

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.2798 OF 2021**

Bai Jerbai Wadia Hospital for Children,  
Acharya Dhonde Marg, Parel,  
Mumbai – 400 012

... Petitioner

versus

1. Deepak Sakharam Mohite
2. Rajesh Suresh Solanki  
C/o Shivsena Nagar Shakha No.1,  
Opp. T.B.Hospital, Zopada No.64,  
½, Sewree, Mumbai – 400 015.

... Respondent

Mr. Rohan Kelkar with Mr. Santosh Shetty i/by T.S.Shetty and Associates, for  
Petitioner.

Mr. Haresh Shivdasani, for Respondent Nos.1 and 2.

**CORAM: N.J.JAMADAR, J.**

**DATE : 6 JULY 2023**

**JUDGMENT :**

1. By this Petition under Article 226 of the Constitution of India, the  
Petitioner takes exception to a judgment and order dated 3 September 2019 passed by  
the learned Member, Industrial Court at Mumbai in Revision Application (ULP)  
No.43 of 2018 whereby the revision preferred by the Petitioner came to be rejected  
while affirming Part I Award passed by the Labour Court at Mumbai in Complaint  
(ULP) No.59 of 2009 whereby and whereunder the inquiry held by the Petitioner  
against the Respondents – complainants therein, was held to be fair and proper.  
However, the finding on misconduct recorded by the Inquiry Officer perverse.

2. The background facts leading to this Petition can be stated in brief as under :

2.1 The Petitioner is a charitable institution. It runs a speciality children Hospital catering to the needs of poor and weaker sections of the Society. The Respondents were the employees of the Petitioner. Pursuant to an incident which allegedly occurred on the night intervening 1 and 2 August 2008, wherein the Respondents were allegedly found consuming liquor and playing cards within the campus of the hospital, the Petitioner served a chargesheet upon the Respondents alleging the following major misconducts as per the Service Rules :

- “a) drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment (Rule 17(k));
- b) Commission of any act subversive of discipline or good behaviour on the premises of the hospital (Rule 17(I);
- c) Gambling within the premises of the hospital (Rule 17(r);”

2.2 The Respondents submitted their explanation. As the explanation was not found satisfactory, a disciplinary inquiry came to be instituted against the Respondents. The Petitioner examined two witnesses, namely, Mr. Borkar, (MW1) the Security guard and Mr. Vibhute (MW2). Eventually, the Inquiry Officer submitted a report on 11 May 2010 returning a finding that all the charges of misconduct, except that of “riotous and disorderly behaviour” were proved.

2.3 Respondent Nos.1 and 2 submitted their response to the Inquiry Officer's findings. In the meanwhile, Respondent Nos.1 and 2 filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 alleging unfair labour practices under Item 1 (a), (b), (c), (d), (e), (f) and (g) of Schedule IV of the Act, 1971. It was, inter alia, alleged that the inquiry was not conducted in accordance with the governing rules and principles of natural justice. The inquiry was not fair and proper. The Respondents were sought to be victimized by imputing patently false allegations. An application for ad-interim relief, taken out by the Respondents in the said Complaint, came to be rejected by the Labour Court by an order dated 30 July 2012. Thereupon, by an order dated 7 August 2012 on the basis of the Inquiry Officer's report, the Petitioner dismissed the Respondents from service.

2.4 In the Complaint, after appraisal of the material on record, by Part I judgment dated 20 February 2018, the Presiding Officer, Labour Court decided the preliminary issues holding, inter alia, that the inquiry conducted against the Respondents-complainants, was legal, fair and proper, but the findings recorded by the Inquiry Officer were perverse. The parties were also directed to proceed further.

2.5 Being aggrieved, the Petitioner carried the matter in Revision before the Industrial Court. The learned Member, Industrial Court found no perversity in the order passed by the Labour Court, and, thus, declined to interfere therein, in exercise

of the revisional jurisdiction.

2.6 Being further aggrieved, the Petitioner-employer has invoked the writ jurisdiction.

3. By an order dated 12 December 2020, Rule was issued while staying the proceedings in Complaint (ULP) No.59 of 2009 before the Labour Court. I have heard Mr. Rohan Kelkar, learned Counsel for the Petitioner and Mr. Haresh Shivdasani, learned Counsel for the Respondents at some length. The learned Counsel took the Court through the pleadings and evidence, especially that of Mr. Borkar (MW1) and Mr. Vibhute (MW2) and the material on record.

4. Mr. Kelkar, learned Counsel for the Petitioner, strenuously submitted that the Labour Court as well as the Industrial Court approached the issue from an incorrect perspective. The impugned orders, according to Mr. Kelkar, suffer from the vice of jurisdictional error, which deserves to be corrected in exercise of writ jurisdiction. Amplifying the submission, Mr. Kelkar strenuously submitted that both the learned Presiding Officer, Labour Court and the learned Member, Industrial Court lost sight of the limits of the judicial review of the findings recorded in a domestic inquiry. Disregarding the settled principles of law, the Labour Court and the Industrial Court ventured into re-appreciation of evidence and went on to record a finding that, in their opinion, the evidence was not sufficient to prove the misconduct.

5. It was urged that the adequacy or sufficiency of the evidence was not a

matter within the realm of the Labour and the Industrial Court. While determining the aspect of perversity or otherwise, of the finding recorded in a domestic inquiry, what should have been properly looked into by the courts below, according to Mr. Kelkar, was the existence or otherwise of the evidence. Once the domestic tribunal on the basis of such evidence forms the opinion, it was not open for the Labour and Industrial Court to sit in appeal over the said finding, urged Mr. Kelkar.

6. Taking the Court through the evidence of Mr. Borkar (MW1) and Mr. Vibhute (MW2), Mr. Kelkar would urge that the misconduct attributed to the Respondents can be said to have been adequately proved. The courts below were, thus, in error in holding that the findings of the Inquiry Officer were perverse as if they were based on no evidence. To buttress this submission, Mr. Kelkar placed a strong reliance on the decisions of the Supreme Court in the cases of **Kuldeep Singh V/s. Commissioner of Police and Ors.**<sup>1</sup> and **West Bokaro Colliery (Tisco Ltd.) V/s. Ram Pravesh Singh**<sup>2</sup>.

7. As against this, Mr. Shivdasani, the learned Counsel for the Respondents would urge that the impugned order does not warrant any interference. The perversity of findings of the Inquiry Officer is writ large. The Inquiry Officer unjustifiably discarded the evidence which clinches the issue in favour of the Respondents. Therefore, such a finding can only be said to be perverse as it was

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1 (1999) 2 SCC 10

2 (2008) 3 SCC 729

rendered by not considering the circumstances which had a significant bearing on the alleged misconduct.

8. In any event, according to Mr. Shivdadani, the Petitioner does not suffer any prejudice as the Labour Court has directed the parties to proceed further in accordance with law. It was submitted that in view of the pronouncement of the Supreme Court in the case of **The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. V/s. The Management and Ors.**<sup>3</sup>, even when no inquiry is held or an inquiry held by the employer is found to be defective, the employer is entitled to adduce evidence before the tribunal to prove the misconduct and justify the order of dismissal or discharge.

9. The aforesaid submissions now fall for consideration.

10. The learned Presiding Officer, Labour Court, was of the view that the Inquiry Officer was not justified in discarding the entry made in the station diary of Bhoiwada Police Station, which recorded that on the night of occurrence at about 22.50 hours, PSI Landge and his staff had visited Wadia Hospital and found nothing suspicious. They had made enquiries with Mr. Borkar (MW1). The learned Presiding Officer found that, on the one hand, the Inquiry Officer declined to summon Mr. Landge, either as Department's witness or the delinquent's witness, and, on the other hand, declined to take into consideration the aforesaid entry in the station diary

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<sup>3</sup> (1973) 1 SCC 813

on the premise that it was not duly proved. This approach of the Inquiry Officer, in substance, weighed with the learned Presiding Officer in arriving at the conclusion that the findings recorded by the Inquiry Officer were perverse.

10. Whether the aforesaid approach of the learned Presiding Officer, Labour Court, with which no fault was found by the learned Member, Industrial Court, is justifiable ?

11. Undoubtedly, in a disciplinary inquiry, if the domestic tribunal based on some evidence arrived at a particular conclusion, ordinarily, it is impermissible for the courts and Tribunals to substitute their own subjective opinion, upon the appraisal of the material, and displace the findings recorded by the domestic tribunal. Equally well settled is the proposition that the courts and tribunals while exercising judicial review of the orders passed by the domestic tribunal do not sit in appeal over the findings recorded by the domestic tribunals and assume the role of appellate authority. The courts and tribunals are vested with the jurisdiction, or, for that matter, duty bound, to interfere if the domestic tribunal has arrived at a conclusion based on no evidence or by unjustifiably discarding the evidence which bears upon the issue or has arrived at the conclusion which no prudent person can arrive having regard to the material on record. In either of these situations, the findings of the tribunal stand vitiated on account of perversity.

12. In the case of **Kuldeep Singh (supra)**, on which reliance was placed by

Mr. Kelkar, the legal position was expounded as under :

“7. In Nand Kishore Prasad V/s. State of Bihar<sup>4</sup> it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

8. The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the that evidence. This principle was laid down by this Court in State of A.P. V/s. Rama Rao<sup>5</sup> in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India V/s. Prakash Chand Jain<sup>6</sup> and Bharat Iron Works V/s. Bhagubhai Balubhai Patel<sup>7</sup> In Rajinder Kumar Kindra V/s. Delhi Administration through Secretary (Labour) and Ors.<sup>8</sup>, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one

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4 (1978) 3 SCC 366

5 (1964) 2 LLJ 150

6 (1969) 2 LLJ 377

7 (1976) 1 SCC 518

8 (1984) 4 SCC 635

to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.”

(emphasis supplied)

13. In **West Bokaro Colliery (supra)**, the Supreme Court after adverting to the previous pronouncements, especially in the context of non-examination of witnesses, enunciated the law in the following words :

“16. In U.P.SRTC V/s. Vinod Kumar<sup>9</sup> this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the enquiry officer or the punishment awarded by the punishing authority.

17. After going through the order of the Industrial Tribunal, we are of the opinion that the Tribunal has interfered with the findings recorded by the domestic tribunal as if it was the Appellate Tribunal. There was evidence present on record regarding indecent, riotous and disorderly behaviour of the respondent towards his superiors. The Management witnesses who were present at the scene of occurrence have unequivocally deposed about the misbehaviour of the respondent towards his superior. Their evidence has been discarded by the tribunal by observing that in the absence of independent evidence, the statements of the workmen who were

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9 (2008) 1 SCC 115

present at the scene of occurrence could not be believed. The Industrial Tribunal fell in error in discarding the evidence produced by the Management only because the independent witnesses were not produced.

18. It is nobody's case that the independent witnesses were available at the scene of occurrence and the Management had failed to produce them. It is possible that at the time of occurrence, only the workers of the Management and the persons who were trying to put up the construction unauthorisedly were the persons present and no independent evidence was available. Statements of the fellow workmen had established the misconduct of the respondent. Enquiry Officer accepted the testimony of the witnesses produced by the Management who had clearly implicated the respondent. It was a legitimate conclusion which could be arrived at and it would not be open to the Industrial Tribunal to substitute the said opinion by its own opinion."

14. Evidently, the question as to whether the findings recorded by the domestic tribunal suffer from the vice of perversity, is rooted in facts. The court called upon to determine the question as to whether the findings of the Inquiry Officer are perverse, is required to appraise the findings on the anvil, whether such finding is based on either no evidence or is arrived at by overlooking the evidence or manifests a view which no prudent person could have taken.

15. A profitable reference in this context can be made to a decision of the

Supreme Court in the case of **M.V.Bijlani V/s. Union of India and Ors.**<sup>10</sup> wherein the question relating to jurisdiction of the court in judicial review in a disciplinary proceedings, fell for consideration before the Supreme Court. The observations of the Supreme Court in paragraph 25 are instructive, and, hence, extracted below :

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjunctures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

(emphasis supplied)

16. On the aforesaid touchstone, reverting to the facts of the case, it is imperative to note that the Inquiry Officer returned a finding that the management could not establish the charge of riotous or disorderly behaviour of the delinquents. Mr. Kelkar fairly submitted that the finding cannot be questioned. An endeavour was,

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<sup>10</sup> (2006) 5 SCC 88

however, made by Mr. Kelkar to draw home the point that the delinquents were found to have consumed liquor and there was material to indicate that the complainant No.1 had made a call to Mr. Vibhute (MW2) as to why Mr. Vibhute had informed the police that they were on the campus of the hospital. The fact that there is no evidence alendue apart from the statement of Mr. Borkar (MW1) that he found the delinquents in an inebriated state and their gait was unsteady, did not matter, urged Mr. Kelkar.

17. I am afraid to accede to the aforesaid submissions. It is not the case of the department that Mr. Borkar (MW1) had either witnessed the delinquents consuming the liquor or playing cards. The genesis of the occurrence is in the visit of police squad from Bhoiwada Police Station. Even Mr. Borkar (MW1) did not claim to have accompanied the police to the spot from where the delinquents, along with others, were allegedly apprehended by the Police.

18. As noted above, evidently, the police did not take any action against the delinquents. On the contrary, in the station diary, an entry was made that the police did not find anything objectionable or suspicious during the visit to the hospital premises. In the aforesaid backdrop, the Inquiry Officer could not have discarded the entry made in the station diary as the visit of the police squad was the substratum of the department's case. In the absence of any other material, the claim of Mr. Borkar (MW1) that he had witnessed the delinquents in an inebriated state with unsteady gait, could not have been made the foundation of guilt.

19. Mr. Kelkar attempted to salvage the position by banking upon the evidence of Mr. Vibhute (MW2). It was urged with a decree of vehemence that the evidence of Mr. Vibhute (MW2) that the Complainant No.1 had called him on the night of occurrence could not be impeached. It is pertinent to note that Mr. Vibhute (MW2) claimed to have become aware of the incident on the next morning upon being apprised by Mr. Borkar (MW1). The Presiding Officer, Labour Court, was justifiably not prepared to give much weight to the said circumstance, especially in the face of the entry in the station diary.

20. In the totality of the circumstances, in my view, the learned Presiding Officer, Labour Court and the Learned Member, Industrial Court committed no error in arriving at the conclusion that the findings recorded by the Inquiry Officer were perverse, especially for not giving deserving weight to the entry in the station diary. In any event, in view of the pronouncement of the Supreme Court in the cases of **the Workmen of M/s. Firestone Tyre (supra), Shankar Chakravarti V/s. Britannia Biscuit Co. Ltd. And Anr.**<sup>11</sup> and **M.L.Singla V/s. Punjab National Bank and Anr.**<sup>12</sup>, the Petitioner has the option of proving the misconduct before the Labour Court in accordance with law.

21. Resultantly, the Writ Petition fails.

22. Hence, the following order :

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<sup>11</sup> (1979) 3 SCC 371

<sup>12</sup> (2018) 18 SCC 21

**ORDER**

- (i) The Writ Petition stands dismissed.
- (ii) Interim order stands vacated.
- (iii) No costs.
- (iv) Rule discharged.

**( N.J.JAMADAR, J. )**