IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2373 OF 2023

Jayashree Electron Pvt. Ltd. ....Petitioner
V/S
Prashant Ranu Gaware ....Respondent

WITH
WRIT PETITION NO.2376 OF 2023

Jayashree Electron Pvt. Ltd. ....Petitioner
V/S
Vinod Manohar Machkar ....Respondent

WITH
WRIT PETITION NO.14338 OF 2022

Jayashree Electron Pvt. Ltd. ....Petitioner
V/S
Vishal Vishwanath Tapkir ....Respondent

WITH
WRIT PETITION NO.2377 OF 2023

Jayashree Electron Pvt. Ltd. ....Petitioner
V/S
Manoj Laxmikant Kale ....Respondent

WITH
WRIT PETITION NO.2375 OF 2023

Jayashree Electron Pvt. Ltd. ....Petitioner
V/S
Mahesh Ashok Patil ....Respondent

WITH

WRIT PETITION NO.2374 OF 2023

Jayashree Electron Pvt. Ltd. ....Petitioner
V/S
Ganesh Eknath Yelwande ....Respondent

Mr. Nitin Kulkarni *a/w Mr. Avinash Belge for the Petitioner in all Writ Petitions.*

Mr. Prashant P. Kshirsagar *a/w Mr. Anirudha M. Sanap i/b M/s. Sarvadnya Legal Associates for Respondent/s in all WPs.*

CORAM: SANDEEP V. MARNE, J.
DATE : 14 AUGUST 2024.

Oral Judgment

1. ***Rule.*** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petitions are taken up for final disposal.

2. The challenge in the present Petitions is to the Part-I Awards dated 15 July 2022 passed by the Labour Court No.3, Pune by which the enquiry conducted against Respondents is found to be fair, proper and not in violation of principles of natural justice. The Labour Court has however held that the findings of the enquiry officer are perverse. The employer has filed these Petitions to the limited extent of the findings of the Labour Court about

perversity in the findings of the enquiry officer.

3. Before proceeding further with merits of the Petitions, it is necessary to first deal with preliminary objection raised by Mr. Kshirsagar, the learned counsel appearing for Respondents about maintainability of the Petitions. According to him Part-I Award deciding the issues of fairness in inquiry and perversity in findings cannot be challenged during pendency of determination of remaining issues by way of Part-II Award. Relying on the judgment of the Apex Court in ***The Cooper Engineering Ltd. vs. P.P. Mundhe***[1] he would submit that the Apex Court has held in paragraph 22 of the judgment as under:

> 22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, It will not be thereafter permissible in any proceeding to raise the line issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.
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> (emphasis and underlining added)

4. Mr. Kshirsagar has also relied upon the judgment of the Apex Court

1. AIR 1975 SC 1900

in ***D.P. Maheshwari V/s. Delhi Administration and others,***[2] in which it is held in paragraph 5 as under:

> 5. Curiously enough, the Learned Single Judge of the High Court affirmed the finding of the Labour Court that D.P. Maheshwari was not employed in a supervisory capacity. He said,
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> "In the face of this material and the admitted hypothesis the conclusion that the respondent was not mainly employed in a supervisory capacity is certainly a possible conclusion that may be arrived at by any Tribunal duly instructed in the law as to the manner in which the status of an employee may be determined. It is, therefore, not possible for this Court to disturb such a conclusion having regard to the limited admit of review of the impugned order."
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> Having so held, the Learned Single Judge went on to consider whether the workman was discharging duties of a clerical nature. He found that it would be difficult to say that D.P. Maheswari was discharging 'routine duties of a clerical nature which did not involve initiative, imagination, creativity and a limited power of self direction.' The Learned Single Judge did not refer to a single item of evidence in support of the conclusions thus recorded by him. He appeared to differ from the Labour Court on a question of fact on the basis of a generalisation without reference to specific evidence. No appellate court is entitled to do that, less so, a court exercising supervisory jurisdiction. Referring to the finding of the Labour Court that the workman was discharging mainly clerical duties the Learned Single Judge observed, "It is erroneous to presume, as was apparently done by the Additional Labour Court, that merely because the respondent did not perform substantially supervisory functions, he must belong to the clerical category." This was an unfair reading of the Labour Court's judgment. We have earlier extracted the relevant findings of the Labour Court. The Labour Court not only found that the workman was not performing supervisory functions but also expressly found that the workman was discharging duties of a clerical nature. The Division Bench which affirmed the judgment of the Learned Single Judge also read the judgment of the Labour Court in a similar unfair fashion and observed." It is no doubt true that the Labour Court held that the appellant's evidence showed that he was doing mainly clerical work. As we read the order as a whole it appears that in arriving at this conclusion the Labour Court was greatly influenced by the fact that the appellant was not employed in a supervisory capacity." We have already pointed out that the Labour Court did not infer that the

2. AIR 1984 SC 153

> appellant was discharging duties of a clerical nature from the mere circumstance that he was not discharging supervisory functions. The Labour Court considered the entire evidence and recorded a positive finding that the appellant was discharging duties of a clerical nature. The finding was distinct from the finding that the appellant was not discharging supervisory function as claimed by the company. We would further like to add that the circumstance that the appellant was not discharging supervisory functions was itself a very strong circumstance from which it could be legitimately inferred that he was discharging duties of a clerical nature. If the Labour Court had drawn such an inference it would have been well justified in doing so. But, as we said, the Labour Court considered the entire evidence and recorded a positive finding that the workman was discharging duties of a clerical nature. The Division Bench, we are sorry to say, did not consider any of the evidence considered by the Labour Court and yet characterised the conclusion of the Labour Court as perverse. The only evidence which the Division Bench considered was that of M.W.I.Shri K.K. Sabharwal and under the impression that the Labour Court had not considered the evidence of K.K. Sabharwal, the Division Bench observed,
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> "The non reference to the said evidence while discussing the point in issue, would clearly vitiate the order to the Labour Court." This was again incorrect since we find that the Labour Court did consider the evidence of M.W.I fully.

5. Mr. Kshirsagar has also relied upon the judgment of Single Judge of Delhi High Court in ***Indian Bank & Anr. V/s. Praveen Kumar,***[3] in which it is held in paragraph 19 as under:

> 19.From the above decisions and in particular, from the decision of the Supreme Court in Cooper Engineering (supra), one thing is clear that whenever the Labour Court or the Industrial Tribunal decides the validity of the domestic enquiry conducted by the management as the preliminary isuse, the writ petition challenging the said order should not be entertained. The Supreme Court in Cooper Engineering (supra) observed that there will not justification for any party to stall the final adjudication of the dispute by the Labour Court/Tribunal by questioning its decision which is a preliminary issue and the same can be agitated even after the final award. The Supreme Court had also observed that it will be legitimate for the High Court to

3. AIR Online 2022 DEL 656

refuse to intervene at this stage.

6. Relying on the above judgments, Mr. Kshirsagar has contended that this Court cannot entertain a challenge to the Part-I Award answering preliminary issues of fairness in enquiry and perversity in findings of the enquiry officer, when the final Award can always be challenged by the employer in the event the same again goes against him. He would submit that entertaining the present Petitions at this stage would result in delay in the decision of the references pending before the Labour Court.

7. On the other hand, Mr. Kulkarni, the learned counsel appearing for the Petitioner relies on judgment of Division Bench of this Court in ***Reliance Industries Ltd. Raigad vs. S.D. Rane, Raigad***,[4]. In which this Court has considered the issue of absolute bar of jurisdiction of this Court in entertaining the Writ Petition under Articles 226 and 227 of the Constitution of India challenging preliminary Part-I Award. This Court held in paragraphs 10 and 11 as under:

> 10. A short point for our consideration in this appeal is whether any bar exists while exercising jurisdiction under Articles 226 and 227 of the Constitution of India when Award Part I passed by the Labour Court is challenged before this Court. The learned Single Judge refrained himself from examining the legality of the said Award Part-I order relying on the judgment of the Apex Court in Cooper Engineering Ltd. (supra). It appears that the judgments of learned Single Judge in Indian Hotels Co. (supra) and Mahindra and Mahindra (supra) were not placed before the learned Single Judge wherein the learned Single Judge has discussed the observations made by the Supreme Court in the case of Cooper Engineering (supra) that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its

4. 2014 I CLR 218

> decision regarding preliminary issue, when the matter, if worthy, can be agitated even after final award and it will be legitimate for the High Court to refuse to intervene at this stage. However, the Supreme Court in Cooper Engineering did not lay down as an absolute proposition of law that the High Court should not exercise its jurisdiction under Articles 226 and 227 in a petition challenging the preliminary Part-I Award and should not go into the legality of the Award Part-I. This view is further confirmed by the Division Bench of this Court in Hindustan Unilever Ltd. V. Hindustan Lever Employees Union and Anr. reported in 2009 II CLR 1083 inw hich the Division Bench while allowing the appeal held that the learned Single Judge ought to have considered whether the finding recorded by the Labour Court in Part -I Award that the enquiry is not proper is correct or not. The Division Bench has set aside the order of the Learned Single Judge and requested the Single Judge to dispose of the petition expeditiously.
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> 11. Thus, considering the settled position of law, in writ jurisdiction there is no bar to test and quest the order passed in Part-I Award, if the same is perverse or illegal. In the present case, the learned Single Judge rejected the Writ Petition filed by the petitioner at the threshold by reading the decision of the Apex Court in the case of Cooper Engineering as the absolute bar. We do not want to go into the merits of the matter and give our opinion which might come into the way of the parties of agitating all the contentions before the learned Single Judge.

8. Mr. Kshirsagar would point out that judgment in ***Reliance Industries Ltd. Raigad*** (supra) has been set aside by the Supreme Court by its order dated 6 May 2016. Perusal of the order dated 6 May 2016 passed by the Supreme Court would indicate that no reasons are recorded as to why the order passed by this Court has been set aside. Mr. Kulkarni would interpret the order of the Apex Court dated 6 May 2016 to have been passed by way of consent. However, there appears to be nothing in the order to indicate that the same is passed on the basis of consent of the parties. The order reads thus:

> "1. Leave granted.
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> 2. Having heard the learned counsels for the parties we set aside the order of the High Court and direct that the complaint shall now be decided on merits by the Labour Court after allowing the parties to bring their respective evidence on record. In the event the Management has reasons to be aggrieved by the award

that will be passed it will be open for the Management to challenge the same on both grounds i.e. with regard to the validity of the domestic enquiry held as well as the decision on merits that may be arrived at by the learned Labour Court.

3. The appeal is disposed of in the above terms.

9. Mr. Kulkarni has also relied upon judgment of the Division Bench of this Court in ***Hindustan Unilever Ltd. V/s. Hindustan Lever Employees Union and Anr***[5] in which judgment of the Apex Court in ***Cooper Engineering Ltd.*** was relied upon with a view to seek dismissal of the Writ Petition challenging Part-I Award. The Division Bench held in paragraphs 3 and 4 as under:

> 3. In our opinion, before declining to entertain the petition on the ground that the petitioner can challenge Part I of the Award in case Part II of the Award goes against the petitioner, the learned Single Judge should have applied his mind to the doubts expressed by the petitioner about his ability to lead evidence in the matter due to expiry of 20 years. In our opinion, if the employer is right in contending that because of passage of time he is not able to lead evidence then inability of the employer to lead evidence is bound to result in recording finding against him also in Part-II of the Award. **The learned Single Judge should have considered whether the finding recorded by the Labour Court that the enquiry is not proper, is correct or not. In case the learned Judge had found that the finding is correct then the petition should have been dismissed and not because the correctness of the finding is to be examined only after Part II of the award is made.** It was also open to the learned Single Judge to go into the reasons given by the petitioner for his inability to lead evidence before the Labour Court. In case, the learned Single Judge had found that the petitioner is in a position to lead evidence even after expiry of 20 years then and then only the petition could have been rejected on the ground that the correctness of the finding that the enquiry is not proper, can be examined after Part II of the award is passed.
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> 4. Taking overall view of the matter therefore, in our opinion, the learned Single Judge was not justified in rejecting the petition in limine. The

5. 2009 SCC Online Bom 2125.

> learned Single Judge, in our opinion, should have admitted the petition for final hearing and after considering all relevant aspects should have passed final order.
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> *(emphasis added)*

10. Mr. Kshirsagar submits that judgment in ***Hindustan Unilever Ltd.*** is rendered in facts of that case and the same cannot be cited in support of absolute proposition that in every case, this Court can entertain Writ Petition challenging Part -I Award passed by the Labour Court.

11. Mr. Kulkarni would rely upon judgment of the Single Judge of this Court in ***Indian Hotels Company Ltd. vs. Jagat Singh Gurow*** [6] in which judgment of the Apex Court in ***Cooper Engineering Ltd*** (supra) was relied upon with a view to seek dismissal of the Writ Petition challenging Part -I Award. This Court however held that High Court's jurisdiction is not ousted when a case is made out where Part I Award is found to be unsustainable. This Court has in paragraph 27 held as under:

> 27. Perusal of these paras would indicate that the Supreme Court felt that when the case of dismissal or discharge is referred to a Tribunal for adjudication, the labour court should decide the preliminary issue whether domestic enquiry has violated the principles of natural justice. If held that when there is no domestic enquiry or defective enquiry, then, there will be no difficulty but when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, thereafter, it will not be permissible to do so in any proceedings to raise the same. It is in that context that the Supreme Court observes that, there is no justification for any party to stall the final adjudication of the preliminary issue by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated

6. Writ Petition No.3125 of 2006, decided on 31 January 2007

> even after the final award. **Thus, it is not as if this Court's jurisdiction cannot be invoked at all to challenge the findings on the preliminary issue.** The fact that the Supreme Court observes that if a decision is worthy of being agitated after the final award, then, parties would be relegated to the stage where the final award is made so that if the same is adverse, it could come to the higher court and assail both awards viz., preliminary and final. **However, if this court is of the opinion that the settled principles justifying this Court's jurisdiction under Article 226 are attracted, then, it would be failing in its duty, if it does not interfere even at the preliminary stage. No general rule can be laid down and everything depends upon facts and circumstances of each case.** Considering the observations of the Supreme Court in the decision relied upon by Mr.Dube-Patil, **it is not possible to accede to his submission that this Court cannot scrutinise the legality and validity of the award Part I in its jurisdiction under Article 226 of the Constitution of India. More so, when in the facts and circumstances of the present case, it has been demonstrated that the Presiding Officer has proceeded on a totally erroneous basis by ignoring vital materials and on the basis of conjectures and surmises, then, his decision cannot be sustained.** If the view taken in the present case by the learned Presiding Officer is not possible or probable at all and that is also demonstrated, then, this Court's interference under Article 226 of the Constitution of India is fully justified
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> *(emphasis added)*

12. Considering the above judgment, in my view, it is not possible to accept an absolute proposition that under no circumstances, High Court can entertain Petition under Article 226 or 227 of the Constitution of India, where a Part -I Award on preliminary issues is challenged. In fact, so far as the preliminary issues relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer are concerned, the findings recorded by the Labour Court in Part-I Award has attained finality. While delivering Part -II Award, the Labour Court will have to examine only correctness of the penalty. Since the findings on preliminary issues have attained finality, I do not see any reason why the aggrieved party cannot be permitted to challenge Part -I Award. In many cases, it takes substantial period of time for the Labour Court

to answer preliminary points about fairness in Inquiry and perversity in the findings of the Inquiry Officer. True it is that if the Inquiry is not held to be fair and or if the findings of the Inquiry Officer are held to be perverse, the employer gets a second opportunity to prove the charges by leading evidence before the Labour Court. However in many cases, on account of passage of substantial period of time, it becomes difficult for the employer to once again lead evidence, which was produced before the Inquiry Officer in support of the charges. This position is taken note of by Division Bench of this Court in ***Hindustan Unilever Ltd.*** (supra). In the present case as well, the concerned witnesses have been examined in the year 2017 and by now period of 7 long years has elapsed. The witness- Unnikrishnan Nair is not the part of the establishment of the Petitioner and was merely working as Contractor at the relevant time. Therefore, on account of passage of 7 long years from the date on which his evidence was recorded, it becomes highly doubtful as to whether Petitioner would be in a position to secure his attendance for the purpose of examining him before the Labour Court. In my view therefore, challenge to Part -I Award cannot be rejected only on the ground that Petitioner can always question the findings in Part -I Award while challenging the Part- 2 Award as well. It must also be noted that in the event the employer's inability to lead evidence before the Labour Court on account of passage of time, and if on that count, the termination order is set aside, while challenging Part -II Award, employer can be made liable to pay wages under Section 17-B of the Industrial Disputes Act, 1947 (ID Act). Therefore, right of the employer to question the findings recorded in Part I Award by filing the petition challenging Part-II Award is not without consequences. In my view therefore, inherent

jurisdiction of this Court to determine validity of Part -I Award during pendency of Reference before the Labour Court is not circumscribed only on account of the fact that the employer can always maintain a challenge to Part -I Award subsequently while challenging Part -2 Award. Preliminary objection raised by Mr. Kshirsagar to maintainability of the Petition is accordingly rejected.

13. Coming to the merits of the case, it is seen that Respondent workmen were issued charge-sheets dated 24 January 2017 and common charge levelled against each of them was in respect of the incident which occurred on 16 January 2017 when the Respondents prevented the Contractor -Mr. Unnikrishnan Nair from entering into the premises and executing the work awarded to him. The charge also alleged the act of threatening on the part of the Respondent-workmen in the event of Mr. Unnikrishnan entering the office of the Company. In respect of Respondent-Prashant Gaware, an additional charge of sleeping on duty without wearing safety shoes on 11 January 2017 was also levelled.

14. The charges levelled against Respondent -workmen have been held to be proved on the basis of the evidence adduced in the inquiry. The Petitioner-employer has therefore proceeded to terminate the services of Respondents -workmen, which is subject matter of challenge in Reference made to the Labour Court at the instance of the Respondents.

15. By Part -I Award dated 15 July 2022, the Labour Court has held the enquiry to be fair, proper and not in violation of principles of natural justice. However, the findings of the Inquiry Officer are held to be perverse. The Petitioner-employer is aggrieved by the finding recorded by the Labour Court on preliminary issue No.2 about perversity in the findings of the Enquiry Officer. The common charge levelled against all Respondents-workmen is about preventing the Contractor-Mr. Unnikrishnan Nair from entering the office of the Company and executing the work awarded to him as well as giving threats to him. To prove this charge, Petitioner-Employer examined Mr. Unnikrishnan Nair in the enquiry. It appears that Mr. Nair had prepared a report in respect of happening of the events on 16 January 2017 and he claims that the said report was submitted to the Company. The report of Mr. Nair came to be produced in the enquiry and is held to be proved after considering the deposition of Mr. Nair.

16. Labour Court has however, held that mere deposition of Mr. Nair is not sufficient to prove the charge relating to 16 January 2017 levelled against Respondents. The relevant findings recorded by the Labour Court in this regard are to be found in paragraphs 20 and 21 of Part-I Award, which reads thus:

> 20. The first party examined Mr. Unnikrishnan Nair and Mr. Vinayak Phadke. Enquiry proceeding mentioned the cross-examination of Mr. Unnikrishnan Nair as follows:-
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> > प्रश्न क. १७ : तुम्ही हा रिपोर्ट कधी व किती वाजता दिला ?
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> > उत्तर : साधारणत: दुपारी 03.30 ते 04.00 चे दरम्यान एच. आर. ऍडमिन चे श्री. शेंडे आहेत यांना दिला.

प्रश्न क. १८ त्यांना निपोर्ट कुठे दिला व ते काय म्हटले ?

प्रश्न क. १९ : तुन्ही जो रिपोर्ट कंपनीत दिला, त्यावर तो मिळाल्याबाबत श्री शेंडे अथवा श्री. दाबके यांची सही नाही अथवा कंपनीचा शिक्का सुद्धा नाही?
उत्तर : बरोबर आहे.

प्रश्न क. २० : श्री जयणल ची सही रिपोर्टवर का आहे?

उत्तर: तो माझा कामगार आहे व ही सर्व घटना त्याचे समोर झाली आहे.

प्रश्न क. ३०: दि.१६.१.२०१७ रोजीचे घटनेची काही पोलीस तक्रार केली आहे का?

उत्तर: नाही केली.

प्रश्न क्र. 35 : तुम्ही असे सांगितले की तुम्ही 100 नंबरला पोलिसांना फोन केला तर पोलिस आल्यावर पोलिस व तुमचे काय बोलणे झाले ?

उत्तर: पोलिस आल्यावर मी निघून गेलो, माझे व त्यांचे काही बोलणे झाले नाही.

प्रश्न क. ४२ :माझे असे म्हणणे आहे की तुम्हाला कोणी शारीरिक इजा केली नाही ?

उत्तर: चेतन बोरकर यांनी हात उचलला, बाकीच्यांनी अडविले, पण अंगाला कोणी हात लावला नाही.

The first party examined Mr. Vinayak Phadke. Enquiry proceeding mentioned the corss-examination of Mr. Vinayak Phadke as follows:

प्रश्न क. 9 : मिहीर दाबके यांचे हजेरीचा पुरावा तुम्ही चौकशी दाखल करू शकता काय?

उत्तर : त्याचे हजेरी पुरावा मी दाखल करू शकत नाही.

प्रश्न क. १०: तुम्ही दि. ११.१.२०१७ रोजी कामावर होता त्याचा पुरावा साक्षीत दाखल नाही ?

उत्तर : बरोबर आहे.
प्रश्न क. १७ : तुम्ही जे सरतपासणीत आ. का. यांचेविरूध्द साक्ष दिली आहे. त्यास तुमचे शब्दांव्यतिरिक्त कोणताही पुरावा नाही ?
उत्तर : बरोबर आहे.

The first party also filed report of Mr. V.R. Phadke dtd. 16.6.2017 and report dtd. 16.1.2017 of Mr. Unnikrishnan Nair on record. The report dtd. 16.1.2017 of the Unnikrishnan Nair is filed before the Enquiry Officer wherein it is mentioned that it is regarding threatening and misbehaving by the workers of the first party at company gate. It is addressed to Managing Director Mr. D.G. Dabke. At the end of the said report it is mentioned that "यह घटना मेरे सामने घटी और मैं इसका गवाह हूं." below it there is a signature of workman working with SOM Electrical Services.

The report dtd. 16.6.2017 is addressed to Jayashree Electron Pvt. Ltd. i.e. first party. It is signed by Mr. V.R. Phadke. In the said report it is mentioned that,

"दि. ११.१.२०१७ रोजी साधारण दु. ०१.३० वाजण्याच्या सुमारास मी पहिल्या मजल्यावर काही कामानिमित्त गेलो असता मला आपले कंपनीतील कामगार श्री. प्रशांत गवारे तेथे जे महावीर प्रोजेक्टचे पॅनल डावीकडून पाचवे येथे कामाचे वेळेत खुर्ची टाकून सुरक्षा बुट न घालता पॅनलच्या आतमध्ये झोपला होता. त्याबाबत ताबडतोब श्री. मिहिर दाबके साहेब यांना माहिती दिली."

The second party workman denied both the reports and also denied misconducts as mentioned in the charge-sheet. Under such circumstances the burden is on the first party to prove the misconduct of the second party. The first party failed to file any corroborative evidence to prove report dtd. 16.1.2017 and 16.6.2017. It is the contention of the first party that their both the witnesses deposed before the enquiry officer and the contents in the said reports are true and correct. But, the second party denied the said reports. This fact must be considered by the enquiry officer.

Furthermore, the second party and his witness in their evidences before the enquiry officer denied the incident mentioned in the alleged charge-sheet. In the cross-examination the second party workman or his witness did not admit any of the misconduct mentioned in the charge-sheet.

21. The enquiry officer in his findings mentioned that, श्री. नायर यांनी उलटतपासणीत सांगितले की, त्यांनी ३.३० ते ४.०० चे दरम्यान त्यांचा रिपोर्ट श्री. शेंडे यांना दिला. त्यावर ब.प्र. यांनी विचारले की, सदर रिपोर्टवर तो मिळाल्याची श्री. शेंडे यांची सही अथवा कंपनीचा शिक्का नाही. सदर बांब श्री. नायर यांनी मान्य केली आहे. त्यामुळे केवळ सदर रिपोर्टवर व्यवस्थापनाला मिळाल्याची सही नाही त्यामुळे तो रिपोर्ट खोटा आहे हे म्हणणे ग्राहय होत नाही." "श्री. जयपाल हे चौकशीत साक्षीदार नाहीत, तसेच, त्यांनी जरी रिपोर्टवर सही केली नसती तरी व्यवस्थापनाच्या साक्षी पुराव्यात कोणताही फरक पडला नसता." "श्री. नायर यांनी पोलिस तक्रार केली नाह। म्हणजे घटना झालीच नाही, हा बचाव ग्राहय धरता येणार नाही." These findings of the enquiry officer are not sufficient to prove the alleged misconduct of the second party. The Unnikrishnan Nair in his cross-examination admitted that he has not made any police complaint against the incident of dtd. 16.1.2017. He further admitted that he does not remember the names of his own workmen. Mr. Vinayak Phadke in his cross-examination admitted that CCTV are available

> in the shop floor of the first party company and some part is covered under the CCTV. In the cross-examination he further admitted that there is nothing on record to show that he was on duty on dtd. 11.1.2017. From this it clearly shows that except words of both the witnesses of the first party and except both the reports there is nothing on record to prove the misconduct of the second party. The enquiry officer failed to show how both the said reports proved. Further the enquiry officer failed to show how the said reports proved the misconduct of second party. Under such circumstances, the enquiry officer in his findings mentioned that the charges leveled against the second party as per standing order mentioned in the charge-sheet are proved. The documentary and oral evidence and admissions of the witnesses are not corroborated with the findings of the enquiry officer. Thus, the enquiry officer has not satisfied the test of the doctrine of preponderance of probability. The findings of the enquiry officer failed to satisfy the conscience of this Court that there is some evidence to support and guard against the perversity.

17. Thus, the Labour Court has proceeded to discard the report dated 16 January 2017 of Mr. Unnikrishnan Nair on twin grounds of (i) non reflection of any endorsement on acknowledgment receipt and (ii) non-examination of Mr. Jayapal, whose endorsement and signature is also reflected on the said report. In my view however, the Labour Court has completely misdirected itself in concentrating only on report dated 16 January 2017 and by completely ignoring the deposition of Mr. Nair. The relevant part of examination-in-chief of Mr. Nair reads thus:

> मी दिनांक १६-०१-२०१७ रोजी साधारण दु.०१.४० मि. जयश्री इलेक्ट्रीक च्या गेटवर होतो. त्यावेळेस माझेबरोबर श्री शक्ती आणि आणखी दोन-चार कामगार होतो. त्यादिवशी श्री जयपाल सुध्दा होते. सदर दोन-चार कामगारांची नाव मला माहीत नाही. मी त्यासर्वांना गेटवर घेऊन आलो. त्यावेळेस वर नमुद कामगारांनी मला अडवले व आमचेवर जोर जोरात ओरडायला लागले व मला आतमध्ये जाण्यापासून अडविले व मला सांगीतले की येथुन निघुन जावा व पुन्हा कंपनीचे आत जावयाचे नाही. मी त्यांना सांगीतले की तुमचे आणि कंपनीचे भांडण आहे, माझा त्याचाशी काही संबंध नाही, माझा कंपनीबरोबर करार झाला आहे, मला काम करू द्या. त्यानंतर ते आमचेवर जोरजोरात ओरडुन म्हणायला लागले की आतमध्ये जायचे नाही, आतमध्ये गेलात तर आम्ही हातपाय तोडुन टाकू व तुम्ही काम करण्याचे लायकीचे राहणार नाहीत. त्यानंतर मी आत जाण्याचा प्रयन्त केला असता मला त्यांनी परत धमकी दिली की तुम्हाला आम्ही घरी येऊन मारून टाकू व कोणाला कळायचे सुध्दा नाही हे कोणी केले. श्री

चेतन बोरकर ने मारण्यासाठी हात उगारला.

त्यानंतर मी १०० नंबर वर पोलीसांना फोन केला व त्यानंतर मला पोलीस येतांना दिसले व त्यानंतर आम्ही तेथुन निघून गेलो त्यादिवशी आम्ही आत गेलो नाही. मी सदर घटनेचा कंपनीस या घटनेचा रिपोर्ट दिला आहे. निशाणी क्र. ७ बघून मी सांगतो की सदर रिपोर्टवर माझी सही आहे. सदर रिपोर्टवर माझे व्यतिरिक्त श्री जयपाल, जे माझे कामगार आहे त्यांची सही आहे व त्यातील आहे. मजकूर खरा आहे.

18. Thus, deposition of Mr. Nair recorded during the course of enquiry clearly states that he was prevented from entering into the office of Company and was threatened. It appears that one of the workmen also lifted his hand to assault Mr. Nair. In my view therefore, the Labour Court ought to have taken into consideration the direct testimony of the witness, who had witnessed the acts performed by the Respondent -workmen. Therefore, even if the report dated 16 January 2017 was to be discarded altogether, still it cannot be said that there is absolutely no evidence on record in support of charge levelled against Respondents-workmen relating to incident of 16 January 2017. The findings of the Labour Court about report dated 16 January 2017 are also clearly unsustainable. The report has been prepared by Mr. Unnikrishnan Nair and the same is signed by him. He has produced the same report in the enquiry and has given evidence about the same. Therefore, merely because there is absence of endorsement on receipt of the said report by the Company or merely because Mr. Jayapal is not examined, who has also signed the said report, the same could not have been a reason for the Labour Court to discard the said report altogether.

19. The Labour Court failed to appreciate that the test of proving charge in a domestic enquiry is preponderance of probability. Employer is not expected to prove the charge beyond reasonable doubt. The purpose for conducting domestic enquiry is only to ensure maintenance of discipline by employees. Therefore, the charges need not be proved beyond reasonable doubt, which is a test required for proving the criminal charge. So long as there is some evidence on record, the Enquiry Officer is justified in holding the charge to be proved. The findings would suffer from the vice of perversity only in the event it being established that there is total absence of evidence or where the cases involves 'zero evidence'. In every case where there is some evidence to prove the charges, it is not for the Labour Court to go into the issue of sufficiency of the evidence.

20. Mr. Kshirsagar relied upon judgment of the Single Judge of this Court in ***Mahadeo Shripati Khot V/s. Divisional Traffic Superintendent (Default), Competent Authority, Maharashtra State Road Transport Corporation,***[7] in which this Court has held in paragraphs 5 and 6 as under:

> 5. When the matter went to the Labour Court on the conductor's complaint, the Court appears to have merely applied its mind to the manner in which the departmental enquiry was conducted in the present case. The court found that the charge was properly explained to the delinquent employee; the departmental enquiry was duly held; the ticket checker as well as the passenger had been examined; and the complainant was given adequate opportunity to cross examine both witnesses. The Court observed that there was no complaint on the part of the employee that any witness had been examined behind his back or his request to cross examine or adjournment had been rejected. The court found that, in the circumstances, there was no procedural defect in the enquiry proceedings and no violation of principles of natural justice. Simply on the basis of this conclusion, the court allowed the whole exercise to pass muster.

7. 2019 I CLR 304

What the court appears to have missed was to consider whether the misconduct alleged against the Petitioner was proved on the basis of the evidence placed before the Enquiry Officer or the court. Without reflecting on the conclusion drawn by the Enquiry Officer on the basis of the evidence before him, the court simply considered the case of (i) observance of natural justice, (ii) victimization and (iii) termination for a patently false reason. On these questions, it held against the employee. When the matter went before the revisional court, surprisingly, the revisional court practically refused to go into the question of appreciation of evidence. The court noticed that the complainant in the present case had not filed any counter revision challenging the finding of the Labour Court in this behalf. The court simply noted that findings of the Enquiry Officer were based on some evidence and could not be said to be perverse. On this basis, the court held point No.2, concerning the correctness of the findings of the Enquiry Officer, in the negative and then applied its mind only to the quantum of punishment, whether proportionate or disproportionate.

6 The above narration clearly indicates that there has been a complete failure of justice in the present case. The charge, in the first place, made against the delinquent conductor was on the basis of statement made by a passenger, who was found without ticket. It could well be that he did not pay any money or get a ticket issued and was saving his skin when the ticket checker caught him without ticket. His statement had to be viewed with circumspection. The passenger's own statements originally made before the ticket checker and later on in the enquiry exhibited a clear and fundamental contradiction. The ticket checker's versions also did not match. And no corresponding amount was found in excess with the conductor. The charge of misappropriation of Rs.1.25 was held to be proved on the basis of this material and the hapless conductor was deprived of his livelihood by dismissing him from service. It is one thing to say that a clear case of misappropriation by a public servant who holds a position of trust vis a vis public funds should be dealt with by iron hand, but quite another to say that on the basis of flimsy material such as this the harshest penalty of dismissal should be levied on the principle that public servants must be above board. The very D & A Procedure, on which reliance is placed by Mr. Hegde, which provides for punishment of discharge or dismissal, and nothing less, for the misconduct included in Item No.7(c) of Schedule 'A', makes it very clear that whilst awarding such punishment, the competent authority must ensure that the guilt of the employee charged is conclusively proved on the basis of available evidence and specific instructions issued from time to time by the administration are scrupulously followed. As I have noted above, it can hardly be said that the guilt of the employee charged here was even remotely proved before the Enquiry Officer on the basis of available evidence.

> Conclusive proof was a far cry. And yet, none of the lower courts properly went into the question of proof, either sufficient or conclusive. The Labour Court, as noted above, did not go into that question at all; it merely satisfied itself as to the nature of the enquiry, whether fair and proper and whether exhibited a case of victimization or termination on a patently false reason. It never considered whether on the basis of available evidence, the delinquent employee's guilt was proved at all, much less conclusively. The revisional court, for its part, refused to go into that question presumably on the footing that the employee had not filed any crossrevision challenging the original order of the Labour Court. The complainant employee need not have filed any revision of his own. It was perfectly open to him to justify the order of the Labour Court, namely, award of reinstatement with continuity of service, on the basis of grounds otherwise available to him including any ground which was not considered by the Labour Court. He could certainly question the propriety of the finding of the Enquiry Officer. The revisional court, in the premises, simply contended itself holding, practically on a sole oneliner, that the finding of the Enquiry Officer was supported by some evidence and could not be termed as perverse. In the facts of the case, that was hardly an appropriate measure of judicial review to be employed by the revisional court, which was the final court on facts.

21. Relying on judgment of ***Mahadev Khot*** (supra), Mr. Kshirsagar has submitted that mere presence of some evidence cannot be a ground for holding the charge to be proved. He has further submitted that in every case where the testimony is affected by contradictions, the industrial adjudicator would be justified in ignoring such evidence. He has further submitted that even in a domestic enquiry charge needs to be proved conclusively. He submitted that judgment of this Court in ***Mahadev Khot*** covers the present cases squarely. I am unable to agree. Apex Court has repeatedly held that presence of some evidence on record in a domestic enquiry is sufficient to prove charge levelled against delinquent employee. In fact, ***Kuldeep Singh v.***

Commissioner of Police & Ors.[8] the Apex Court has held that so long as there is some evidence on record, which is acceptable and which can be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and finding would not be interfered with. Relevant findings recorded by the Apex Court in ***Kuleep Singh*** read thus:

> 10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. **But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.**
>
> *(emphasis supplied)*

22. In ***State of Rajasthan Vs. Heem Singh***[9] His Lordship Justice *Dr. D. Y. Chandrachud* (as he then was) has summarized the counters of power of judicial review by courts and tribunals while dealing with findings of guilt recorded in domestic inquiries. The Apex Court has held thus:

> 33 In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. **The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service.** Disciplinary enquiries have to abide by the rules of natural

8. *(1999) 2 SCC 10,*
9 2020 SCC OnLine SC 886

> justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. **At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity.** A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. **To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.**
>
> *(emphasis and underlining added)*

23. More recently, the Apex Court in ***State of Karnataka v. Umesh***,[10] has reiterated the principles that govern the disciplinary enquiry and criminal trial. It is held:

> 16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the

10. (2022) 6 SCC 563

service rules governing the relationship of employment. **Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry**. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

(i) the rules of natural justice have been complied with;

(ii) **the finding of misconduct is based on <u>some evidence</u>;**

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and

(v) the penalty is disproportionate to the proven misconduct.

(emphasis and underling supplied)

24. In the present case it cannot be said that there is total absence of evidence on record. There is direct evidence given by person, who has been prevented from entering into the office of the Company and who has been threatened by the delinquent-workmen. Therefore, it cannot be said that the findings recorded by the Enquiry Officer are not supported by any evidence on record.

25. Mr. Kshirsagar has attempted to point out few contradictions into the deposition of Mr. Unnikrishnan particularly with regard to the report submitted by him. According to him, Mr. Unnikrishnan in answer to question

No. 17 of his cross-examination stated that report was submitted by him between 3.30 p.m. to 4.00 p.m. to Shri Shende of H.R. (Administration). However, in the examination–in-chief, he stated that he did not enter the office on that day. In my view contradiction cannot be assumed in the matter of submission of report to Mr. Shende, HR Admin as it is possible that report can be handed over to the concerned person even without entering the office. So far as the alleged contradiction in the deposition of Nair about filing of complaint is concerned, Mr. Kshirsagar would submit that in his deposition Mr. Nair emphatically stated that he did not file police complaint about the incident dated 16 January 2017 and subsequently it was found that Nair had in fact filed a police complaint, which came to be relied upon by Petitioner-employer in Complaint (ULP) No. 11/17. In this regard, reliance is placed on averments in paragraph 20 of statement of claim. However, perusal of averments in paragraph 20 merely contains vague pleading that '*furthermore second party also came to know first party has suppressed certain evidence, which contradicted the statement made by Management's witness during his cross-examination'.* Thus, there is no specific pleading about filing of complaint by Mr. Nair even in the statement of claim. Therefore, it is difficult to accept that there is any contradiction in the deposition given by Mr. Nair.

26. Even if it is assumed that there are any contradictions in evidence of Mr. Nair, in my view the same would not affect his evidence and none of the alleged contradictions would render his deposition to be completely unbelievable. In any case even if report of 16 January 2017 is to be discarded altogether, the specific testimony of Mr. Unnikrishnan recorded on 24 January

2017 cannot be ignored. It is also a matter of fact that after receipt of the charge-sheet, only reply given by the Respondent -workmen was about denial of charges, levelling false charges and causing mental harassment to them. They did not state in their respective replies that incident in question did not occur at all or that Mr. Unnikrishnan had not approached on the gate of the Company on 16 January 2017.

27. The findings recorded by the Labour Court expecting corroborative evidence is clearly unsustainable as it is not necessary in domestic enquiry to produce additional evidence to corroborate the evidence which is already on record. Mere non-filing of police complaint by Mr. Unnikrishnan did not mean that the deposition given by him in the domestic enquiry is required to be altogether ignored. Though the Labour Court has considered the test of preponderance of probability, it has erroneously held that the Enquiry Officer has not satisfied the said test. In my view, there is some evidence on record to prove misconduct alleged in the charge-sheet. Therefore, it cannot be stated that findings recorded by the Enquiry Officer are perverse. The Labour Court has erred in holding that the findings of the Enquiry Officer are perverse in Part-I Award dated 15 July 2022.

28. Writ Petitions accordingly succeed. Part -I Awards dated 15 July 2022 are set aside to the extent of finding of the Labour Court about perversity of the finding of the Enquiry Officer. The Labour Court shall accordingly proceed to deliver part -2 Award on the remaining issues framed.

29. Writ Petitions are allowed to the above extent. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]