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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.10.2023

% **Judgment delivered on: 01.11.2023**

\+ **LPA 465/2023 and CM APPL. 29241- 29243/2023**

DELHI TRANSPORT CORPORATION ..... Appellant

Through: Ms. Aditi Gupta, Advocate.

versus

RAMESHWAR DAYAL (DECEASED)
THROUGH LRS ..... Respondent

Through: Mr. Anuj Aggarwal and Ms. Shreya Kukreti, Advocates.

\+ **LPA 473/2023 and CM APPL. 29724-29726/2023**

DELHI TRANSPORT CORPORATION ..... Appellant

Through: Ms. Aditi Gupta, Advocate.

versus

SH RAMESHWAR DAYAL (DECEASED THROUGH HIS LRS)
AND ANOTHER ..... Respondents

Through: Mr. Anuj Aggarwal and Ms. Shreya Kukreti, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

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SATISH CHANDRA SHARMA, C.J.

1. The present Letters Patent Appeals (LPAs) are arising out of the common judgment passed in W.P.(C.) No.6347/2006 titled ***D.T.C. Vs. Rameshwar Dayal & Another***; and W.P.(C.) No. 2631/2007 titled ***Rameshwar Dayal Thru L.R'S Vs. D.T.C.***

2. The facts of the case reveal that one Rameshwar Dayal – who is represented by his Legal Representatives (LRs) as he was no more, was appointed as a Conductor on 07.01.1973 in the service of Delhi Transport Corporation (DTC). He was unauthorisedly absent from duty w.e.f. 31.03.1991 to 14.04.1991 (for a period of 15 days). The competent Disciplinary Authority – on account of his unauthorized absence, issued a charge-sheet on 20.06.1991 and the deceased employee was granted time to file reply within fifteen days. The deceased employee did file a reply on 21.07.1991. The Disciplinary Authority – not being satisfied with the reply filed by the deceased employee, appointed the Inquiry Officer and the Presenting Officer. The Inquiry Officer submitted the report dated 24.09.1991 and a copy of the said report was also served to the deceased employee on 25.10.1991. The deceased employee was inflicted the punishment of removal from service by order dated 17.01.1992.

3. The appellant/ DTC on 17.01.1992 preferred an application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (the Act) and the said application was rejected by the Labour Court on 24.02.2001.

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4. The appellant/ DTC – being aggrieved by the order rejecting the application preferred under Section 33 (2) (b) of the Act, preferred a writ petition being W.P.(C.) No. 5860/2001.

5. The workman also challenged his removal by way of I.D. No.101/2001 on 17.10.2001. A written-statement was filed on 09.07.2001, and finally, an Award was passed on 31.05.2003 directing reinstatement in service along with back wages and continuity of service. The Award was published on 14.07.2003 and was declared enforceable w.e.f. 13.08.2003.

6. The facts further reveal that the writ petition being W.P.(C.) No.5860/2001 preferred by the DTC being aggrieved by order dated 24.02.2001 by which the application preferred under Section 33 (2) (b) of the Act was rejected, resulted in remand order dated 17.11.2005. The DTC also preferred a writ petition subsequently being W.P.(C.) No.6347/2006 against the Award dated 31.05.2003 by which the workman was reinstated with back wages.

7. As already stated earlier, in W.P.(C.) No. 5860/2001, the matter was remanded back, and finally, an Award was passed on 21.02.2007 allowing the application preferred under Section 33 (2) (b) of the Act.

8. The LRs of the deceased employee challenged the Award dated 21.02.2007 by filing a writ petition being W.P.(C.) No. 2631/2007 before this Court. Meaning thereby, two petitions arising out of the same dispute were pending before this Court being:

(a) W.P.(C.) No. 6347/2006 against the Award dated 31.05.2003 by which the workman was reinstated with back wages and the same was preferred against the LRs of the deceased workman as the workman had expired during the pendency of the proceedings; and

(b) W.P.(C.) No. 2631/2007 preferred by the LRs of deceased Rameshwar Dayal against the Award dated 21.02.2007 by which the application preferred under Section 33 (2) (b) of the Act was allowed by the Labour Court.

9. The learned Single Judge by a common judgment has dismissed the first writ petition, i.e. W.P.(C.) No. 6347/2006 preferred by the DTC against the Award dated 31.05.2003, meaning thereby, upholding reinstatement of the workman in service with back wages and other consequential benefits; and the second writ petition, i.e. W.P.(C.) No. 2631/2007 which was arising out of the application preferred under Section 33 (2) (b) of the Act has been dismissed as infructuous.

10. The operative paragraph of the judgment passed by the learned Single Judge – as contained in paragraphs 33 to 50, reads as under:

> *"33. This Court had heard the arguments advanced by the learned counsels for both the parties and perused the documents on record and Judgments relied upon by the parties.*
>
> *34. Before adverting to the facts of the present case, it is important to examine the law regarding Section 33 (2) (b) and Section 10 of the I.D. Act. Learned Single Judge of this Court in W.P (C) No.3633/2004 titled as DTC Vs Shyam Lal examined the scope of Section 33(2) (b) and Section 10 of the Industrial*

Disputes Act. 1947. It is profitable to reiterate the discussion of the learned Single Judge in this regard:

> *"11. The scope of jurisdiction of the Industrial Adjudicator under Section 33(2)(b), is only to oversee the dismissal to ensure that no unfair labour practice or victimization has been practiced. If the procedure of fair hearing has been observed and a prima-facie case for dismissal is made out; approval has to be granted. The jurisdiction of the Industrial Adjudicator under Section 33(2)(b) cannot be wider than this. Reference in this regard may be made to Lalla Ram Vs. D.C.M. Chemical Works Ltd. AIR 1978 SC 1004 and Cholan Roadways Limited Vs. G. Thirugnanasambandam AIR 2005 SC 570. The proceeding under Section 33(2)(b) is not a substitute for an industrial dispute referred for adjudication under Section 10. It is for this reason only that the decision on the application under Section 33(2)(b) does not close the right of the respondent workman to raise an industrial dispute under Section 10 of the ID Act.*
>
> *12. However, the distinction between adjudication of an industrial dispute referred under Section 10 and an approval application under Section 33(2)(b) in practice is found to have been blurred. Applications under Section 33(2)(b) are being treated and tried in the same manner and following the same procedure as an industrial dispute. This has led to a situation, where decision of applications under Section 33(2)(b) is held up for years and/or takes the same time as decision of an industrial dispute under Section 10. Often, it is also found to result in parallel proceedings or duplicate proceedings in both of which witnesses are examined and on same facts and evidence,*

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inconsistent findings returned in two proceedings, in ignorance of other proceeding.

13. If the object of Section 33(2)(b) is only to prevent victimization of an employee in dispute with the management/employer, the scope of inquiry by the Industrial Adjudicator while dealing with and deciding such application cannot possibly be the same as while dealing with and deciding an industrial dispute. If an application under Section 33(2)(b) is to be dealt with and scope of inquiry therein so limited, the disposal thereof should not take long. The findings returned by the Industrial Adjudicator on an application under Section 33(2)(b) are "prima- facie" and not "final" and not binding in a subsequent industrial dispute. The findings can be "prima-facie" only if returned on the basis of "summary" examination and not if returned on the basis of "detailed examination" as in adjudication of industrial disputes.

14. However, it is found that the Industrial Adjudicators, after completion of pleadings in an application under Section 33(2)(b), frame a preliminary issue qua validity of domestic inquiry, allow examination of witnesses on such preliminary issues and if decide preliminary issues against the management/employer and if the management/employer has exercised the option to prove misconduct before the Industrial Adjudicator, frame issues thereon, again allow evidence and then adjudicate. Very often, the reply to the application under Section 33(2)(b) not even found to contain defence of victimization or found to contain vague and general pleas qua victimization; the pleas as relevant in an industrial dispute are raised and adjudicated. In a large number of cases, the complete inquiry

proceedings/reports are not even found on the file of Industrial Adjudicator.

15. In my view, the Industrial Adjudicators should insist on the complete record/report of domestic inquiry and the disciplinary authority to be produced along with an application under Section 33(2)(b). Thereafter, the pleadings should be perused minutely to see whether any case of victimization is made out. If the workman has not pleaded a case of victimization owing to pendency of an earlier dispute or has not made out a case of action of which approval is sought having been taken against him to settle scores with him in the earlier dispute or to derive unfair advantage in the earlier dispute, or if the pleadings in this respect are vague and without particulars, no further inquiry by the Industrial Adjudicators is needed and the application under Section 33(2)(b) should be allowed immediately. Even if pleas are taken by the workman of the domestic inquiry having been conducted in violation of the Standing Orders/Rules or the principles of natural justice, but the same is not attributable to victimization as aforesaid, such pleas ought not to be adjudicated in Section 33(2)(b) proceedings but should be left to be adjudicated in the industrial dispute if raised under Section 10 of the Act. The earlier industrial dispute owing whereto Section 33(2)(b) application is necessitated, in a large number of cases is not of the individual workman against whom application under Section 33(2)(b) is filed but has been raised by all workmen of the establishment or their union and with respect to their general service conditions. In such cases, the management/employer generally cannot be said to have taken the action of which approval under Section 33(2)(b) is sought, by way of victimization,

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unless it is shown that such workman was responsible for initiating/instigating or pursuing the earlier dispute.

16. If the workman in his reply to Section 33(2)(b) application or otherwise does make out a case of victimization, the industrial adjudicator should then proceed to see by examination of domestic inquiry proceedings whether the same is borne out thereform. However, such examination should again be limited to whether, to ensure dismissal of workman, he has been as a matter of design, deprived of or prevented from proper opportunity or from proving his case. Such examination has to be narrower than examination of validity of domestic inquiry in an industrial dispute under Section 10. For instance, while an inadvertent breach of prescribed procedure of inquiry may entitle the industrial adjudicator in a Section 10 proceeding to hold the domestic inquiry to be vitiated but unless such breach is found to be intended to prevent the workman from placing his version before the Inquiry Officer, so as to ensure finding against him, the same may not constitute a ground in a Section 33(2)(b) proceeding to hold the domestic inquiry to be vitiated.

17. Once (in a Section 33(2)(b) proceeding) the domestic inquiry is held to be vitiated for the reason of victimization, the Industrial Adjudicator should weigh, if victimization is quite evident, need may not arise to give opportunity to the management/employer to prove misconduct before the Industrial Adjudicator; however if evidence of victimization in domestic inquiry is not so strong, the Industrial Adjudicator may proceed to determine whether charge of misconduct is false by way of victimization or not. If the workman is prima facie found guilty of misconduct, approval

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> *should still be granted by allowing the application under Section 33(2)(b) and leaving the workman to raise other pleas in the industrial dispute under Section 10. For the said limited aspect, the Industrial Adjudicator may record evidence but within the confines aforesaid and without expanding the scope of inquiry.*
>
> *18. It is hoped that by following the aforesaid procedure, Section 33(2)(b) proceedings will be disposed of expeditiously, as they were intended to be and shall not languish for years, as has been happening."*

35. Hence from the perusal of the above stated Judgment, it is clear that the scope of enquiry under Section 33(2) (b) and Section 10 of the I.D. Act are different and distinct. Enquiry under Section 33(2)(b) of the I.D. Act is only to oversee the dismissal to ensure that no unfair labour practice or victimization has been practiced. Hence the findings recorded by the learned Labour Court during the enquiry under Section 33(2) (b) of the I.D. Act regarding the validity of the domestic enquiry is only a prima facie view and not a final view. The veracity of the domestic enquiry conducted by the Petitioner/Management and the misconduct of the Respondent has to be examined in a proceeding arising out of Section 10 of the I.D. Act. Proceedings under Section 33(2)(b) of the I.D. Act cannot be termed as a substitute for the proceedings under Section 10 of the I.D. Act.

36. Based on this legal principle, this Court proceeds to examine the facts of the present case. Impugned Award-I is arising out of Section 10 of the I.D. Act proceedings whereas Impugned AwardII is arising out of the proceedings under Section 33 (2) (b) of the I.D. Act. Vide the impugned Award-I, the learned Labour Court held that the Respondent/Workman is not guilty of any misconduct. Hence, after the passing of impugned Award-I, the approval Application OP No.28/1992

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itself has become infructuous and it ought not to have been proceeded with.

37. Learned Labour Court, while passing the impugned Award-I, was not aware of the fact that the Petitioner/Management already challenged the Award dated 24.02.2001, whereby the approval application was rejected, before this Court in W. P. (C) No.5860/2001. By the passing of the impugned Award-1, the approval application, O.P No. 28/1992 itself has become infructuous. Hence the W.P (C) No. 5860/2001, which was arising out of OP No. 28/2001 had also become infructuous. However, both the parties miserably failed to point out before this Court in W. P. (C) No. 5860/2001 that the impugned Award-I arising out of Section 10 of the I.D. Act is already passed. Hence this Court vide order dated 17.11.2005 remanded the matter back to the learned Labour Court-II for fresh examination of the approval Application O.P No.28/1992. Both the parties failed to point out before the learned Labour Court-II also that industrial dispute arising out of Section 10 of the I.D. Act had already culminated into an Impugned Award-I. Hence the learned Labour Court-II conducted a full-fledged enquiry and held that the Respondent/Workman is guilty of misconduct. All these proceedings were arising out of the approval application being O.P. No.28/1992, which had already become infructuous by the passing of Impugned Award-I. This Court deprecates the conduct of both the parties which led to the wastage of considerable judicial time.

38. Be that as it may, the opinion expressed by the learned Labour Court under Impugned Award-II regarding the misconduct of the Respondent/Workman can be termed as "prima facie" view and not final view.

39. Whereas in the impugned Award-I, the learned Labour Court examined the validity of the domestic enquiry and the misconduct committed by the Respondent/Workman in detail. Learned Labour Court examined as to whether there was negligence or lack of interest on behalf of the deceased

Workman in performing his duties. It is expedient to examine the charge sheet on the basis of which the Workman has been held liable for misconduct. Relevant part of the charge sheet dated 20.06.1991 issued to the Respondent/Workman is reproduced hereunder:

> *"You were found absent for 15 days from your duty from 31.3.91 to 14.4.91 without prior information and permission of Competent Authority which shows your being uninterested in the services of Corporation.*
>
> *Your above said act is a misconduct under Section 4 (11), 19 (h) and 19 (m) of standing orders of DRTA which governed the duties of employees of the Corporation.*
>
> *Copy of report upon which charge sheet is based on is attached. Copy of your past record is attached. Your past record will be considered at the time of passing of final order.*
>
> *If you want personal hearing in the matter then apply for the same in your explanation. Your explanation must be reached in the office of undersigned within 10 days after receiving this charge sheet. If you want to see any document of reliance, which is available in record, then report to undersigned within 24 hours after receiving this charge sheet."*

40. A bare perusal of the charge sheet reveals that the allegation against the Respondent/Workman was that he was absent for a period 15 days from his duty without prior information, which shows him being uninterested in the services of the Petitioner Management. It is further stated that the absence without information and permission amounts to misconduct under Section 4 (11), 19 (h) and 19 (m) of the Standing Orders of DRTA. Furthermore, it is also stated that

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the past record of the workman would also be considered at the time of passing the final order and a copy thereof is also attached to the chargesheet. In reply, the Respondent/Workman submitted that he had sent an application for leave through his blind brother who gave the said application to some person at the gate of Kalkaji Depot. Further, he also gave his medical and fitness certificate along with his application on the day he resumed his duty i.e. 15.04.1991.

41. Hence it is evident that as soon as he joined back in service on 15.04.1991, he submitted an application along with his medical and fitness certificate. Pertinently, no orders were passed as to the acceptance or rejection of this application.

42. This Court in the matter of Om Singh (supra) has faced with a similar situation as in the present case, wherein Sardar Singh (supra) was distinguished and it was held that immediately after having remained absent for 14 days, the workman had submitted an application for leave supported by a medical certificate. The said application was neither rejected nor any order was passed by the Management therein. Relevant portion of the said Judgment reads, inter alia, as follows:

> *"5. The period of absence was also 14 days, which stand explained by the application submitted by the respondent while reporting for duty on 11th June, 1992. It was necessary for the appellant to act upon the said application either way. It is true that in the charge sheet, reference was made to the past records but the same was for the purpose of passing the final order. The specific charge was salient in this regard. It appears that the respondent was warned sometime in 2004 for not stopping the bus inspite of request by passengers at the bus stand. This was the only document of past conduct enclosed with the charge sheet. No documents that the respondent was a habitual absentee in the past was enclosed with the charge sheet filed before the industrial adjudicator.*

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> *8. Considering the facts and circumstances of the case, we are of the considered opinion that it cannot be said that any interference by the appellate Court is called for. There are no valid grounds for reversing the orders passed by the industrial adjudicator and the learned Single Judge. At this stage, learned Counsel relied upon the decision of the Supreme Court in DTC v. Sardar Singh reported in 2004 (6) 613. In our considered opinion, the facts in the said case are distinct and different from the case in hand. In the present case immediately after having remained absent for 14 days the respondent had submitted an application for leave supported by a medical certificate. The said application has not been rejected by the appellant and no order has been passed. The facts in detail have been stated above."*

43. The Respondent/Workman was absent from duty for 15 days, however, he had valid reason for the said period of absence. Further he submitted his leave application with medical certificates as soon as he joined back in service. However, the Petitioner/Management failed to consider the same. Hence the Petitioner/Management has failed to prove the misconduct as alleged against the Respondent/Workman.

44. Further, perusal of the enquiry report also reveals that no document showing the past record was produced before the Inquiry Officer and the same has also not been dealt by him in the report. It was only the Disciplinary Authority who gave some observations on the past record, but it was not coupled with any evidence. The relevant portion of the order of the disciplinary Authority reads, inter alia, as follows:

> *"I have thoroughly studied the complete case file, and the report given by the Enquiry Officer in the*

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matter of Charge sheet against Shri Rameshwar Dayal, Conductor, B. No. 8189.1 am in complete agreement with the views expressed by the Enquiry Officer showed in the Investigation result. Shri Rameshwar Dayal, Conductor, B. No. 8189 is fully guilty in this matter, 1 studied the past record also of the accused in which there are 20 entries out of which one entry of taking leave without pay and five entries are related to be for being absent without any intimation from his duty. The past leave record of the accused was also seen in which the accused in the your 1988 took 71, in 1989 = 173, and in 1990 has taken 164 days leave, without pay. From this it is clear that the accused does not take interest in the work of the Nigam. There is nothing appropriate to keep such employee in the services of the Nigam. Hence in my temporary view, 1 propose the punishment of removal of Shri Rameshwar Dayal, Conduct, B. No. 8189, from the services of this Nigam, in this matter, for which show cause notice may be issued to him. Sd/- Depot Manager."

45. The instances of past conduct would only be relevant if the misconduct is proved, which has not been done in the present case as the Workman immediately after resuming his duties has submitted his leave application along with his medical and fitness certificate. This Court in the matter of Shirani Devi and Ors. (supra), categorically held that past conduct in a case would only be relevant if the misconduct is proved and states as follows:

"22. Learned counsel for the DTC then sought to suggest that there were past instances of misconduct of the Appellant which justified the punishment of removal from service. With the DTC not having been able to prove the misconduct of the Appellant, the question of quantum of punishment does not arise. The instances of past

misconduct would be relevant only if the misconduct in the present case is proved. The past instances cannot constitute proof of misconduct in the present instance. That had to be proved by leading credible evidence which the DTC failed to do."

46. *Learned Labour Court dealt with these aspects in detail in the impugned Award-I dated 31.05.2003. Relevant part of the Impugned Award-I is reproduced hereunder:*

> *"13. As such, it is apparent that the copy of his past record was not annexed with the charge sheet. It is further clear that his past record will not be a consideration of a factor while arriving at the conclusion that he is not interested in the work, but will be considered only at the time of final orders i.e. to say that the adverse conduct if any, was not a part and parcel of the charged. The workman was not called upon to explain or defend the same.*
>
> *14. The perusal of enquiry proceedings and repots as proved by MW1 shows that during the enquiry only one witness was examined who has simply stated that the workman remained absent without information for the period 31-3-91 to 14-4-91 regarding which he had not sent any information to the office of the Management. There is no statement for the period for the period from 10.04.1991 to 14.04.1991 as mentioned in the charge sheet. Enquiry proceedings further reveals that the report was not produced during the enquiry. Further, the witness was not chosen to be cross examined. No further witness on any other aspect was examined, meaning thereby that the past record was not produced as evidence during the enquiry.*

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15. In the enquiry report also the enquiry officer had not at all dealt with or has made any observation regarding the past record and after disbelieving the version of the workman that he was compelled to take leave because of his illness and that he had sent applications through his brother, on the ground that if the workman was so ill than instead of getting himself treated at a Private Hospital he should have got treated in Govt. Hospital, returned a finding that the charge stands proved. There is no averment by any witness that the conduct of the workman amounts not taking interest in the work of the management. Nor such a finding had been returned by the enquiry officer that because of remaining absent for 15 days, the conduct amounts to not taking interest in the work of the management.

16. Perusal of record further shows that the disciplinary authority took into consideration, the findings of the enquiry officer as well as the past record of the workman and issued a show cause notice dated 25-1-91 Ex. MWl/2, but even in the same the workman had not been called upon to explain his past conduct. Nor there is a mention that because of the past conduct the punishment proposed is just and sufficient.

17. It may not be out of place to mention here that the purpose of issuance of show cause notice is two-fold. One is to give an opportunity to the workman, to dispel the findings given by the enquiry officer and secondly to make his submissions with regard to the proposed punishment and in the present case, the show cause notice do not serve the purpose for which it is required to be served

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18. It may not be out of place to mention here that MWl had admitted in his cross examination that the workman had submitted an application on 15-4-91 along with medical certificate, but as per the record produced by the management, no orders were passed accepting or rejecting the same and simply the same was put in his leave record.

19. In view of the facts that the workman had moved an application stating grounds of medical illness after availing the leave and the said application was not disposed off, and in view of the fact that the past service record of the workman never formed a part and parcel of the charge sheet, nor the workman was asked to explain or defend the same, and in view of the fact that such a past record was never supplied to the workman and was not relied upon during the enquiry and even do not form part and parcel of a show cause notice, the findings that because of absence for 15 days for which the application submitted was undecided, cannot be sustained. Coupled with the fact that approval application filed by the management was dismissed and no writ petition has been filed by the management against the same meaning thereby that the workman continues to be in deemed service of the management because of declining of approval and the order of termination becoming honest, it is held that the enquiry held against the workman was not proper as he was not given the full opportunity to defend himself nor the charges stood proved against him. Issue No. 1 is decided against the management.

20. Since, there is no stand of the management in the written statement that in case enquiry is vitiated it be allowed to prove the charges by leading evidence before this Tribunal and even otherwise there being a basic defect in the charge

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sheet itself, no such permission can be granted. The workman is entitled to reinstatement with continuity of service."

47. This Court also fully subscribes to the views of the learned Labour Court as expressed in the Impugned Award-I and there is no impunity or perversity in the impugned Award-I. Therefore, this Court, while exercising jurisdiction under Article 226 of the Constitution, is not inclined to interfere with the findings of the learned Labour Court. Hence, impugned Award-I is hereby upheld and W.P (C) No. 6347/2006 is hereby dismissed.

48. It is clarified that on account of the death of the Respondent/Workman, the Legal heirs of the deceased workman is entitled to entire back wages with all other consequential benefits, calculated on the notional basis.

49. As discussed herein above, the impugned Award-II grants permission to the Petitioner/Management to proceed with the termination order. However, the termination order itself was set aside by the learned Labour Court vide the impugned Award-I. Hence the approval application, OP No.28/1992 itself had become infructuous. Learned Labour Court ought not have been proceeded with the OP No.28/1992. However, due to the callous and negligent attitude of the parties, the impugned Award-I was not brought to the notice of this Court or learned Labour Court. Since OP No.28/1992 was infructuous, the writ petition arising out of the impugned Award-II, i.e. W.P (C) No. 2631/2007 has also become infructuous.

50. In view of the detailed discussions herein above, W.P (C) No.6347/2006 is hereby dismissed on merits. W.P.(C) No.2631/2007 is dismissed as infructuous. No order as to costs."

11. Heard learned counsel for the parties and perused the record.

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12. The most important aspect of the case is that the workman in the present case is not alive and the appellant/ DTC has paid all his terminal dues, meaning thereby, the DTC has implemented the Award dated 31.05.2003. The aforesaid fact of implementation of Award dated 31.05.2003 is not in dispute. All dues have been cleared by the DTC in respect of the workman towards terminal dues – as informed to this Court by learned counsel for the DTC.

13. The common order passed by the learned Single Judge – as already stated earlier, deals with two writ petitions referred as under:

a) W.P.(C.) No. 6347/2006 titled ***D.T.C. Vs. Rameshwar Dayal & Another***, wherein the DTC has challenged the Award dated 31.05.2003 passed by the Industrial Tribunal directing reinstatement of the workman with full back wages; and

b) W.P.(C.) No. 2631/2007 titled ***Rameshwar Dayal Thru L.R'S Vs. D.T.C.*** preferred by the LRs of deceased Rameshwar Dayal being aggrieved by the Award dated 21.02.2007 by which the Industrial Tribunal has granted permission to the management to terminate the services of the workman under Section 33 (2) (b) of the Act.

14. The undisputed facts of the case make it very clear that the deceased workman was charge-sheeted on 02.06.1991 for remaining absent for a period of fifteen days. It is also an undisputed fact that the deceased workman subsequently brought documents on record before the Authorities explaining his absence that he was unwell. However, after holding inquiry, he was removed from service by an order dated 17.01.1992.

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15. The appellant/ employer thereafter preferred an application under Section 33 (2) (b) of the Act for grant of approval in respect of termination of the workman and the same was rejected on 24.02.2001.

16. The employer thereafter preferred a writ petition being W.P.(C.) No. 5860/2001 and the same was disposed of by this Court by a remand order dated 17.11.2005 directing the Labour Court to decide the matter afresh.

17. The Labour Court finally decided the matter in respect of application under Section 33 (2) (b) of the Act by an Award dated 21.02.2007 granting approval to the management to terminate the services of the workman.

18. As the workman had expired during the pendency of the proceedings, the LRs of the deceased workman came up before this Court challenging the Award dated 21.02.2007 – which was in respect of application under Section 33 (2) (b) of the Act. The learned Single Judge has held the proceedings under Section 33 (2) (b) of the Act as infructuous – as earlier held by the Labour Court while passing the Award dated 31.05.2003 after meticulously appreciating the evidence on record that the workman is entitled for reinstatement with back wages.

19. In the considered opinion of this Court, once the Award was passed on merits by the Labour Court on 31.05.2003 after taking into account the evidence on record, the learned Single Judge was justified in scanning the Award dated 31.05.2003 on merits.

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20. This Court has also carefully gone through the Award dated 31.05.2003. Paragraphs 14 to 21 of the said Award – directing reinstatement of the workman with full back wages, read as under:

> *"14. The perusal of enquiry proceedings and enquiry reports as proved by MW1 shows that during the enquiry only one witness was examined who has simply stated that the workman remained absent without information for the period i.e. 31.3.91 to 14.4.91 regarding which he had not sent any information to the office of the management. There is no statement for the period of 10.4.91 to 14.4.91 as mentioned in the charge sheet. Enquiry proceedings further reveals that the report was not produced during the enquiry. Further, the witness was not chosen to be crossexamined. No further witness on any other aspect was examined, mean1ng thereby that the past record was not produced as evidence during the enquiry.*
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> *15. In the enquiry report also the enquiry officer had not at all dealt with or has made any observation regarding the past record and after disbelieving the version of the workman that he was compelled to take leave because of his illness and that he had sent applications through his brother, on the ground that if the workman was so ill then instead of getting himself treated at a Private Hospital he should have got treated in Govt. Hospital, returned a finding that the charge stands proved. There is no averment by any witness that the conduct of the workman amounts to not taking interest in the work of the management. Nor such a finding had been returned by the enquiry officer that because of remaining absent for 15 days, the conduct amounts to not taking interest in the work of the management.*
>
> *16. Perusal of record further shows that the disciplinary authority took into consideration the findings of the enquiry officer as well as the past record of the workman and issued show cause notice dated 25.10.91 Ex.MW1/2 but even in the same the workman had not been called upon to explain his*

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conduct. Nor there is a mention that because of the past conduct the punishment proposed is just and sufficient.

17. It may not be out of place to mention here that the purpose of issuance of show cause notice is two-fold. One is to give an opportunity to the workman, if .... the findings given by the enquiry officer and secondly to make his submissions with. regard to the proposed punishment and in the present case, the show cause notice do not serve the purpose for which it is required to be served.

18. It may not be out of place to mention here that MWl had admitted in his cross examination that the workman had submitted an application on 15.4.91 alongwith medical certificate but as per the record produced by the management, no orders were passed accepting or rejecting the same and simply the same was put in his leave record.

19. In view of the facts that the workman had moved an application stating grounds of medical ·illness after availing the leave and· the said application was not disposed off, and in v1ew of the fact that the past service record of the workman never formed a part and parcel of the charge sheet, nor the workman was asked to explain or defend the same and in view of the fact that such a past record was never supplied to the workman and was not relied upon during the enquiry and even do not form part and parcel of show cause notice, the findings that because of absence for 15 days for which the application submitted was undecided, cannot be sustained. Coupled with the fact that approval application filed by the management was dismissed and no writ petition has been filed by the management against the same meaning thereby that the workman continue to be in deemed service of the management because of declining of approval and the order of termination become nonest, it is held that the enquiry held against the workman was not proper as he was not given the full opportunity to defend himself nor the charges stood proved against him. Issue No.1 is decided against the management.

> *20. Since, there is no stand of the management 1n the written statement that in case enquiry is vitiated it be allowed to prove the charges by leading evidence before this Tribunal and even otherwise there being a basic defect in the charge sheet itself, no such permission can be granted. The workman is entitled to reinstatement with continuity of service.*
>
> *21. Since the workman had stated that from the date of his termination he is unemployed and the management had not led any evidence to prove that the workman has gainfully employed and since the approval application filed by the management was dismissed on 24.2.2001 and the present dispute was raised by the workman in 2001 itself as the management did not prove duties to the workman despite dismissal of the approval application, the workman is entitled to full back wages. The reference is answered in favour of the workman/ The back wages be paid within one month from the date of publication of this award otherwise the management shall be liable to pay interest@ ... % p.a. Award is passed accordingly."*

21. The Award passed by the Labour Court makes it very clear that during the inquiry, only one witness was examined and it was a case of absence for fifteen days. The Labour Court has also observed that the Inquiry Officer has disbelieved the statement of the workman who has categorically stated that he was compelled to take leave on account of illness and his leave application was sent through his brother. The medical certificates were ignored only on the ground that the workman took treatment in a private hospital and the Inquiry Officer observed that the workman should have got treated himself in a Government hospital.

22. Not only this – in the considered opinion of this Court, for absence of fifteen days, the punishment of removal is shockingly disproportionate, and

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therefore, on this count alone, the workman was entitled for the relief sought.

23. The most unfortunate part in the present case is that the workman is no more, and even if the matter is to be remanded back to the Labour Court on the point of quantum of punishment, no purpose is going to be served as the workman is not alive.

24. The learned Single Judge was justified in dismissing the petition preferred by the employer against the Award dated 31.05.2003. The finding of fact arrived at by the Labour Court are not at all perverse findings and the scope of interference by this Court is quite limited.

25. It is not for the High Court to constitute itself into an Appellate Court over Tribunals constituted under special legislations to resolve disputes which have been resolved by specialized Tribunals especially when the findings are not perverse.

26. The Hon'ble Supreme Court in paragraph 17 of the judgment in ***Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, has held as under:

> *"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot*

be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken… …   The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

27. The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.

28. The Hon'ble Supreme Court has taken a similar view in ***Hari Vishnu Kamath v. Ahmed Ishaque & Ors.***, AIR 1955 SC 233, *inter alia* held as under:

"21. ... On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of

this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.

23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. ... The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

29. In ***Dharangadhara Chemical Works Ltd. v. State of Saurashtra,*** (1957) SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

30. In ***Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan***, (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/ Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of

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fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

31. In a Constitution Bench judgement of the Supreme Court in ***Syed Yakoob vs. K.S. Radhakrishnan & Ors.***, AIR 1964 SC 477, the Apex Court has inter alia held as under:

> *"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be*

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corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manliest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two

> *constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."*

32. The Hon'ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

33. The Hon'ble Supreme Court in ***State of Haryana vs. Devi Dutt & Ors.***, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.

34. In the present case, the Labour Court has arrived at a conclusion based upon the evidence adduced by the parties and the learned Single Judge has affirmed the findings of fact again after minutely scanning the entire evidence, and therefore, the question of interference by this Court does not arise.

35. The supervisory jurisdiction of the High Courts under Article 227 of the Constitution of India, was discussed by the Supreme Court in ***Mohd. Yunus v. Mohd. Mustaqim***, (1983) 4 SCC 566, whereby it was, *inter alia*, held as under:

> *"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."*

36. Furthermore, in ***Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala***, (1988) 1 SCC 155, the Supreme Court held as under:

> *"13. The intention here is manifest. In any event this is a possible view that could be taken. This Court in Venkatlal G. Pittie v. Bright Bros. (P) Ltd. [(1987) 3 SCC 558] and Beopar Sahayak (P) Ltd. v. Vishwa Nath [(1987) 3 SCC 693] held that where it cannot be said that there was no error apparent on the face of the record, the error if any has to be discovered by long process of reasoning, and the High Court should not exercise jurisdiction under Article 227 of the Constitution. See in this connection the observations of this Court in Satyanarayan*

> *Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137 : (1960) 62 Bom LR 146] . Where two views are possible and the trial court has taken one view which is a possible and plausible view merely because another view is attractive, the High Court should not interfere and would be in error in interfering with the finding of the trial court or interfering under Article 227 of the Constitution over such decision."*

37. In light of the aforesaid judgments, this Court does not find any reason to interfere with the Award dated 31.05.2023 passed by the Labour Court, nor with the order passed by the learned Single Judge especially in the light of the fact that the workman is no longer alive and entire terminal dues have been paid to the widow and other LRs of the deceased workman.

38. The appeal is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

NOVEMBER 01, 2023
B.S. Rohella