedly on 11.07.1991 at about 10:30am to 10:35am and on 16.07.1991 in the morning. The employer has not produced any additional documents or witnesses to prove the other charges which are misconduct under Clause 29(II), 29(XI), 29(XXIV), 29(XXXII) and 29(XXXVIII) of the Certified Standing Orders. The management examined some witnesses who were examined before the enquiry Officer. The officers of

the company, Mr Ooman Mathew and Mr Furtado who were also present at the place were not examined and no plausible reason was tendered for not examining the material witnesses who were present at the relevant time. Shri Prakash Naik in the cross-examination admitted that there is a Union by name, 'Shipyard Employees Union', and there are two rival groups in the Union, one led by Shri Cyril Fernandes and the other led by Shri Vincente Dias. There were physical clashes between the two groups. He admitted he was the active member of the Union and he considered Cyril Fernandes as the President of the Union and that the Union was actually led by Shri Vincente Dias which is a rival group and the workmen who are the active member of the Union led by Mr Vincente Dias. Considering the rivalry of the Union and that the workmen belonging to other group, the evidence of Shri Prakash Naik besides his bald statement requires corroboration from other witnesses including the officers who were admittedly present on that day.

22. Learned advocate Mr Bandodkar had submitted that the evidence of Shri Prakash Naik has not been challenged by the workman as was done before the enquiry Officer during the course of inquiry. There was no cross-examination on the aspect

of threats given by the workman in a domestic inquiry. Strict and accentuated rules of evidence under the Indian Evidence Act may not apply and all material which are legally probative for a prudent mind are permissible. In case of dismissal of workman, Industrial Tribunal should be slow in coming to the conclusion pertaining to the interference with the punishment imposed by the management by discarding the evidence, merely because no independent witness was produced in a misconduct pertaining to assault of superior officer. The minor discrepancy of trivial matters not touching the core of the case, would not permit rejection of the evidence as a whole. However, it was the contention of learned advocate for the respondent that the witness Prakash Naik had submitted his affidavit stating that on 11.07.1991 at around 10:35am when he was on his way to the grinding machine, he saw a group of 25-30 workers from different departments coming towards his department and the workers including the respondent entered the place where he was working. The respondent approached the witness, caught hold of boiler suit and removed A/C reading paper from his pocket and threatened him of dire consequences saying that they will kill him. He also stated that the other workmen namely, Mr Diago Sequeira, Mr John Fernandes, Mr Chandu Desai, Mr

Suresh Dhuri and Mr Anand Naik were present but were not cross-examined to prove the incident wither before the Inquiry Officer or the Court.

23. Mr Prakash Naik filed a complaint with the General Manager (Production). He admitted that in his complaint dated 11.07.1991 he has mentioned the name of worker at Sr. No. 1 as “Arauz”but in the complaint at page 74, the name of the workman at Sr. No.1 was “Arauzo Mariano”. He admitted the name of other workmen at Serial No.6 of the complaint was written as Francis Gomes. The full name of Party No. I is not written in the original complaint. He claimed that Party No. I workman was his friend. It is therefore not understood why he has not mentioned the full name of the Party-I in the original complaint. Nothing prevented the witness from mentioning the names of Party-I workmen before giving a copy to the Manager. The Manager was not examined to prove that complaint was lodged against Party-I. On the basis of the discrepancies, the Tribunal opined that serious doubt is caused on the genuineness of the complaint filed by Shri Prakash Naik and it is possible that the name of Party-I/workmen and other persons were added subsequently at the instance of management. It is not the case

of Shri Prakash Naik that the workman has threatened him of dire consequences.

24. Shri Prakash Naik in his evidence has referred to the incident of 11.07.1991. He is silent about the second incident which occurred on 16.07.1991. Shri Sadanand Sail has also stated nothing regarding the incident occurred on 16.07.1991. Thus, the Party-II has not proved the alleged incident on 11.07.1991 and 16.07.1991 against Party-I except that he entered the Yard on both the occasions. The Tribunal opined that the Party-II has failed to prove misconduct under Clause 29(II), 29(XI), 29(XXIV), 29(XXXII) and 29(XXXVIII) but proved Clause 29(I) and 29(XII) of the Certified Standing Orders of the company.

25. The discretion under Section 11-A is available on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court or the existence of any mitigating circumstances which require the reduction of sentence or the past conduct of workman which may persuade the Labour Court to reduce the punishment.

26. Powers of Tribunal under Section 11-A are very wide. Tribunal can re-appraise the evidence and specify itself as to whether the misconduct alleged against the workman was proved or not.

27. In the light of the reasons assigned by the Tribunal, no interference is called for in the impugned Award. The respondent was appointed as Mechanic Fitter (Gen) from 01.11.1984, He was dismissed from service by letter dated 03.05.1994. The workman has worked for over 9 years. There is no dispute that the last drawn salary of the workman was Rs.2,538.55. The dismissal has taken place about 23 years ago. The Tribunal has concluded that reinstatement is not been considered as either desirable or expedient in certain cases where there has been strained relations between employer and employee or where the employee was found to have been guilty of any activity subversive or prejudicial to the interest of the industry. The relationship between Party-I and Party-II were strained on account of various incidents.

28. The workman filed affidavit of evidence dated 01.10.2009 stating that he was not gainfully employed from the date of dismissal, i.e. 03.05.1994 till date and that he made efforts to get employment but could not succeed. If the employer wants to deny back-wages to the employee, it is necessary for the employer to specifically plead or prove that during the intervening period, the employee was gainfully employed and was getting emoluments. Denial of back-wages to an employee who has suffered due to illegal acts of employer would amount to punishing the concerned employee and rewarding the employer by relieving him of the obligation of paying back-wages including emoluments. There is nothing on record nor it is pleaded or proved by management that the employee was employed and getting some emoluments. Considering these aspects, the Tribunal has opined that the workman is entitled for back-wages and granted 75% of back-wages with consequential benefits.

29. Considering all these aspects, it can be seen that no case is made out to upset the Award. The petition is devoid of merits.

30. In the case of **Hamdard Dawakhana Wakf v/s. ITS Workmen and others** (supra), it is held that the Industrial Tribunal would be justified in characterizing the finding recorded in the domestic enquiry as perverse only if it is shown that such finding is entirely opposed to the whole body of evidence adduced before it. In the case of **Management of Regional Chief Engineer P.H.E.D. Ranchi v/s. Their Workmen rep. By District Secretary** (supra), it is observed that it is necessary for the workman to plead and prove with necessary evidence that after dismissal from service, he or they were not gainfully employed anywhere and had no earning to maintain himself or his family. In the case of **Automobile Association of Upper India v/s. P.O. Labour Court II & Anr** (supra), the Delhi High Court has observed that burden of proof to establish plea rests on person so claiming. In the case of **Management of Coimbatore District Central Co-operative Bank v/s. Secretary, Coimbatore District Central Co-operative Bank Employees' Association and Another** (supra), it is held that normally, when disciplinary proceedings have been initiated and findings of fact have been recorded in such inquiry, they cannot be interfered with unless such findings are based on no evidence or are perverse, or such that no reasonable main could have reached

such findings. In the case of **National Gandhi Museum v/s. Sudhir Sharma** (supra), it was observed that workman is not entitled to relief of back wages if he has not pleaded that he was not gainfully employed after his dismissal and has proved his version by leading cogent and convincing evidence. Since it is the workman who knows better as to how he has remained unemployed, primarily, the burden is on workman to discharge the same by leading cogent evidence to prove so in view of Section 106 of the Indian Evidence Act. Thereafter, the burden would shift upon the employer. Plea which is not taken at initial state is not permissible at a later stage. In the case of **Jagdish Singh v/s. Punjab Engineering College & ors** (supra), it was held that unless punishment is shockingly disproportionate to the gravity of charges alleged, the Courts or Tribunals cannot interfere with the decision of disciplinary authority. In the case of **Divisional Manager, Rajasthan State Road Transport Corporation v/s. Kamruddin** (supra), it was held that the power of Labour Court/Industrial Tribunal in terms of Section 11A of the Act to interfere with the quantum of punishment, the said power should be exercised judiciously. In the case of **Messrs Bharat Iron Works v/s. Bhagubhai Balubhai Patel and Others** (supra), it was observed that if there is no legal evidence at all

recorded in the domestic enquiry against the concerned employee with reference to the charge or if no reasonable person can arrive at a conclusion of guilt on the charge levelled against the employee on the evidence recorded against him in the domestic enquiry. In the case of **Divisional Controller, Maharashtra State Transport Corpn., Mumbai, Dhule Division, Dhule & Anr. v/s. Ravindra Adhar Gosavi, Dist. Dhule** (supra), the Court observed that the charge in a departmental inquiry has to be proved on the touchstone of preponderance of probability. The charge is not required to be proved on the principle of proof beyond reasonable doubt. The respondent therein was facing serious charge of demand and acceptance of illegal gratification. In the case of **Automobile Association of Upper India v/s. P.O. Labour Court II & Anr** (supra), it was observed that only evidence in support of a plea of employment was self serving affidavit filed by the workman and nothing beyond that to support the plea of service of seven years. Such affidavit by itself is wholly insufficient to discharge the burden of proof on the workman.

31. In the case of **Uttar Pradesh State Road Transport Corporation v/s. Gajadhar Nath** (supra), it is held that where the

finding of misconduct is recorded in domestic enquiry, authorities under the Act have full power and jurisdiction to reappraise evidence and to satisfy themselves whether evidence justified finding of misconduct. In the case of **Krushna Narayan Wanjari v/s. Jai Bharti Shikshan Sanstha, Hinganghat through its Secretary And Another** (supra), it was held that interference with award of Tribunal Court should not be mechanical unless approach is wholly perverse in sense that Tribunal acted on no evidence, the High Court under Article 226/227 is not justified in interfering with the award since it is not court of first appeal to appreciate evidence. In the case of **E.Merck (India) Limited, v/s. V. N. Parulekar and others** (supra), it is held that the powers of Tribunal are very wide. The Tribunal can reappraise the evidence and satisfy itself whether charge of misconduct is proved or not. In the case of **Central Board of Dawoodi Bohra Community And Another v/s. State of Maharashtra And Another** (supra), it is held that a Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum. It will be open only for a Bench of co-equal strength to

express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted. In the case of **State of Bihar v/s. Kalika Kuer alias Kalika Singh And others** (supra), it is held that an earlier decision of a coordinate Bench of the same High Court although appearing to be incorrect on the ground that a possible aspect of the matter was not considered by, or raised before, that Bench, cannot merely for that reason be said to be rendered per incuriam. It is binding on the letter coordinate Bench. The latter coordinate Bench must either follow it or refer the matter to a larger Bench. In the case of **The Workmen of M/s Firestone Tyre And Rubber Co. Of India (Pvt) Ltd. v/s. The Management And others** (supra), the Court considered the scope of Section 11A. Section 11A has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. In the case of **Krushna Narayan Wanjari v/s. Jai Bharti Shikshan Sanstha, Hinganghat through its Secretary And Anr** (supra), it is held that

unless approach is wholly perverse in sense that Tribunal acted on no evidence, High Court under Articles 226/227 is not justified in interfering with award since it is not court of first appeal to reappreciate evidence. In the case of **Shashikant Gangaram Narkar v/s. Advance Transformers & Equipments Pvt. Ltd & Anr.** (supra), this Court observed that it is not proper approach of Labour Court when it observed that there is no supporting evidence on record to indicate that petitioner made attempts to obtain gainful employment, there is no justification for denial of the entire back-wages to the employee for the interregnum, initial burden which is on the workman has been discharged that he was not gainfully employed after his dismissal from service, in view of the judgment of the Supreme Court in the case of **Deepali Gundu Surwave v/s. Kranti Junior Adhyapak Mahavidyalaya & Ors.** (supra), the workman is entitled to full back-wages for the period he was out of service, with interest at 8% from the date of award till the date of actual payment. In the case of **Deepali Gundu Surwave v/s. Kranti Junior Adhyapak Mahavidyalaya & Ors.** (supra), it is held that reinstatement entitles the employee to claim full back-wages. Denial of back-wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the

obligation to pay back-wages. Where employer wants to deny back-wages or contest the employee's entitlement to get consequential benefits, employer has to prove and plead that employee was gainfully employed during the intervening period.

32. Considering the aforesaid circumstances and the law laid down in the above decisions, I find no reason to interfere in the impugned award. The petition is required to be dismissed.

ORDER

- (i) Writ Petition No.265 of 2019 stands dismissed.
- (ii) In view of disposal of Writ Petition, Civil Application No.1423 of 2023 does not survive and is accordingly disposed off.

PRAKASH D. NAIK, J.

VINITA VIKAS NAIK

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