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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8249 OF 2024
WITH
CIVIL APPLICATION (ST) NO. 1593 OF 2019
IN
WRIT PETITION NO.8249 OF 2024

M/s. Asahi India Glass Ltd. ***...Petitioner***

V/s.

Shri. Nadeem A. A. Dolare ***...Respondent***

Mr. Avinash Jalisatgi, *a/w Mr. Vaibhav Jagdale for the Petitioner.*
Dr. Uday Warunjikar *i/b Mr. Sumit Kate for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 5 December 2024.

Judgment pronounced on : 13 December 2024.

Judgment :

1) Petitioner has filed the present Petition challenging the judgment and order dated 21 September 2015 passed by the learned Member, Industrial Court, Thane, dismissing their Revision Application (ULP) No.86 of 2012 and confirming the judgment and order dated 10 August 2012 passed by the Presiding Officer, third Labour Court, Thane in Complaint (ULP) No.134 of 2007. While allowing the Complaint filed by Respondent-employee, the Labour

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Court has directed reinstatement with continuity of service with 50% backwages w.e.f. 31 August 2007.

2) Briefly stated, facts of the case are that Petitioner is a limited Company, engaged in manufacturing of float glass and had established its one of its Plants at Waked, District-Ratnagiri. According to Petitioner, Silica is the raw material used for manufacturing of float glass. That Petitioner used to treat the extracted Silica so as to make it fit for manufacturing of float glass. Respondent was appointed in Petitioner's company as Plant operator at its Plant at Taloja, where he worked till August-2002. By letter dated 28 August 2002, Respondent, alongwith another employee, was transferred at Waked, Ratnagiri Plant. While working as Skilled Worker-II (O & M) he was allotted duties in Clariflocculator (Water Treatment System) area and his duties involved critical monitoring of various levels during operation of the plant. On 26 October 2006 Respondent was performing duties in the night shift from 11.00 p.m. to 7.00 a.m. It is alleged that at 3.05 am. of 27 October 2006, vigilance check was conducted by Manager (O & M) as well as Manager (P & A) and it was found that Respondent was missing from his place of work without any prior permission and was found in the changing room sitting on the Bench and sleeping by putting his head and arm on the table. Respondent was placed under suspension pending the enquiry on 28 October 2006. On 31 October 2006, he was served with charge-sheet alleging misconduct under Clauses 24(i) and 24(v) of the standing orders. Domestic enquiry was held into the charges levelled against the Respondent by nominating an independent Enquiry Officer. Respondent submitted his representation dated 12 December 2006 denying the charge and putting forth his explanation.

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Petitioner-Management examined Chandrakant Shankar Chavan as its witness. It appears that the Respondent did not cross-examine the management witness. After examining the evidence on record the Enquiry Officer submitted his report dated 18 June 2007 holding Respondent guilty of the charges. Report of the Enquiry Officer was supplied to the Respondent, who submitted his response to the same. After considering Respondent's response, Petitioner passed order dated 31 August 2007 imposing the punishment of dismissal of service on the Respondent.

3) Respondent filed Complaint (ULP) No. 134 of 2007 in Labour Court, Thane, challenging the dismissal order. The Complaint was resisted by the Petitioner by filing written statement. Petitioner also filed Application at Exhibit-14 for framing and deciding the issue of territorial jurisdiction as a preliminary issue, which application was rejected by Labour Court by order dated 3 July 2008. It appears that at the instance of Respondent, Regular Criminal Case No.70 of 2006 was registered in the Court of Judicial Magistrate, First Class, Lanja, against six officials and employees of the Petitioner with regard to alleged incident dated 28 October 2006 of threatening and assaulting him. The said case came to be dismissed by judgment and order dated 19 March 2009 acquitting all the accused therein.

4) In the meantime, Respondent led his evidence in Complaint (ULP) No.134 of 2007. The Petitioner-Management examined the Enquiry Officer as its witness in support of preliminary issues of fairness in the enquiry and validity of findings recorded by the Enquiry Officer. The Labour Court passed order dated 15 September 2009 on the preliminary issues and held that the enquiry

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was not fair and proper and that the findings recorded by the Enquiry Officer are perverse.

5) Petitioner thereafter led evidence before the Labour Court to justify its action. It examined Mr. Chandrakant S. Chavan and Mr. Bhavesh Achrekar as its witnesses to prove the charges. The Respondent examined himself. The Labour Court passed judgment and order dated 10 August 2012 holding that Petitioner committed unfair labour practices under items 1(a) and 1(b) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP** Act). It further directed reinstatement of Respondent with continuity of service and 50% backwages w.e.f. 31 August 2007 i.e. from the date of termination.

6) Petitioner filed Revision Application (ULP) No.86 of 2012 before the Industrial Court, Thane. By judgment and order dated 21 September 2015 Industrial Court dismissed the Revision Application filed by the Petitioner. Petitioner has accordingly filed the present Petition on 12 February 2016 challenging the orders of the Labour and Industrial Courts.

7) Mr. Jalisatgi, the learned counsel appearing for the Petitioner would submit that the Labour and Industrial Courts have erred in interfering the punishment of dismissal imposed on the Respondent. That Respondent committed serious misconduct of sleeping on duty while being assigned with vital task of observing and maintaining the operations of Clarifloculator. That non-maintenance of vigilance during operations of Clarifloculator results in stoppage of operation of the entire Plant leading to heavy losses for the Petitioner-

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Company. That the charge was duly proved by the Enquiry Officer by examining Mr. Chandrakant Chavan in the enquiry. That despite there being sufficient evidence on record about Respondent being found sleeping on duty, the Labour Court erred in passing Part-I Award. That though not really required, Petitioner once again justified its action before the Labour Court by leading evidence of Mr. Chandrkant Chavan and Bhavesh Achrekar, who personally witnessed Respondent sleeping while being on duty. That photograph demonstrating his act was also produced and proved before the Labour Court. That report of vigilance check was also prepared on 27 October 2006 and the same has been proved in the enquiry. That there is apparent inconsistency in the findings recorded in Part I and Part II Awards with regard to false defence adopted by Respondent about availing leave on the relevant day. That while Labour Court erroneously accepted false defence of leave being taken from 3.00 a.m. onwards, in Part-II Award, it recorded contradictory findings that Respondent worked on the relevant day upto 5.00 a.m. continuously. Mr. Jalisatgi would draw my attention to the shift duty report of Respondent in which he made an entry of not feeling well at 5.00 a.m. That if he indeed was on half day leave from 3.00 a.m., there was no reason for him to make remark in the shift duty report about not feeling well at 5.00 a.m. Mr. Jalisatigi would submit that findings recorded by the Labour Court in Part-II Award are perverse. That the Labour Court has erroneously held the charge to be not proved ignoring the fact that Petitioner-Management produced direct evidence of witnesses, who saw Respondent sleeping while being on duty. That the misconduct is otherwise serious in nature and Respondents has rightly been visited with punishment of dismissal. Mr. Jalisatgi would further submit that Petitioner's Ratnagiri factory

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has been closed in 2013. That after Part II Award of Labour Court as well as order of the Industrial Court Petitioner offered reinstatement to the Respondent without prejudice to their rights and contentions by letter dated 16 October 2015 by posting him at Karouli Mines, Village Manoharpura, Tehsil & Dist. Karouli, Rajasthan Plant (**Karouli Plant**). That it was specifically mentioned in the said letter dated 16 October 2015 that the entire Waked establishment was shifted at Karouli Plant alongwith all the workmen. However, Respondent refused to join Petitioner's Plant at Karouli Plant. He would also rely upon shifting notice dated 26 September 2013 by which Waked Plant is shifted to Karouli Plant on account of non-availability of Silica sand at Waked and Company operating its own Mines in Rajasthan where there is abundant availability of good quality of Silica sand. He would therefore submit that there is no question of reinstatement of Respondent at Waked Plant, which is no longer functioning. That since Respondent is otherwise not willing to join Karouli Plant, impugned orders of reinstatement and backwages deserve to be set aside.

8) Petition is opposed by Dr. Warunjikar, the learned counsel appearing for the Respondent-employee. He would submit that both the courts have concurrently held the termination of Respondent to be unlawful and that no interference is warranted in the concurrent findings recorded by the Labour and Industrial Courts. That Petitioner has failed to demonstrate element of perversity or exercise of jurisdiction with material irregularity for this Court to exercise extraordinary jurisdiction under Article 227 of the Constitution of India. He would therefore pray that the Petition be dismissed with costs. He would submit that Respondent has been victimised by the

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Petitioner-Management and his victimisation has rightly been upheld by the Labour and Industrial Courts. That the entire charge itself is imaginary and totally false. That Respondent was on leave from 3.00 a.m. to 7.00 a.m. That several employees were deliberately dismissed by Petitioner. Thus, victimisation of Respondent is more than apparent.

9) Dr. Warunjikar would further submit that the Labour and the Industrial Courts have assessed the evidence on record produced before them and have arrived at a finding of fact that charge levelled against the Respondent is not established. That Petitioner deliberately set up a new witness viz. Mr. Bhavesh Achrekar, who was never examined in the domestic enquiry. That the photographs were never proved before the Labour Court and that the Labour Court has rightly observed that the alleged act of Respondent sleeping on duty is not reflected in the shift duty report. That there is discrepancy in respect of the exact time the Respondent was allegedly found sleeping on duty. That the Labour Court has rightly taken into consideration Respondent raising the issue of pollution caused due to discharge from the factory of the Petitioner, on account of which, he is subjected to victimisation. Dr. Warunjikar would submit that Respondent is in dire need of a job and therefore deserves to be reinstated in service. He would pray for dismissal of the Petition.

10) Rival contentions of the parties now fall for my consideration.

11) Respondent faced charge of missing from duty and sleeping in the changing room during night shift of intervening night

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between 26 and 27 October 2006 at about 3.05 a.m. It appears that report of vigilance check was prepared on 27 October 2006 by Mr. Chandrakant Chavan and Mr. S.P. Mose, who were apparently accompanied by Security supervisor Mr. Powel and Shift Incharge Mr. Acharekar. The report indicates that Respondent was not present in the allotted working area and found in the changing room in sleeping position. The investigating team apparently took photographs and it is alleged that the Respondent was in such deep sleep that he did not get up after the camera flashed light while taking photographs. In the departmental enquiry, Mr. Chandrakant Chavan was examined, who was apparently not cross-examined by the Respondent. Though the Enquiry Officer held the charge to be proved, the Labour Court has held the enquiry to be unfair and findings of the Enquiry Officer to be perverse in the Part-I Award dated 15 September 2009. Petitioner did not challenge the Part-I Award dated 15 September 2009 contemporaneously nor the same is subject matter of challenge in the present Petition. In short, Petitioner has accepted that the enquiry was not fair and proper and that findings of the Enquiry Officer were perverse.

12) Petitioner-Management accordingly decided to justify its action by leading evidence before the Labour Court and accordingly examined Mr. Chandrakant Chavan and Mr. Bhavesh Achrekar, who were apparently present during the course of vigilance check. Perusal of the affidavit of evidence of Mr. Chandrakant Chavan would indicate that he is an eyewitness to Respondent's act of sleeping during the course of his duty during the intervening night of 26 and 27 October 2006. Similar is the case of Mr. Bhavesh Acharekar, who has also personally witnessed the act of sleeping of Respondent. The Labour

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Court has unnecessary laid stress on slight difference in time at which Respondent was caught sleeping. In the charge-sheet time is indicated as 3.05 a.m. whereas the witnesses indicated time as 3.20 a.m. In my view, for proving charge in the departmental enquiry, such minor inconsistency in time cannot be a reason for discarding evidence of a eyewitness. The charge of sleeping on duty has been conclusively proved by evidence of Mr. Chandrakant Chavan and Mr. Bhavesh Acharekar.

13) Respondent attempted to raise a defence that he was on half day leave from 3.00 a.m. on 27 October 2006. This act is however, belied by remark made in shift duty report wherein it is indicated that Respondent was not feeling well at 5.00 a.m. Though the Labour Court recorded a finding in favour of the Respondent about being on sanctioned half day leave from 3.00 a.m. onwards, in Part -I Award, in Part – II Award it recorded an inconsistent and contradictory finding that he worked continuously till 5.00 a.m. on 27 October 2006. Apart from the fact that said finding is contradictory, the same is recorded only on account of the fact that there is no remark about Respondent sleeping on duty in the shift report. In my view, the Labour Court committed gross error in discarding the oral evidence of two eyewitnesses and recorded an erroneous finding that Respondent was working continuously till 5.00 a.m. on 27 October 2006 merely on the basis of contents of the shift report. The Labour Court further committed error in turning blind eye to the photographs placed on record where the Respondent was seen sleeping at the relevant time.

14) In domestic enquiry, the test of proof of charge is preponderance of probability. It is not necessary for the Petitioner-

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Management to prove charges beyond reasonable doubt. So long as there is some evidence in support of charge, Labour Court or Industrial Court cannot interfere in the punishment by going into the aspect of sufficiency of evidence. It is well settled law that courts and tribunals cannot go into the aspect of adequacy of evidence and only in cases where there is complete absence of evidence that Courts or Tribunals can interfere in the findings recorded in the domestic enquiry. In this regard reliance by Mr. Jalisatgi on judgments of the Apex Court in ***Kuldeep Singh V/s. Commissioner of Police and Others***[1]***, State Bank of Bikaner and Jaipur V/s. Nemi Chand Nalwaya***[2] and ***State Bank of Haryana and Anr. V/s. Rattan Singh***[3] is apposite. In fact, in ***Kuldeep Singh*** (supra) the Apex Court has held in paragraph 10 as under:-

> 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 added)*

15) Thus, there is sufficient evidence on record for proving the charge of sleeping on duty against Respondent and the findings recorded by the Labour and the Industrial Courts on this issue are clearly perverse and unsustainable.

16) Having held that the charge levelled against Respondent is justified by the Management by leading evidence before the Labour Court, the next issue is about proportionality of penalty. It is contended by Mr. Jalisatgi that Respondent's act of sleeping on duty

[1] (1999) 2 SCC 10
[2] *(2011) 4 SCC 584*
[3] *(1977) 2 SCC 491*

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must be considered in conjunction with duties and responsibilities attached to his job. It is sought to be suggested that Respondent was supposed to oversee the operation of Clarifloculator Plant and any mishap in operation of the Plant could be disastrous. That therefore running of the operation in absence of any observation by Plant Operator poses extreme risk to the operations and to the Company. No doubt the charge of sleeping on duty is not to be lightly considered, when the employee holds a responsible position, as any dereliction of duty on his part can lead to dangerous consequences. In this regard reliance by Mr. Jalisatgi on judgment of the Apex Court in ***Bharat Forge Co. Ltd. V/s. Uttam Manohar Nakate***[4] is apposite. In that case, the Respondent was found lying fast asleep on an iron plate at his working place and was accordingly dismissed from service. The Apex Court in paragraph 26 and 32 held as under:-

> 26. We have noticed hereinbefore that all the courts have answered the question as regards commission of misconduct by the respondent in one voice. The Labour Court evidently had taken recourse to clause (g) of Item 1 of Schedule IV of the Act, which ex facie was inapplicable. The said provision clearly postulates two situations, namely, (i) the misconduct should be of minor or technical character; and (ii) the punishment is shockingly disproportionate without having any regard to the nature of the particular misconduct or the past record of service of the employee. The past record of service, therefore, is a relevant factor for considering as to whether the punishment imposed upon the delinquent employee is shockingly disproportionate or not. As has been noticed hereinbefore, before the learned Single Judge an attempt on the part of the respondent to take recourse to clause (b) of Item 1 of Schedule IV failed. In the absence of any plea of factual victimisation and furthermore in the absence of any foundational fact having been laid down for arriving at a conclusion of legal victimisation, in our opinion, the Division Bench committed a manifest error in invoking clause (a) thereof.
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> 32. In Regional Manager, Rajasthan SRTC v. Sohan Lal it has been held that it is not the normal jurisdiction of the superior courts to

[4]. (2005) 2 SCC 489

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> interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct g proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary.

17) However, in the present case, Respondent was not monitoring security or safety functions. Misconduct committed by a security guard or a person posted to guard an establishment can be viewed very seriously. In fact, I have taken a view in ***Prahlad Baburao Thale Vs. Union of India*** Writ Petition No. 3156 of 2017 decided by the Bench at Aurangabad on 20 August 2022 that a constable employed in Central Industrial Security Force carrying weapon if found sleeping on duty is a serious misconduct. However, in the present case, Respondent was apparently not entrusted with any security or safety related duties. Therefore, a single stray act of Respondent of sleeping on duty would not, in facts and circumstances of the case, construed a grave misconduct, worthy of throwing him out of service. In ***Bharat Forge Co. Ltd.*** (supra) though the employee was found sleeping on duty, his past conduct as well as his conduct during domestic enquiry proceedings was taken note of by the Apex Court. In the present case, there is nothing on record to indicate that his past record was blameworthy or that he was punished or any action was taken against him in the past. Therefore, his stray act of sleeping on duty would not constitute grave misconduct worthy of imposition of extreme penalty of dismissal from service. In my view therefore, though the charge is established on the basis of evidence led before the Labour Court, punishment of dismissal imposed on the Respondent is shockingly disproportionate to the proved misconduct.

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18) The next question is about the nature of relief to be granted in favour of the Respondent. He was dismissed from service w.e.f. 31 August 2007. By now, 14 long years have passed. Also reinstatement of Respondent at same place appears to be impossible in the light of shifting of Petitioner's Plant at Karouli. Mr. Jalisatgi has relied upon notice dated 26 September 2013 issued to various authorities regarding shifting of its Waked Plant to Karouli Plant w.e.f. 26 September 2013. Mr. Jalisatgi has also relied upon transfer order issued to various employees and officials on 26 September 2013 posting them at Karouli Plant.

19) It appears that prior to filing of the present Petition Petitioner had offered reinstatement to Respondent by letter dated 16 October 2015 by calling upon him to report at Karouli Plant. He was offered Rs.10,000/- towards travelling expenses and another Rs.10,000/- towards relocation allowance in addition to accommodation facility for 7 days. In the said letter dated 16 October 2015 Petitioner also communicated to Respondent that its Taloja establishment was also closed down w.e.f. 15 August 2014. However, it appears that Respondent did not show any interest in reporting for job at Petitioner's establishment at Karouli, Rajasthan. Therefore, there is no question of reinstating the Respondent in service at Waked Plant, where the establishment is already closed. Respondent is not interest in working at Karouli, Rajasthan. Therefore, though the punishment of dismissal from service is found to be shockingly disproportionate, Respondent cannot be granted reinstatement or any backwages. Instead, award of lumpsum compensation would meet ends of justice considering the fact that 14 long years have elapsed

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from the date of his dismissal and his lack of interest in joining Petitioner's establishment at Karouli, Rajasthan.

20) The next issue for consideration is about quantum of lumpsum compensation to be awarded to the Respondent. While deciding the quantum of lumpsum compensation three factors need to be borne in mind viz., (i) charge of sleeping on duty is proved against Respondent, (ii) he has declined the offer of reinstatement of 16 October 2015 and has voluntarily stayed away from work (iii) closure of Petitioner's establishment at Waked, Ratnagiri. It appears that the last drawn wages of Respondent in October 2006 were Rs. 22,134/- comprising of bonus of Rs.8,000/- and overtime allowance of Rs.1,562/-. If bonus amount of Rs.8,000/- is deducted from gross salary of Rs. 22,134/-, his gross emoluments in the month of October - 2006 were Rs.14,134/-. The current age of Respondent is approximately 53 years and he has left with another 6/7 years of service. Mr. Jalisatgi would submit that another dismissed employee has accepted compensation of Rs. 22,00,000/-. It appears that in Writ Petition No.1255 of 2018 filed by Petitioner against Shaikh Ahsan Sabari A. Gafoor, who was also terminated on 9 July 2007 on allegations of absence from duty from 5 February 2007 to 11 March 2007, this Court awarded lumpsum compensation of Rs.22,00,000/-. In my view, similar treatment needs to be extended to Respondent in the present case as well. Thus, award of lumpsum amount of Rs.22,00,000/- to the Respondent would meet the ends of justice.

21) I, accordingly proceed to pass the following order:-

(i) Judgment and order dated 10 August 2012 passed by the Presiding Officer, third Labour Court, Thane in

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Complaint (ULP) No.134 of 2007 and Judgment and order dated 21 September 2015 passed by the learned Member, Industrial Court, Thane, in Revision Application (ULP) No.86 of 2012 are set aside.

(ii) Petitioner shall pay lumpsum compensation of Rs. 22,00,000/- to the Respondent in lieu of reinstatement and backwages.

(iii) Beyond the lumpsum amount of Rs.22,00,000/- Respondent shall not be entitled to any further amount from the Petitioner in respect of the services rendered by him.

(iv) Compensation of Rs.22,00,000/- shall be paid by the Petitioner to the Respondent within a period of four weeks.

22) With the above directions Writ Petition is partly allowed and disposed of. Considering the facts and circumstances of the case there shall be no order as to costs.

23) In view of disposal of the Writ Petition, Civil Application also stands disposed of.

[SANDEEP V. MARNE, J.]

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