

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9360 OF 2017
WITH
INTERIM APPLICATION NO.13876 OF 2024
IN
WRIT PETITION NO.9360 OF 2017

TATA Consultancy Services Limited ... Petitioner
V/s.
Vinit Jain ... Respondent

Mr. B.D. Birajdar with Ms. Komal Deshmukh, Advocates for the Petitioner.

Mr. Avinash Belge, Advocate for the Respondent No.1.

Ms. Priyanka B. Chavan, AGP for the Respondents No.2 and 3/State.

CORAM : SANDEEP V. MARNE, J.

Dated : 13 February, 2025.

ORAL JUDGMENT :

1. The employer-TATA Consultancy Serviced Limited has filed this petition challenging the Award dated 23rd March, 2017 passed by Presiding Officer, Learned Labour Court, Mumbai in Reference (IDA) No.40 of 2015. The Labour Court has partly allowed the reference by directing reinstatement by the Respondent with 50% back-wages and continuity with effect from 3rd October, 2013.

2. Respondent was employed with the Petitioner since the year 2007 as Band-2 employee and was promoted to the category of Band-3 employee in

the year 2010. He was transferred to the Australian Credit Operation, which is a blended process, whereby Respondent was entitled to voice allowance irrespective of the fact whether he was receiving calls or not. It is the contention of the Respondent that he was however denied such voice allowance and that the Petitioner in arrears of amount of Rs.1,41,000/- towards such voice allowance. It is Respondent's case that because he demanded arrears of voice allowance, a show cause notice dated 29th May, 2012 was issued to him alleging insubordination, reporting late for duties etc. The Petitioner thereafter issued charge-sheet cum dismissal order dated 3rd October, 2013 dismissing the Respondent from service on allegations of willful insubordination/disobedience, late attendance, disorderly indecent behaviour, commission of acts subversive of discipline/good behaviour and refusal to accept charge-sheets/orders/communications. The punishment of dismissal from service imposed by the Petitioner vide an order dated 3rd October, 2013 became subject matter of Reference (IDA) No.40 of 2015 registered at the instance of the Respondent before 11th Labour Court, Mumbai. Since no disciplinary inquiry was held by the Petitioner-employer while dismissing the Respondent, Petitioner chose to justify its action by leading evidence before the Labour Court. After considering the pleadings documentary and oral evidence, the Labour Court proceeded to hold that the charges relating to insubordination and reporting late for duties were proved whereas the balance charges were not proved against the Respondent. The Labour Court however found that the punishment of dismissal from service was not proportionate to the proved misconduct. Accordingly, the Labour Court has warned the Respondent to be punctual in attendance of work and not to commit any further acts of insubordination. Labour Court has directed reinstatement of the

Respondent with 50% back wages and continuity with effect from 3rd October, 2013. Petitioner-employer has challenged Labour Court's Award dated 23th March, 2017 in the present petition. By order dated 24th November, 2022, the petition has been admitted. By further order dated 19th December, 2024, this Court has stayed the operation of the award during pendency of the petition. The petition is called out for final hearing with the consent of learned counsel appearing for parties and submissions canvassed by them have been heard.

3. Mr. Birajdar, learned counsel appearing for Petitioner would submit that since the charges of insubordination and late attendance of duties are conclusively proved before the Labour Court, order of reinstatement could not have been passed by the Labour Court. He would submit that Respondent committed acts of insubordination atleast on four occasions on 3rd May, 2013, 4th July, 2013, 21st August, 2013 and 15th July, 2013, where he simply refused to obey the orders given by his superiors. That the Petitioner undertakes and executes various projects and whenever the employees are deputed to work on the project, act of insubordination on the part of the employee causes huge losses to the Petitioner-employer. He would submit that for adjudging suitability of an employee to work on the project, the employees are often subjected to process of interview. That Petitioner used to refuse to participate in such interviews. Additionally, he reported late for duties on twelve occasions since July, 2013. He would also invite my attention to the notice dated 29th May, 2012 for demonstrating the past similar misconduct committed by the Respondent. He would submit that once the serious charges of insubordination is proved, the Labour Court could not have interfered in the quantum of punishment. In

support of his contention, he would rely upon judgment of Division Bench of this Court in ***Sarabhai M. Chemicals Vs. M. S. Ajmere and another***¹.

4. Mr. Birajdar would further submit that the Labour Court has erred in putting the burden of proving that the Respondent was gainfully employed on the Petitioner. He would submit that said burden rested on the shoulders of the Respondent, who did not make any averment about absence of gainful employment either in his statement of claim or in his affidavit of evidence. He would therefore submit that the Award passed by the Labour Court suffers from serious jurisdictional errors warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

5. Mr. Belge, learned counsel appearing for Respondent No.1 would oppose the petition. He would submit that there is in fact no act of insubordination committed by the Respondent as falsely sought to be suggested. He would invite my attention to email correspondence relating to deputation of the Respondent for interview on 9th July, 2007 in respect of a project for which the Respondent was admittedly not suitable. He would submit that the Officers of the Petitioner admitted that Respondent did not have expertise to work on the suggested project and that therefore the resistance shown by the Respondent to appear for interviews in relation to that project cannot amount to insubordination. He would submit that the Labour Court has rightly held the punishment of dismissal to be disproportionate to the proved misconduct. That the Labour Court has already denied 50% back-wages to the Respondent which constitutes

¹ 1979 (Mh. L.J.) 903.

sufficient punishment for him in respect of the alleged act of insubordination and late attendance of duties. He would accordingly pray for dismissal of the petition.

6. Rival contention of the parties now fall for my consideration.

7. The Respondent faced following charges in the charge-sheet cum dismissal order dated 3rd October, 2013.:

“24(a) Willful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior;

24(g) Late attendance on not less than four occasions within a month;

24(k) disorderly or indecent behaviour on the premises of the establishment;

24(l) Commission of any act subversive of discipline or good behaviour on the premises of the establishment.

24(c) Refusal to accept charge sheet, order or other communication.”

8. Admittedly, no domestic inquiry was conducted and the Petitioner-employer took the risk of dismissing the Respondent from service without

holding the inquiry. It took a bold step of justifying its action directly before the Labour Court by leading evidence. Petitioner led evidence before the Labour Court. After evaluating the evidence, the Labour Court has arrived at a conclusion that the Petitioner has proved the charges relating to insubordination and late reporting for duties. In this regard, it would be apposite to reproduce some of the findings recorded by the Labour Court in the impugned order :

“1. The first party in order to discharge the burden cast on it, has examined Deepmala Shah-Asst. Manager (HR) at Exh.C-33. Her evidence is nothing but the replica of written statement of the first party. She states that services of the second came to be terminated w.e.f. 3/10/2023 by issuing him chargesheet-cum-dismissal order. She has reiterated almost all facts constituting alleged misconduct. The chargesheet-cum-dismissal order which at Exh.C-6 is on two fold charges. First pertains to act of insubordination whereas second pertains to late attendance. It is alleged that on 3/5/2013, 4/7/2013, 21/8/2013 and 15/7/2013 the second party did not obey the orders of his superiors. It further alleged that in the month of July 2013 on 12 occasions the second party reported late on duty and left early.

2. Thus, the second party, indirectly admits that he used to come late. As there is no effective cross-examination as regards his late coming on 12 occasions in the month of July 2013 and also on the aspect of insubordination except on 21/8/2013, the charges levelled against second party of insubordination and late coming stands proved. In so far as disorderly and indecent behaviour is concerned, there is no cogent and reliable evidence.

3. It is evident from the aforesaid discussion that charges of insubordination and attending office at later

hours and leaving it early have been proved against the second party.

4. The first party has proved that second party committed insubordination and he was irregular in attending the duty.”

9. Thus, it has been conclusively proved that the Respondent committed acts of insubordination and late reporting for duties. The charge of insubordination is in respect of failure to obey the orders of the superiors on 3rd May, 2013, 4th July, 2013, 21st August, 2013 and 15th July, 2013. So far as late attendance for duties is concerned, it is proved that on 12 different occasions in one month of July 2015, Respondent had reported late for duties. It appears that Respondent has committed similar misconduct in the past as well. Petitioner has placed on record copy of letter dated 29th May, 2012 which alleges late reporting for duties from 1st March, 2012 to 19th April, 2012. In this period of about 2 months, Respondent reported late on as many as 31 different occasions. Additionally, he was accused of availing unscheduled breaks from March, 2012 to April, 2019 on 26 different occasions. Thus, the past record of the Respondent does not appear to be quite clean.

10. Despite holding that the charges of insubordination and reporting late for duties are proved, the Labour Court has proceeded to interfere in the penalty by holding that the same is shockingly disproportionate. The relevant findings recorded by the Labour Court in paragraphs No.21 and 22 of the impugned award are as under :

‘21. Having regard to the proved misconduct, the punishment of dismissal is surely shockingly

disproportionate. Instead of that, if the second party as provided under Section-11A of the I.D. Act, is punished by award of warning as provided under Rule-25 of the Model Standing Orders, ends of justice would meet. In view of these reasons, I do not find any substance in the submission of learned advocate for the first party that punishment of dismissal from service awarded to the second party is required to be maintained as it is.

22. Having dealt with proposed punishment and shockingly nature of punishment awarded by the first party, now further material question arise whether second party is entitled for reinstatement with full backwages and continuity of service. It is undisputed fact that second party is in service since 2007. Considering the length of service, certainly the second party is entitled for reinstatement. The first party without holding enquiry dismissed second party. Order of dismissal is not at all warranted in view of the proved misconduct. So, in the interest of justice it would be proper to direct reinstatement with continuity of service from the date of dismissal i.e. 3/10/2013.”

11. In my view, the Labour Court has committed a jurisdictional error in going into the issue of quantum and proportionality of penalty as if it was exercising appellate jurisdiction over the wisdom of the employer. It is well established position of law that Courts and Tribunal cannot interfere in the quantum of penalty as the appointing authority/ employer has full discretion in the matter of choosing a particular penalty once the charge is held to be proved. Labour Court cannot step into the shoes of the employer and decide as to what could be the appropriate penalty for the misconduct which is proved in the domestic inquiry. Petitioner is a leading IT services provider in the country and has viewed the repeated acts of insubordination and reporting late for duties to be grave misconduct. This subjective satisfaction recorded by the employer about gravity of

misconduct could not have been interfered with casually by the Labour Court by invoking the principle of proportionality. The principle of proportionality can be invoked only when the conscious of Courts/Tribunal is shocked after comparing the penalty with the proved misconduct. Respondent apparently was an incalcitrant employee, who was repeatedly reporting late for duties and was refusing to obey the orders of the superiors. The Labour Court cannot wear the glasses of the employer and decide whether such conduct on the part of the employee is grave or not. This jurisdiction and discretion vests solely with the employer. It cannot be stated that Respondent's repeated acts of insubordination and reporting late for duties on as many as 12 occasions within a month were worthy of being condoned or do not constitute a grave misconduct so as to impose the penalty of dismissal from service. What ought to have been borne in mind by Labour Court is the nature of employment in which the concerned worker works. In a particular establishment, reporting late for duty or not obeying order of Superior may not strictly constitute a grave misconduct. However, in case of an employer like the present one, repeated acts of reporting late for duty and disobeying the orders of superiors would undoubtedly constitute grave misconduct worthy of imposing the punishment of dismissal from service. The Labour Court in my view has committed a jurisdictional error in stepping into the shoes of the employer and deciding whether the misconduct is grave or not.

12. The charge of insubordination has been proved against the Respondent. In this regard, reliance by Mr. Birajdar on judgment of Division Bench of this Court in ***Sarabhai M. Chemicals*** (supra) appears to

be apposite. The Division Bench of this Court has held in paragraphs No.15 to 18 of the Judgment as under :

“15. Now, there can hardly be any dispute with regard to the principles which have to be considered while determining the validity of the award made by a Labour Court in a case where the dismissal order made by an employer is made the subject-matter of a reference before a Labour Court. As observed in *Anand Bazar Patrika's case*, if the enquiry has been properly made and the order of punishment dismissing the employee is not *mala fide*, then the Industrial Tribunal cannot interfere with the action of the management, but it is also well established that the action of the management is subject to review and scrutiny where the matter is referred to Labour Court and if the workman succeeds in showing that the order of dismissal is *mala fide* or that it was made to victimize the workman for his trade union activities, the order of dismissal made by the employer can be interfered with by the Labour Court. In addition to such scrutiny of the action of the employer, there is the further jurisdiction of the Labour Court to go into the question as to whether the punishment awarded by the employer is such that no reasonable employer could have imposed that punishment in like circumstances unless it served some other purpose. The Supreme Court in *Hind Construction and Engineering Co. Ltd. v. Their Workmen* [1965 I LLJ 462 : AIR 1965 SC 917.] , has put the position of law as follows:—

“It is now settled law that the tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the tribunal as it is ordinarily before a Court of appeal. The tribunal's powers have been stated by this Court in a large number of cases and it has been ruled that the tribunal can only interfere if the conduct of the employer shows lack of *bona fides* or victimization of employee or employees or unfair labour practice. The tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer

conducting the domestic enquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed, the tribunal should not interfere. The tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the pan record or is such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.”

16. The validity and the legality of the award made by the Labour Court will have to be tested on the touchstone of the principles enunciated by the Supreme Court in the *Hind Construction & Engineering Co.'s case* and the *Anand Bazar Patrika's case*. Now, before we go to that part of the award which deals with the order of dismissal, we consider it necessary to point out the apparent error into which the Labour Court has fallen when it boldly proceeded to lay down a proposition of law that a single act of insubordination will not amount to misconduct in respect of which disciplinary proceedings could be taken against a workman. In all fairness to the learned Counsel for the workman, it must be said that this part of the observations made by the Labour Court was not supported by him. However, since the learned Judge of the Labour Court purported to lay down certain propositions basing them on a reported decision, we consider it necessary to deal with that question. The charge made against the workman was one of insubordination and indiscipline, both based on his conduct of refusing to obey what had been found to be lawful orders of the

superior officer. The conduct of the workman consisted of declining to type out delivery challans which was a part of his duty and it has been so found even by the Labour Court. There is, therefore, no difficulty in holding that he had disobeyed a lawful order. If there was no valid reason justifying such conduct, the disobedience would also amount to an act of indiscipline.

17. Now it is difficult to see why such disobedience will not amount to insubordination. The learned Counsel appearing on behalf of the workman wanted to draw a distinction between disobedience and insubordination and it was contended before us that unless there is a flagrant disobedience or rebellious disobedience, the conduct of a workman cannot amount to insubordination. In our view, this argument is plainly contrary to the very concept of insubordination. A subordinate officer or employee is duty bound to obey a lawful order of a superior officer. That such is the duty of a subordinate officer is not required to be stated in so many words in any list of duties. The concept of obedience is implicit in the fact that the officer receiving the order is subordinate to the officer giving the order and a lawful order has to be obeyed, unless there is good justification for not complying with such a lawful order. It is this conduct of declining to obey an order which not only results in disobedience, but the conduct of the workman would also amount to insubordination. The *Concise Oxford Dictionary* gives the meaning of the word 'insubordinate' as "Disobedient, rebellious". The two meanings given by the dictionary do not mean that only a rebellious conduct would amount to insubordination, but even disobedient conduct would amount to insubordination. The *Random House Dictionary* gives the meaning of 'insubordinate' as follows: "Not submitting to authority; disobedient, one who is insubordinate". These meanings would indicate that any person who is disobedient becomes insubordinate and his conduct amounts to insubordination. Therefore, where a workman disobeys a lawful order, he can be said to be guilty of insubordination and it needs hardly to be stated that a misconduct of disobedience and insubordination would also amount to indiscipline. We have, therefore, no difficulty in holding on the finding recorded by the Labour Court that it was a part of the

workman's duty to type the delivery challans and his declining to do so would clearly amount to insubordination and indiscipline.

18. It is difficult for us to appreciate the view taken by the Labour Court that there must be a series of disobedient conduct or acts of indiscipline before a workman can be charged with insubordination or indiscipline. As already pointed out, the Labour Court has unambiguously stated in the award that one single act of disobedience will not amount to an act of insubordination or an act of indiscipline. If each act of disobedience would result in act of insubordination and indiscipline, then it is difficult to see what warrant there is for the proposition which is being laid down by the learned Judge that a workman cannot be charged for insubordination in respect of one act.”

13. In my view, the Labour Court has grossly erred in recording a casual finding of punishment being disproportionate to the proved misconduct by substituting itself in place of the employer, as if it was exercising appellate jurisdiction over the wisdom of the employer in choosing the exact nature of penalty. The Labour Court has merely issued a warning to the Respondent directing him to be punctual and not to commit an act which would constitute insubordination. Such direction by the Labour Court would also be beyond its jurisdiction.

14. As if the jurisdictional error committed by the Labour Court in interfering in the quantum of punishment was not sufficient, it has recorded a preposterous finding that the burden of proving absence of gainful employment was on the Petitioner-employer. Recording of such finding by the Labour Court is against basic notions of Labour and Industrial jurisprudence. The initial burden is on the workman to prove that he is not gainfully employed. The workman at least needs to raise an averment and

make statement in affidavit of evidence that he is not gainfully employed. It is only after evidence is led by the workman that he is not gainfully employed that the burden shifts on the employer to produce evidence to demonstrate that the workman has actually drawn wages during the period of this communication. In the present case, the Respondent admittedly did not aver in the statement of claim or in the affidavit of evidence that he was not gainfully employed. In any case, since the direction for reinstatement itself is found invalid, it is not necessary to delve deeper into the further erroneous direction of Labour Court for payment of backwages.

15. After considering the overall conspectus of the case, impugned award passed by the Labour Court is indefensible and liable to be set aside.

16. The Petition accordingly succeeds. Award dated 23rd March, 2017 passed by the Labour Court in Reference (IDA) No.40 of 2015 is set aside.

17. Writ Petition is allowed in above terms. Rule is made absolute. There shall be no order as to costs.

18. In view of disposal of the Writ Petition, the Interim Application also stands disposed.

(SANDEEP V. MARNE, J.)