AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7817 OF 2018

1. **Ambadas Mahadev Khade**
Aged years, Occu. Suspended,
An adult, Indian inhabitant,
residing at: D-16, Pethkar Plaza,
Peth Road, Panchvati,
Nashik - 422 003. … **Petitioner**

V/s.

1. **The state of Maharashtra**
Through office of the government
Pleader, Civil Appellate Side,
Bombay High Court, Mumbai.

2. **Mahindra and Mahindra Limited**
a Company registered under the
provisions of the Companies Act
Having its registered office at Gateway
building, Apollo Bandar,
Mumbai:400001 and its plant
situated at:80/89, M.I.D.C.,
Satpur, Nashik:422007 … **Respondents**

Ms. Gunjan Shah i/by Mr. Kayval P. Shah, for petitioner.

Mr. Y. D. Patil, AGP for State-Respondent no. 1.

Mr. N. B. Jalota i/by G. K. Tripathi, for Respondent no. 2.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 12, 2026

PRONOUNCED ON : MARCH 26, 2026

JUDGMENT:

1. By the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner calls in question the legality and correctness of the impugned Awards dated 11 January 2018 and 21 April 2018 passed by the Labour Court at Nashik in Reference (IDA) No. 42 of 2014. By the said Awards, the Labour Court has held that the domestic enquiry conducted against the petitioner was fair, proper and in accordance with the principles of natural justice. It has further recorded a finding that the conclusions arrived at by the Enquiry Officer are not perverse. On that basis, the Labour Court has ultimately answered the reference against the petitioner.

2. The factual background giving rise to the present petition is required to be noted in some detail. The petitioner was employed with the respondent-company as a permanent workman with effect from 1 November 1985. He initially joined in the O-2 grade and continued to serve in the said capacity. At the relevant time, he was working in the R&D-I Department of the respondent-company. It is the case of the petitioner that throughout his service tenure he discharged his duties sincerely and maintained good conduct. On account of his work performance, technical competence and training, he was deputed by the respondent-company to the Ford Company in the United Kingdom for advanced training. In the year

1996, he was promoted to the post of Group Captain. According to the petitioner, he had an unblemished service record and was regarded as one of the competent employees of the respondent-company. By a letter dated 21 December 2011, the respondent-company placed the petitioner under suspension on allegations of serious misconduct. The suspension was effected with immediate operation, pending issuance of a charge-sheet, conduct of enquiry and passing of final orders. Thereafter, a charge-sheet dated 28 February 2012 came to be issued to the petitioner. In the said charge-sheet, it was alleged that on 20 December 2011 at about 7:45 a.m., a surprise inspection was conducted by the security officer of the respondent-company, namely Mr. G. G. Wable, of the locker allegedly allotted to the petitioner. During such inspection, certain materials stated to be belonging to the respondent-company were found in the said locker. On the basis of these allegations, it was contended that the petitioner had committed misconduct within the meaning of the Model Standing Orders, more particularly under clauses 24(d) and 24(1), relating to theft, dishonesty and acts subversive of discipline.

3. The petitioner was granted a period of 48 hours to submit his written explanation to the charge-sheet. He was also directed to remain under suspension during the pendency of the enquiry proceedings and till final orders were passed. It was further indicated that he would be entitled to subsistence allowance in accordance with the provisions of the Industrial Employment (Standing Orders) Act, 1946. Upon completion of the enquiry, the Enquiry Officer submitted his report along with findings on 22

November 2012. The said report was forwarded to the petitioner by the respondent-company under a covering letter dated 29 November 2012. Thereafter, by an order dated 24 January 2013, the respondent-company imposed the punishment of dismissal from service upon the petitioner with immediate effect.

4. Subsequently, the Deputy Commissioner of Labour, Nashik Division, Nashik, by communication dated 4 April 2014, referred the industrial dispute between the petitioner and the respondent-company to the Labour Court at Nashik for adjudication. The dispute pertained to the petitioner's claim for reinstatement in service with full back wages and continuity of service from 21 January 2013. The said reference was registered as Reference (IDA) No. 42 of 2014. Upon adjudication, the Labour Court, by its final Award dated 21 April 2018, answered the reference in the negative and declined to grant reliefs as sought by the petitioner.

5. Learned Advocate Ms. Gunjan Shah appearing for the petitioner submitted that the alleged incident is stated to have occurred on 20 December 2011 and the petitioner was placed under suspension on 21 December 2011. However, the charge-sheet came to be issued only on 28 February 2012, that is after a lapse of more than two months. It is her submission that the petitioner, in his reply dated 9 April 2012, had specifically contended that no locker was ever allotted to him and that no locker was opened in his presence. It was further stated by him that he had not signed any panchanama and that no copy thereof was supplied to him. According to the learned counsel, these material contentions raised by the petitioner have not been duly

considered by the authorities. Learned counsel further submitted that during the course of cross-examination, the petitioner had categorically denied having signed the panchanama and had specifically disputed that the signature appearing thereon was his. It was also brought on record that the panchanama was allegedly shown to the petitioner for the first time on 16 April 2012 during the course of the domestic enquiry. It is pointed out that the Management witnesses themselves have admitted that no copy of the panchanama was furnished to the petitioner at the time when it was allegedly prepared. It is further submitted that the panchanama itself does not record the presence of the petitioner at the relevant time. A perusal of paragraph 1 of the panchanama shows that it records only the presence of two panch witnesses. There is no recital in the entire document indicating that the petitioner was present when the panchanama was drawn. Except for the alleged signature appearing at the end of the document, there is nothing to establish his presence. The petitioner has specifically denied the said signature. In these circumstances, it is contended that the panchanama dated 20 December 2011 is doubtful and suffers from inconsistencies, and therefore cannot be relied upon. It is further urged that the alleged signature of the petitioner is fabricated and that the petitioner has deposed on oath that the document was neither executed in his presence nor signed by him.

6. Learned counsel submitted that the entire case of the respondent-company rests on the assertion that the petitioner handed over the keys of the locker and hence the locker belonged

to him. It is contended that there is no documentary evidence whatsoever to establish that the locker in question was allotted to the petitioner. The petitioner, in his evidence, has categorically stated that the locker neither belonged to him nor was allotted to him. The Management witnesses have also admitted that there is no documentary proof regarding allotment of the locker, lock or keys to the petitioner. In the absence of proof of allotment or exclusive use, it cannot be inferred that the articles allegedly found therein were in the possession of the petitioner. It is further the case of the petitioner that the charges have been levelled against him with ulterior motives. It is further submitted that there are material contradictions in the evidence of the Management witnesses regarding the alleged sealing of the locker prior to the incident. While one witness stated that the locker was sealed, other witnesses have categorically deposed that no such sealing was carried out. In cross-examination, witnesses including Shri Wable, Shri Mayekar and Shri Palwe admitted that the locker was not sealed, that there was no documentary proof of such sealing, no order to that effect and no intimation was given to the petitioner. These admissions, according to the petitioner, render the version of the Management unreliable. Learned counsel further submitted that although certain documents were produced before the Enquiry Officer, the Management failed to produce the actual seized articles until the conclusion of its evidence. The articles were eventually produced through one Shri Raskar, who was not present at the time of the alleged inspection or preparation of the panchanama. It is pointed out that the bag containing the articles

did not bear any signatures indicating its custody or transfer. Shri Raskar has admitted that there was no such endorsement and further that he had not verified the articles before submitting his report. It is, therefore, contended that the entire process suffers from serious infirmities. It is also urged that the punishment of dismissal imposed upon the petitioner is grossly disproportionate.

7. It is further submitted that the respondent-company did not issue any show cause notice calling upon the petitioner to explain the proposed punishment nor did it await any reply from him before passing the order of dismissal. The charge-sheet itself, along with the name of the Enquiry Officer, was issued after a considerable delay from the date of the alleged incident. According to the petitioner, this procedure is in violation of the principles of natural justice. Learned counsel also submitted that no complaint regarding loss of property nor any criminal proceedings were initiated by the respondent-company against the petitioner in respect of the alleged theft. This, according to her, weakens the case of the Management. On these grounds, it is prayed that the impugned Award be quashed and set aside. Reliance is placed on the judgment of the Supreme Court in *Divisional Controller, Maharashtra State Road Transport Corporation, Latur vs. Bhushan Jagannathrao Bulbule, reported in (2018) 5 Mh. L.J. 936*.

8. Per contra, learned Advocate Mr. N. B. Jalota appearing for respondent No. 2 opposed the petition and submitted that the petitioner was employed as a permanent workman in the Nashik plant since 1 November 1985 and was working in the R&D Department in O-2 grade. On 20 December 2011, the petitioner

was assigned to the first shift commencing at 7:00 a.m. On that day, a surprise inspection of the locker allotted to the petitioner was conducted by the Security Officer, Shri G. G. Wable, in the presence of Shri Mangesh Palave and Shri Narayan Mayekar, both Assistant Managers in the R&D Department. It is submitted that upon opening the locker, materials belonging to the respondent-company were found therein. According to the respondent, these materials were unauthorisedly kept by the petitioner. It is contended that the petitioner has not offered any satisfactory explanation for the presence of these articles in the locker. A charge-sheet dated 28 February 2012 was thereafter issued. A panchanama recording the articles found in the locker was prepared on 20 December 2011 itself. It is the case of the respondent that the petitioner had signed the said panchanama and had also handed over the keys of the locker for its opening. Learned counsel submitted that the contention raised by the petitioner that the locker was not allotted to him is misconceived. Reliance is placed on the testimony of Management Witness No. 1, Shri Ghanshyam Wable, who stated that the keys of the locker were handed over by the petitioner. It is urged that this fact clearly indicates that the locker was in possession of the petitioner. It is further submitted that there was no cross-examination on this aspect and no suggestion was put to the witness disputing this statement. In such circumstances, the said evidence, according to the respondent, stands unchallenged and must be accepted.

9. It is further submitted that once it is established that the keys of the locker were with the petitioner, it leads to a reasonable

inference that the locker was allotted to him. The respondent contends that, on the basis of preponderance of probabilities, the possession of the keys establishes control and use of the locker by the petitioner. It is, therefore, urged that the contention of the petitioner in this regard deserves to be rejected. Learned counsel also submitted that the petitioner has since attained the age of superannuation on 31 May 2024 and is no longer in service of the respondent-company. It is, therefore, contended that the question of reinstatement does not arise. It is further submitted that the petitioner, in substance, has admitted that the materials were found in the locker, though he has attempted to explain the same by stating that such materials were required for discharge of his duties. According to the respondent, the nature of the materials does not support this explanation. It is also pointed out that the petitioner has not taken a defence that the locker was tampered with or that the articles were planted by any third person. Thus, the presence of the materials in the locker is not seriously in dispute.

10. Learned counsel submitted that in the context of labour jurisprudence, the standard of proof required is that of preponderance of probabilities. On the basis of the admitted and proved facts, it is contended that there is sufficient material to hold that the petitioner had unauthorisedly kept the company's articles in the locker. The findings recorded in the domestic enquiry, therefore, cannot be said to be perverse. It is further submitted that the panchanama assumes considerable importance in the present case and constitutes a crucial piece of evidence.

According to the respondent, the petitioner was present at the time of its preparation and had signed the same. It is contended that the petitioner has not seriously disputed the contents of the panchanama or its correctness. It is also urged that the Labour Court has recorded a finding accepting the contents of the panchanama as true and that such finding has not been effectively challenged. In these circumstances, it is submitted that the panchanama establishes the misconduct alleged against the petitioner. On these grounds, dismissal of the petition is prayed for.

REASONS AND ANALYSIS:

11. After hearing the learned Advocates for the parties and going through the record placed before this Court, this Court finds that the dispute turns mainly on the question whether the domestic enquiry was fair and whether the findings recorded by the Enquiry Officer and accepted by the Labour Court can be said to be illegal, perverse or so unreasonable that they call for interference in writ jurisdiction. The petitioner has tried to show that the entire action of the Management is doubtful from the very beginning. The respondent-company, on the other hand, has stood by the domestic enquiry and has submitted that the material on record clearly shows misconduct on the part of the petitioner. The matter has therefore to be tested on the basis of the record and the settled limits of judicial review. This Court is not sitting as an appellate court over the findings of fact. It can interfere only if there is a clear error of law, gross perversity, or breach of natural justice.

12. The first submission of the petitioner is regarding delay in issuing the charge sheet. It is correct that the alleged incident is of 20 December 2011 and the charge sheet came to be issued on 28 February 2012. There is some gap of time. But every delay does not make the action bad in law. The Court has to see whether such delay has actually caused any injustice to the employee or has affected his defence in a real manner. Here it is seen that immediately after the incident, the petitioner was placed under suspension. So the employer did not remain silent. The process had already started. Thereafter, the charge sheet was issued and enquiry followed. The petitioner has not been able to point out that because of this gap of time, any evidence was lost, or any witness became unavailable, or his defence got weakened in any specific way. In absence of such showing, delay alone cannot be treated as fatal. Therefore, this Court is not inclined to accept that the proceedings stand vitiated only on this ground.

13. Coming to the issue of panchanama, the petitioner has taken a very firm stand. He says no locker was allotted to him, nothing was opened in his presence, and he has not signed any such document. He also says that copy was not given to him at that time. These are serious objections. They go to the root of the matter. But such objections cannot be accepted only because they are stated. They must be tested against the evidence which has come on record. The Management witnesses have stated that the locker was opened and the panchanama was drawn at that time. The petitioner denies the signature. Now, denial by itself is not always sufficient. Its weight depends on the surrounding facts. If

other evidence supports the Management, then mere denial may not carry much value. But if the surrounding facts are inconsistent, then such denial becomes important. Therefore, this Court has to examine the entire material together. It cannot accept or reject the panchanama only on one line of argument.

14. The petitioner has also pointed out that the panchanama itself does not clearly show his presence. A document like panchanama should ideally be clear on who was present and what exactly happened. It should not leave doubt on such basic facts. In the present case, it is seen that the initial part of the panchanama refers to panch witnesses, and there is no clear line stating that the petitioner was present. At the same time, the Management says that the petitioner gave the keys and signed the document. The petitioner disputes both. Because if the panchanama is not reliable, then the very base of the charge becomes weak. If it is reliable, then it strongly supports the Management. Therefore, this Court has to examine it carefully. It has to see whether other circumstances support the version of the Management sufficiently.

15. Then comes the question of the locker itself. The petitioner clearly says that the locker was not his and was never allotted to him. The respondent-company relies mainly on one circumstance. That the petitioner handed over the keys. The witness has said so. From this, the respondent-company wants the Court to conclude that the locker belonged to the petitioner. This Court finds that such conclusion cannot be accepted in a automatic manner. Having keys may show some connection. But it is not the same as proving allotment. Especially when serious misconduct like theft or

dishonesty is alleged, the employer is expected to show some proper record if it exists. Normally, lockers in such establishments are allotted and there is some system. If that is so, then some document, register, or record should be there. In the present case, the Management witnesses themselves have admitted that there is no documentary proof of allotment of locker or keys. This admission weakens the certainty of the Management's case. It does not destroy it completely, but it does create doubt which the Court must keep in mind. At the same time, this Court cannot overlook a certain difficulty arising from the stand taken by the petitioner himself. It has come on record that, while disputing the overall case of the Management, the petitioner has admitted that out of the articles mentioned at serial numbers 1 to 49, the material at serial number 30, namely the apron, belongs to him. This admission assumes some significance. It shows that the petitioner was not completely unconnected with the contents found in the said locker. Now, once such an admission is there, the Court has to examine its effect carefully. If the petitioner's case is that the locker did not belong to him at all and that he had no connection with it, then the presence of his own article in that very locker raises a question which remains not fully answered. It creates a situation where his denial of connection with the locker does not appear entirely consistent. At the same time, this by itself does not prove the entire charge. But it is a circumstance which cannot be ignored. In ordinary course, if a person's own belonging is found in a particular place, it may indicate some degree of access or use. The petitioner has not given a clear and satisfactory explanation as

to how his apron came to be in that locker if the locker was not allotted to him or was not used by him. This gap in explanation becomes relevant while appreciating the overall probabilities. Therefore, while the petitioner has raised serious objections to the panchanama and the alleged recovery, his own admission regarding the apron creates a small but important link connecting him to the locker. This aspect, when seen along with other material on record, has to be taken into account while assessing whether the findings of the enquiry are sustainable.

16. The petitioner has also highlighted contradictions regarding sealing of the locker. He says one witness speaks of sealing, others deny it. If the locker was sealed earlier, there should have been some record or at least consistent oral evidence. Here, witnesses themselves have also admitted that there is no document of sealing and no information was given to the petitioner. But the Court must see whether this point goes to the root or is only a side issue. The core issue still remains whether the petitioner was connected with the locker and whether company articles were found there. Even if the sealing story is not fully reliable, it does not automatically mean that the recovery itself is false.

17. Another submission of the petitioner is about the handling of seized articles. He says that the articles were not properly produced and were brought by a person who was not present at the time of inspection. He also points out absence of signatures on the bag. Proper handling of such articles gives confidence to the process. If there are gaps, doubt can arise. In this case, it appears that the handling was not very neat. There are missing links.

However, it must be remembered that this is a domestic enquiry. The standard is not as strict as in criminal trial. The question is whether, on a reasonable view, the misconduct is proved. Absolute perfection in procedure is not required, but fairness is required. Here, the Labour Court has considered the material and found it sufficient. This Court does not find that the evidence is so unreliable that no reliance could be placed on it.

18. The petitioner has also argued that no separate show cause notice before dismissal was given. The record shows that charge sheet was issued, reply was taken, enquiry was conducted, and findings were recorded. After that, punishment was imposed. If there is complaint about absence of separate notice on punishment, the Court has to see whether this has caused real prejudice. The petitioner has not shown that he could have made any additional defence on punishment which he was prevented from making. In such situation, this procedural point alone is not sufficient to set aside the action.

19. The argument that no criminal complaint was filed also cannot take the matter far. Departmental proceedings are independent. An employer may or may not file a police complaint. That does not decide the validity of domestic enquiry. At the most, it may show how seriously the employer viewed the matter. But it is not decisive. Here, the enquiry has been conducted and evidence has been assessed. Therefore, absence of criminal case does not help the petitioner much. On the side of the respondent-company, much emphasis is placed on the fact that the petitioner handed over the keys. This is indeed an important circumstance. It shows

some control or connection with the locker. From this, the respondent-company draws inference of allotment. The Labour Court has has accepted the Management version. Unless that view is completely unreasonable, this Court will not interfere.

20. It is also pointed out that the petitioner has not seriously denied that the material was found in the locker. Once presence of company articles in a locker connected with the petitioner is accepted, then burden shifts on him to explain properly. His explanation has not been found satisfactory. This is a finding of fact. Merely because another view is possible, this Court cannot substitute its own view.

21. Lastly, the standard of proof in such matters has to be kept in mind. It is not proof beyond reasonable doubt. It is preponderance of probabilities. The authority has to see what is more likely on the basis of material. Here, all circumstances have been considered together. The Labour Court has found that the charge is proved. This Court does not find that such conclusion is impossible or wholly unreasonable. Therefore, there is no ground to interfere with that finding.

22. In view of the foregoing discussion and reasons recorded hereinabove, this Court is of the considered opinion that the petitioner has failed to make out any case for interference in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India. The findings recorded by the Labour Court holding that the domestic enquiry was fair and proper, and that the conclusions of the Enquiry Officer are not perverse, do not

suffer from any legal infirmity warranting interference.

23. Accordingly, the following order is passed:

(i) The writ petition stands dismissed;

(ii) The impugned Awards dated 11 January 2018 and 21 April 2018 passed by the Labour Court, Nashik in Reference (IDA) No. 42 of 2014 are upheld;

(iii) In the facts and circumstances of the case, there shall be no order as to costs.

24. The amount deposited by the respondent No.2-company shall remain with the office for a period of eight weeks from today. If within eight weeks, no interim relief is granted by the superior Court, it shall be open for the respondent No.2-company to seek withdrawal of the said amount.

(AMIT BORKAR, J.)