

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9736 OF 2021

**SANTOSH
SUBHASH
KULKARNI**

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SANTOSH SUBHASH
KULKARNI
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Daundkar Pradeep Shahaji
A/P Kanersar, Tal. Khed, Pune – 410 505 ...Petitioner

Versus

M/s. Tata Motors Limited,
Passenger Car Business Unit, Sector No.15,
and 15A, P.C.N.T.D.A., Dist. Pune – 410 501. ...Respondent

Mr. Neel Helekar, for the Petitioner.

Mr. Kiran Bapat, Senior Advocate, a/w Gaurav Gawande,
Rachit Bharwada, i/b Haresh Mehta & Co., for the
Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 14th MARCH, 2023

PRONOUNCED ON : 28th MARCH, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2. Should a workman who assaults his co-workman be punished with the penalty of dismissal from service is the question which the present petition poses.

3. The aforesaid question arises in view of the challenge by the petitioner – workman to the judgment and awards dated 9th February, 2018 and 9th June, 2020 by the learned Presiding Officer, Labour Court, Pune, in Reference (IDA) No.255 of 2014,

whereby and whereunder the enquiry against the petitioner was held to be legal, fair and proper and the findings of the enquiry officer not perverse and, resultantly, the reference as to whether the services of the petitioner were terminated illegally and whether the petitioner was entitled to be reinstated in service was answered in the negative.

4. Background facts necessary for determination of the aforesaid question can be stated as under:

(a) On 20th January, 1999, the petitioner was appointed as a Mechanist Grinder with the respondent Company. The petitioner was posted in Engine Shop. On 14th May, 2013, the petitioner reported to duty in 'A' shift on crankshaft line. At about 6.40 am. the petitioner went to the locker room near Metrology Laboratory. Mr. S. B. Shinde, a co-workman, had come to the locker room to take his safety shoes. Suddenly, it is alleged, the petitioner mounted assault on Mr. Shinde. Before Mr. Shinde offered any resistance the petitioner punched him hard on the left eye. The petitioner continued to unleash the blows. Mr. Shinde fell down. The petitioner gave kick blows despite Mr. Shinde having fallen to the floor. As Mr. Shinde raised alarm, other team members rushed to the spot and rescued Mr. Shinde.

(b) A charge-sheet-cum-notice of enquiry dated 25th June, 2013 was served on the petitioner alleging *inter alia* that the aforesaid acts of the petitioner amounted to misconduct within the meaning of Clause 24(k) and 24(l) of the Standing Orders.

(c) A Disciplinary Enquiry was instituted. The petitioner participated in the enquiry. Respondent examined eight witnesses in support of the charge. Petitioner examined himself in defence. Eventually the Enquiry Officer submitted a report finding the petitioner guilty of the misconduct. Copy of the Enquiry Report was served on the petitioner. Explanation was submitted by the petitioner on 10th February, 2014. By an order dated 7th April, 2014, the respondent imposed the penalty of dismissal from service as per the provisions of Clause 25(1)(d) of the Standing Orders applicable to the petitioner.

(d) Upon an industrial dispute being raised, the appropriate Government made following reference to the Labour Court under Section 10(1)(c) read with Section 12(5) of the Industrial Disputes Act, 1947 (“the ID Act, 1947”):

“Whether services of second party – Shri Pradip Shahaji Daundkar have been terminated illegally on 07/04/2014 by the first party or not?

If yes, whether he is entitled to be reinstated on his original post with full back wages from the date of

termination and continuity of service along with consequential benefits or not?"

(e) By an award (Part-I) dated 9th February, 2018, the learned Presiding Officer, Labour Court, was persuaded to answer the preliminary issues as to the legality of the enquiry and findings recorded by the Enquiry Officer in favour of the respondent and hold that the enquiry conducted against the petitioner was legal, fair and proper and in conformity with the principles of natural justice and that the findings recorded by the Enquiry Officer were not perverse.

(f) By an award (Part-II) dated 9th June, 2020, the Presiding Officer held that the punishment inflicted on the petitioner by the respondent was not shockingly disproportionate and, resultantly, the termination of the petitioner was not illegal and the petitioner was not entitled to the relief of reinstatement with continuity in service and back-wages. The reference was thus answered in the negative.

5. Being aggrieved by and dissatisfied with the aforesaid awards the petitioner has preferred this petition.

6. I have heard Mr. Helekar, the learned Counsel for the petitioner and Mr. Bapat, the learned Senior Advocate for the respondent, at some length. With the assistance of the learned

Counsel for the parties, I have perused the material on record especially the charge-memo, Enquiry Report and the impugned awards.

7. Mr. Helekar submitted that the impugned awards deserve to be interfered with as the Labour Court lost sight of the fact that the alleged victim had no grievance against the petitioner. An endeavour was made to impress upon the Court that there was some transaction between the petitioner and Mr. Shinde, the alleged victim. In that context, non-examination of an eye witness to the occurrence renders the department's case unworthy of credence. The findings of the Enquiry Officer, therefore, could not have been readily accepted by the Labour Court.

8. As a second limb of the submission Mr. Helekar would urge that the proportionality of the penalty is required to be judged in the context of the starta of the society the petitioner and the alleged victim come from. They were essentially blue collar workmen. An incident of altercation between co-workman has been blown out of proportion by the respondent. From this standpoint, the punishment can be said to be shockingly disproportionate to the gravity of the misconduct. Therefore, the

impugned orders deserve to be quashed and set aside, urged Mr. Helekar.

9. On the first count, attention of the Court was invited to the Complaint (Exhibit-C) lodged by Mr. Shinde on the very day of the occurrence. Emphasis was laid on the last paragraph of the said complaint wherein Mr. Shinde claimed that he had brought the said incident to the notice of the authorities so that such incident should not recur in future and that he had no personal grudge against the person against whom the complaint was made i.e. the petitioner. Mr. Helekar also invited attention of the Court to the findings in the Enquiry Report wherein most of the witnesses examined by the respondent have deposed to the fact that they either came at the spot of occurrence after the occurrence was over or learnt about the same later.

10. First and foremost, in exercise of writ jurisdiction this Court is not expected to sit in appeal over the findings of the disciplinary authority. It is trite judicial review is not an exercise in appeal from a decision but essentially a review of the manner of decision making process. Secondly, it is equally well settled, strict rules of evidence do not apply to disciplinary proceedings. If there is some material on the basis of which the disciplinary authority has arrived at a finding, it is not open in

exercise of writ jurisdiction to interfere with the finding of fact unless the Court comes to the conclusion that the finding is not based on any evidence or wholly perverse.

11. In the case at hand, the findings recorded by the Enquiry Officer cannot be said to be either based on no evidence or otherwise perverse. From the tenor of the defence of the petitioner it becomes abundantly clear that the incident as such was not put in contest. A different version of the incident, at the most, was sought to be offered by the petitioner. It was sought to be explained by asserting that while the petitioner and Mr. Shinde were in the locker room, the petitioner accidentally gave a push to Mr. Shinde and the latter lost balance and fell on the locker and thereby sustained injury.

12. The statement of Mr. Shinde is not only supported by the statements of the respondent's witnesses but there is a formidable dyke in the form of injury certificate. The injury certificate (Exhibit-8(ii)) issued by Nirmala Hospital, clearly records that Mr. Shinde had narrated history of assault by a colleague. Multiple injuries were noted on the face of Mr. Shinde. If the complaint (Exhibit-6) of Mr. Shinde, on which Mr. Helekar laid emphasis is considered in juxtaposition with the aforesaid material, it becomes abundantly clear that specific

allegations of assault were made by Mr. Shinde against the petitioner. Mr. Shinde alleged that the petitioner unleashed successive blows without giving him any opportunity to resist and gather his bearings. The last sentence in the said complaint that Mr. Shinde had no personal grudge against the assailant therefore cannot be read torn out of context.

13. No case of either breach of the rules or principles of natural justice could be made out. Given the facts of the case, nor the findings can be said to be perverse. In the backdrop of the material on record, the learned Presiding Officer, Labour Court, does not seem to have committed any error in returning a finding that the enquiry was legal, valid and proper and in conformity that the principles of natural justice and the findings were not perverse.

14. Mr. Helekar strenuously submitted that the punishment of dismissal from service is shockingly disproportionate to the gravity of the misconduct. It was not the case that Mr. Shinde had suffered any grievous injury. A minor scuffle, even if assumed to have taken place between two co-workers, without any threat to industrial peace could not have been made a basis for dismissal of the petitioner.

15. Per contra, Mr. Bapat would urge that ultimately it was the responsibility of the respondent to maintain peace and safety in the factory. The proved misconduct within the meaning of Clause 24(k) and 24(l) of the Standing Orders can only be said to be grave and potentially threatened the industrial peace. In any event, according to Mr. Bapat, this Court in exercise of writ jurisdiction would not be justified in interfering with the order of punishment unless disproportionality of the punishment shocks the conscience of the Court. Mr. Bapat submitted that acts of violence within the precincts of the factory haven been held to be instances of grave misconduct entailing dismissal from service.

16. To bolster up the aforesaid submission Mr. Bapat placed a strong reliance on a Three-Judge Bench judgment of the Supreme Court in the case of *B. C. Chaturvedi vs. Union of India and Others*¹. In the said case, the Supreme Court after adverting to the nature of the judicial review enunciated that normally the Tribunal/Court cannot substitute its own conclusion on the penalty and impose some other penalty than the one imposed by the Disciplinary Authority in exercise of power of judicial review. The observations of the Court in

¹(1995) 6 Supreme Court Cases 749.

paragraphs 12, 13 and 18 are instructive and hence extracted below:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. *In Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

.....

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

17. It would be contextually relevant to note that the learned Presiding Officer, Labour Court, referred to and relied upon a judgment of this Court in the case of *Holy Spirit Hospital and others vs. Benjamin Fernandes*², wherein this Court did not approve of the course adopted by the Labour Court in substituting the penalty of dismissal from service with a lesser penalty where the misconduct was of assaulting a superior officer by the workman in the said case. The observations of this Court in paragraphs 23 and 24 govern the facts of the case at hand. They read as under:

“23. Mrs. Anita Rodrigues was a Supervisor and was superior in rank to the workman and belonging to the fairer sex. The incident of assault by the workman was in the precincts of the hospital where patients undergo medical treatment. Both were on duty at the relevant time when the incident took place. Clearly, the Labour Court has shown

22013(4) Bom.C.R. 253.

undue leniency to the workman and only as a matter of misplaced sympathy interfered and altered the punishment of dismissal to that of reinstatement and permanently withholding two increments. The fact that the workman was serving in the hospital for several years and his past record was not adverse, was in my view, not an extenuating circumstance warranting interference with the punishment of dismissal awarded by the management considering the gross facts of the case.

24. Looking to the nature of misconduct, it certainly cannot be said that no reasonable person could inflict the punishment of dismissal nor can it be said that the dismissal order was so disproportionate as to shock the conscience of the Court. Discipline and congenial atmosphere is required to be maintained in any institution. To show leniency in a case such as the present one and to allow the workman to be reinstated would send a wrong signal to the other employees that one can get away lightly even with gross misconduct of assault on his superior. Even assuming for a moment that it was permissible to take a lenient view of the matter, it is of significance to note that at no point of time the workman has shown any remorse or afforded any apology either to Mrs. Anita Rodrigues or to the Hospital and his stand has all along been that of denial simplicitor.”

18. In the case of *L. K. Verma vs. H.M.T. Limited and another*³

a case of verbal abuse entailing the penalty of dismissal, the Supreme Court, *inter alia*, observed as under:

“22. So far as the contention as regards quantum of punishment is concerned, suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal.”

19. In *Mahindra and Mahindra Ltd. vs. N. B. Narawade*,⁴ again

a case of verbal abuse, the Supreme Court has enunciated that use of abusive language against a superior officer cannot be termed to be an indiscipline calling for lesser punishment in the

³(2006) 2 Supreme Court Cases 269.

⁴(2005) 3 SCC 134.

absence of any extenuating factor. The observations in paragraph 20 read as under:

"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only 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 the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. *Orissa Cement Ltd. v. Adikanda Sahu* (1960) 1 LLJ 518 (SC) and *New Shorrock Mills v. Maheshbhai T. Rao* (1996) 6 SCC 590 this Court held: 'Punishment of dismissal for using of abusive language cannot be held to be disproportionate.' In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove."

20. In *Hombe Gowda Educational Trust and another vs. State of Karnataka and others*,⁵ a case of assault entailing the punishment of dismissal, the Supreme Court had enunciated the law as under:

5(2006) 1 Supreme Court Cases 430.

“17. The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

18. This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.

19. Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as to shock one's conscience.

20. A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important.”

21. In the light of the aforesaid enunciation of law, the petitioner has to demonstrate that the punishment imposed is shockingly disproportionate to warrant interference by this Court in exercise of writ jurisdiction. It all boils down to the prism through which the misconduct is viewed. Neither a case of provocation, much less grave and sudden, nor any other extenuating circumstance was sought to be pressed into service on behalf of the petitioner. The counter version, sought to be offered, was negated by the evidence on record. Even if the

case of the petitioner is taken at par that there were some transactions between the petitioner and Mr. Shinde, the victim, yet the gravity of the act does not get diluted. The petitioner could have resorted to the recourses which were available for settlement of disputes with Mr. Shinde, either in relation to the employment or private. Mounting assault and that too a ferocious one within the precincts of the factory premises while on duty had the propensity to breach industrial peace.

22. Mr. Bapat was justified in canvassing a submission that under the pretext that the petitioner and Mr. Shinde were blue collar workmen, the petitioner could not have indulged in violent acts. Such conduct is subversive of discipline. It posed a grave threat to peace at the establishment. From this standpoint, the learned Presiding Officer, Labour Court, does not seem to have committed any error in answering the reference in the negative.

23. For the foregoing reasons, I am persuaded to hold that no interference is warranted in exercise of writ jurisdiction. Hence, the petition deserves to be dismissed.

24. The petition stands dismissed.

Rule discharged.

No order as to costs.

[N. J. JAMADAR, J.]