IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 992 OF 2022

Wheels India Ltd. ...Petitioner

V/s.

Ganesh Bajirao Vishwasrao ....Respondent

ALONGWITH

WRIT PETITION NO. 14018 OF 2022

Ganesh Bajirao Vishwasrao ...Petitioner

V/s.

Wheels India Ltd. ....Respondent

Mr. Varun Joshi a/w. Mr. Chetan Alai, Miss. Rama Somani i/by. Mr. Chetan Alai, for the Respondent.

Mr. G.R. Naik i/by. M/s. G.R. Naik & Co., for the Petitioner in WP-14018-2022 and for Respondent in WP-992-2022.

CORAM : SANDEEP V. MARNE, J.

Resd. On : 18 December 2023.

Pron. On : 22 December 2023.

JUDGMENT:

1. **Rule** in both Petitions. Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, petitions are taken up for hearing.

2. The Petitioner-Wheels India Ltd. has filed Writ Petition No. 992 of 2022 challenging Part-II Award of the Industrial Tribunal, Pune dated 5 December 2019 directing it to reinstate the Respondent- Workman with continuity of service and 50% backwages for the period from 6 March 2014 to 24 December 2015. The reinstatement is directed essentially by holding that the punishment of dismissal is disproportionate. Otherwise in Part-I Award dated 13 December 2017, the Industrial Tribunal held the enquiry to be just, legal and proper and the findings in the enquiry to be not perverse. Thus, the employee failed in Part-I Award dated 13 December 2017, whereas succeeded in Part-II Award dated 5 December 2019. During pendency of Writ Petition No. 992 of 2022, the employee-Ganesh Bajirao Vishwasrao has filed Writ Petition No. 14018 of 2022 challenging the Part-I Award dated 13 December 2017. Since both the petitions arise out of the same proceedings being Reference (IT) No. 22 of 2014 decided by the Industrial Tribunal, Pune, both the petitions are heard and decided together.

3. Briefly stated, facts of the case are that Wheels India Ltd., a company incorporated under the provisions of the Companies Act, 1956, is engaged in the business of manufacturing steel wheels and has a factory at Plot No.C-1, MIDC, Ranjangaon (Ganpati), Karegaon, Taluka-Shirur, District-Pune. The Company had employed 215 Workmen in its factory whose conditions of service

are governed by the contract of employment vix. Appointment Order, Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 and various settlements signed by the Company with Wheels India workers' Union. The Respondent/Workman joined the services of the Company on 9 January 2006 and was designated as a Operator in the Tools Room Department.

4. Wheels India Workers Union raised a demand for issuance of shares of the company to the permanent employees. Since the demand was not met, the Union issued notice for stoppage of work w.e.f 11 March 2011. Respondent-Workman was suspended on 9 March 2011 alongwith five other employees on the allegations of giving threats to trainees and contract employees. Respondent was served with the chargesheet dated 1 April 2011 alleging that on 7, 8 and 9 March 2011 instead of performing duties, Respondent caused obstruction to the work of temporary trainees, contract workers and threatened them of consequences if they resumed work on the next day. It was further alleged that on 9 March 2011, all temporary trainees, term contract and contract workers did not report for work leading to halt of scheduled manufacturing activity and caused loss to the company. Respondent-Workman gave his reply to the chargesheet dated 7 April 2011, which was not found satisfactory and the Company decided to conduct an enquiry into the chargesheet. One Mr. V.G. Deshpande, Advocate was appointed as an Enquiry

Officer. Respondent-Workman was permitted to be represented by Mr. Kolhatkar, Advocate, who cross-examined the management witnesses. At the end of enquiry, the Enquiry Officer submitted report on 3 January 2013 holding the Respondent-Workman guilty of charges leveled against him. Copy of the Enquiry Report was furnished to the Respondent-Workman, who submitted his representation vide letter dated 2 April 2013. The employer thereafter passed order dated 6 March 2014 imposing the penalty of dismissal from service on the Respondent. The Respondent-Workman raised a dispute before the Deputy Commissioner of Labour, Pune and directly filed an application under the provisions of Section 2(A)(2) of the Industrial Disputes Act, 1947 before the Industrial Tribunal, Pune. He filed his Statement of Claim, which was resisted by Petitioner by filing Written Statement. The Industrial Court delivered Part-I Award on preliminary issues of fairness of enquiry and perversity in the findings. On 13 December 2017, the Industrial Tribunal held that the enquiry conducted was fair and proper and that the findings of the Enquiry Officer are not perverse. The Respondent did not challenge Part-I Award of the Industrial Tribunal delivered on 13 December 2017.

5. It is the case of the employer that when the Reference was subjudice before the Industrial Tribunal-I, the same was transferred to Industrial Tribunal-II for the reasons attributable to the Advocate for the Respondent. The Respondent led evidence before the Industrial Tribunal and was cross-examined by the

employer. The Industrial Tribunal thereafter delivered Award dated 5 December 2019 holding that the misconduct committed by the Respondent-Workman, though was proved, the punishment was disproportionate. The Industrial Tribunal, therefore directed the employer to reinstate the Respondent-Workman with continuity of service and 50% backwages from 6 March 2014 to 24 December 2015. It came on record during the course of pendency of proceedings before the Industrial Court that the Respondent-Workman was employed with Sterion India Pvt. Ltd. w.e.f. 24 December 2015 and was earning wages of Rs.27,600/- per month. This is the reason why the Workman was directed to be paid 50% backwages from the date of the dismissal i.e. 6 March 2014 till the date of employment with Stereion India Pvt. Ltd. i.e. 24 December 2015. The Petitioner-Employer is aggrieved by the Part-II Award dated 5 December 2019 and has filed Writ Petition No. 992 of 2022. When Writ Petition No. 992 of 2022 came up for hearing before this Court on 2 February 2022, this Court passed the following Order:

> 1. By this petition, the petitioner-management seeks to challenge the judgment and award (Part-II) dated 05/12/2019 delivered by the Industrial Tribunal, Pune, thereby answering Reference (IT-2A-2) No.22 of 2014, partly in the affirmative. The company is directed to re-instate the employee in employment with continuity of service and with 50% back-wages from 06/03/2014 to 24/12/2015. It is informed that since he was in gainful employment, the backwages for the period there-beyond, has not been granted by the Tribunal. The learned advocate for the petitioner has drawn my attention to the charge-sheet dated

01/04/2011, which, prima facie, appears to contain grave and serious charges.

2. He then drew my attention to the Part-I Award, delivered by the Industrial Tribunal, dated 13/12/2017, vide which, the domestic enquiry conducted against the employer was held to be fair and proper and the findings of the Enquiry Officer were sustained.

3. The learned advocate for the petitioner relies upon relies upon the judgment delivered by this court in ***Nanded Waghala City Municipal Corporation v. Keroji Sitaram Dasare***, 2016 (II) L.L.J. 612.

4. It is well settled that once the Part-I Award/Order results in sustaining the domestic enquiry, on account of adherence to principles of natural justice and the findings of the Enquiry Officer are found to be sustainable, the only issue that remains to be adjudicated upon is, as to whether the charges proved against the employee would call for the punishment, which has been awarded by the employer. In short, the proportionality of the punishment is the only issue that needs to be considered.

5. In ***Damoh Panna Sagar Rural Regional Bank Limited v. Munna Lal Jain***, 2016(II) LLJ 612 , the Hon'ble Apex Court has held that the court can interfere in the quantum of punishment only if it finds that the punishment is shockingly disproportionate to the seriousness and gravity of the proved misconducts. Merely because, it may appear to be disproportionate is not enough. It should shock the judicial conscience of the court.

6. The charges proved against the employee are of threatening and intimidating temporary workers, trainees, term contract / contract employees, contract labours, etc. from performing their duties on 07/03/2011, 08/03/2011 and 09/03/2011. On 09/03/2011, they were threatened with physical harm and dire consequences. As a result of such threats and intimidation, these employees did not perform duties on 09/03/2011, out of fear that they would be physically assaulted by the charge-sheeted employee.

7. Considering the above, issue notice to the respondents, returnable on 21/03/2022.

8. Untill further orders, the impugned Award shall stand stayed.

6. After this Court made observations about the finality being given to Part-I Award dated 13 December 2017, the Respondent-Workman filed Writ Petition No. 14018 of 2022 in April 2022 challenging Part-I Award dated 13 December 2017. According to the Workman, the Industrial Tribunal has erred in holding the enquiry to be fair and proper when the same was conducted in violation of principles of natural justice. He also contends that the findings recorded by the Enquiry Officer are perverse. Therefore, Part-I Award dated 13 December 2017 has been challenged in Writ Petition No. 14018 of 2022.

7. Mr. Varun Joshi, the learned counsel would appear on behalf of the Petitioner- Employer in Writ Petition No. 992 of 2022 and on behalf of the Respondent-Employer in Writ Petition No. 14018 of 2022. He would submit that the Industrial Tribunal has committed gross error in holding the penalty to be disproportionate to the misconduct proved against the Workmen. That threatening the co-workers and causing obstruction to the manufacturing activities is a serious misconduct, for which penalty of dismissal from service is commensurate. Relying on the Judgment of the Apex Court in ***Bengal Bhatdee Coal Co. Ltd. V.s. Ram Probesh Singh and Ors***. AIR 1964 SC 486, Mr. Joshi, would contend that obstructing workers from performing their duties is a serious misconduct. He

would further submit that the Industrial Tribunal has erred in laying emphasis on past record of the workman. Relying upon the judgment of the Apex Court in ***Depot, Manager, A.P. SRTC V/s., B. Swamy (2007) 12 SCC 4***, Mr. Joshi would contend that the gravity of the misconduct cannot be minimized by non-indulgence by the workman in similar misconduct in the past. He would submit that the conduct of the workmen resulted in manufacturing activities of the Company coming to a grinding halt and that such misconduct cannot be labelled as minor as sought to be suggested by the Industrial Tribunal. That since the penalty imposed is not shockingly disproportionate, the Industrial Court has erred in setting aside the same. He would pray for setting aside of Part-II Award dated 5 December 2019.

8. So far as Writ Petition No. 14018 of 2022 is concerned, Mr. Joshi would submit that filing of the petition is clearly an afterthought. That there is inordinate and gross delay in challenging Part-I Award dated 13 December 2017 by filing Writ Petition No. 14018 of 2022 in April 2022. That the petition is filed by the workman only after noticing the findings recorded by this Court in Order dated 2 February 2022. Mr. Joshi would further submit that the finding recorded in Part-I Award dated 13 December 2017 are perfectly valid and that no interference by this Court is warranted in the same. He would pray for dismissal of Writ Petition No. 14018 of 2022.

9. Mr. Naik, the learned counsel appearing for the workman who is Respondent in Writ Petition No. 992 of 2022 and Petitioner in Writ Petition No. 14018 of 2022 would submit that Part-I Award dated 13 December 2017 is erroneous and delivered in ignorance of the fact that principles of natural justice were breached with impunity during the course of inquiry. That the charges levelled against the Workman were absolutely vague in that the names of neither contract employees who were allegedly threatened nor their contractors were disclosed. The exact time of alleged threatening was not indicated. The quantum of alleged loss of production suffered by the Company is not reflected. The names of persons witnessing the alleged act of the workman are not disclosed. According to Mr. Naik, in absence of these particulars, the charge levelled against the workman was absolutely vague and the workman was denied reasonable opportunity of defence on account of vagueness in the charges. He would submit that the enquiry was conducted in the office of the Advocate and not in the factory premises to build pressure on the workman during conduct of the enquiry. That material witnesses were not examined in the enquiry. That atleast one of the contract workers, who were allegedly threatened, ought to have been examined to prove the charge. That the enquiry was conducted by way of formality by examining the Engineer in Tools Department, Store Manager and Senior Personnel Officer. That the workman examined five witnesses to disprove the allegations. That the findings are based on hearsay evidence. Mr. Naik would submit that the findings of the Enquiry officer are thus perverse. He would

therefore submit that the Part-I Award deserves to be set aside, which would render Part-II Award otiose.

10. So far as Writ Petition No. 992 of 2022 filed by the Employer-Wheels India Ltd. is concerned, Mr. Naik would submit without prejudice to the challenge to the Part-I Award, that the penalty imposed was not just disproportionate but also discriminatory. That the Industrial Court has rightly taken into consideration the fact that the other suspended employees were let off with warning letters. That the strike was not called by the workman but by the Union and the workman is made a scapegoat for the purpose of pressurizing the other employees to end the strike. That the Industrial Court has rightly held the punishment to be disproportionate. He would submit that in the event of the Workman failing in challenge to Part-I Award, the Part-II Award dated 5 December 2019 be maintained.

11. Rival contentions of parties now fall for my consideration.

12. Since Writ Petition No. 14018 of 2022 is filed challenging Part-I Award dated 13 December 2017, it would be necessary to first deal with challenge to Part-I Award. This is because in the event of Part-I Award being set aside, the proceedings will have to be remanded before the Industrial Tribunal for giving an

opportunity to the employer to lead evidence in support of the charges. This would render Part-II Award automatically infructuous. I therefore proceed to examine challenge to the Part-I Award dated 13 December 2017 first.

13. It must be observed at the very outset that there is gross delay in filing Writ Petition No. 14018 of 2022 challenging Part-I Award dated 13 December 2017. The petition is filed on 12 April 2022, i.e after period of about five long years from the date of delivery of Part-I Award. In addition to inordinate delay of five years, the workman is also guilty of laches in setting up challenge to Part-I Award. By not challenging Part-I Award immediately after 13 December 2017, the Workman allowed the Tribunal to proceed with hearing of Reference which led to delivery of Part-II Award of 5 December 2019. Thus, in the long gap of two years of delivery of Part-I and Part-II Awards, the workman did not think it necessary to challenge Part-I Award. He succeeded in Part-II Award on 05 December 2019 and secured an Order of reinstatement with 50% backwages. After passing of Part-II Award, he did not feet it necessary to challenge Part-I Award and maintained lislnce for three long years. It is only after this Court made adverse observations while issuing notice in Writ Petition No. 992 of 2022 by its Order dated 2 February 2022 that the workman thought of challenging Part-I Award and has accordingly filed Writ Petition No. 14018 of 2022. The only explanation given for delay and laches is to be found in para-25 of Writ Petition No. 14018 of 2022 which reads thus :

> 25. The impugned Part-I Award of the Industrial tribunal, Pune was passed on 13/12/2017 but since, final adjudication of the reference was pending and reference final dispose off by Award dated 05.12.2019 and thereafter all over country Covid-19 pandemic situation aroused and therefore, the petitioner approached this Hon'ble Court as expeditiously as possible and there have been no lapse or delay on his part.

14. I find the above explanation to be unacceptable in that there is no justification as to why the Part-I Award was not challenged for 5 long years. The reason of Covid-19 outbreak for failure to challenge Part-I Award is again unacceptable in that there was no impediment on account of Covid-19 outbreak upto March 2020. Furthermore, no justification is offered as to why Part-I was not challenged after reopening of Courts after relaxation of lockdown. I am therefore of the view that Writ Petition No. 14018 of 2022 deserves to be rejected on the ground of delay and laches.

15. Reliance is placed on Mr. Naik on the judgment of the Apex Court in ***Cooper Engineering Ltd. V/s. Shri. P.P. Mundhe***, 1975 SCC (2) 661 in support of his contention that Part-I Award can be challenged only after delivery of Part-II Award. The Apex Court in para-22 has held 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 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.

16. While there can be no dispute to the proposition that Part-I Award can also be challenged after delivery of final Award, however in the present case there is gross delay in filing Writ Petition No. 14018 of 2022 even after delivery of Part-II Award. Therefore, the judgment of the Apex Court in **Cooper Engineering** (supra) would not assist the case of the Workman.

17. Even if the objection of delay and laches in filing Writ Petition No. 14018 of 2022 is to be ignored considering the position that the Petition is filed by the workman, I do not find any valid justification for setting aside Part-I Award. I do not find the charge leveled against the workman to be vague in any manner. The charge contains the necessary particulars of dates on which the workman indulged in the misconduct of threatening and obstructing the work of temporary trainee, term contract and contract workers. It was not necessary for the employer to disclose names of such contract workers who were threatened or the time at which they were threatened. The quantum of loss of production also need not be stated in the charge. The objection about venue of enquiry is clearly afterthought and no specific prejudice is caused to the workman on

account of enquiry being held in the office of the Enquiry Officer. Infact, the workman was permitted to be represented by an Advocate and therefore it is difficult to believe that any pressure was exerted on the workman during the course of enquiry. The Industrial Tribunal has observed that the workman failed to point out as to how the findings of the Enquiry Officer are perverse. The Enquiry Officer has submitted a detailed report running into 31 pages by considering the depositions of three witnesses examined by the Employer as well as five witnesses examined by the workman. There is some evidence on record to indicate that the workman did indulge into the misconduct alleged against him. The management witnesses have given deposition about threats given by the workman to the contract workers. They have also given evidence stoppage of manufacturing activity and about production loss suffered by the employer.

18. It is sought to be urged that the evidence of the management witnesses is a hearsay. Without going into the factual dispute as to whether the same is hearsay or not, it must be observed here that even hearsay evidence can be considred in a domestic inquiry. Reference in this regard can be made to the Judgment of the Apex Court in the case of **State of Haryana V/s. Rattan Singh** in which it has held that there is no allergy to hearsay evidence in domestic enquiry. The Apex Court held in para-4 as under :

> 4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may

> not apply. All materials which are logically probative for a prudent mind are permissible. **There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.** It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. **However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded**. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. **We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent.** Therefore, we are unable to hold that the order is invalid on that ground.
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> *(emphasis supplied)*

19. I therefore do not find any patent error in Part-I Award delivered by the Labour Court. Therefore, even on merits, Writ Petition No. 14018 of 2022 deserves to be dismissed.

20. So far as Writ Petition No. 992 of 2022 challenging final Award is concerned, the Industrial Tribunal has proceeded to set aside the punishment of dismissal by holding the same to be disproportionate to the misconduct proved. In the chargesheet, Respondent-workman faced the charge of threatening the trainees and contract employees resulting in obstruction from attending the work from 9 March 2011. It was also alleged in the chargesheet that the said act resulted in production loss for the management. The charge leveled against the workman has been proved in the enquiry. In my view, the misconduct of threatening other employees with a view to ensure non-performance of work by them cannot be considered as a minor or insignificant misconduct. In my view, threatening or intimidating other employees itself is a gross misconduct. If such threats or intimidation is aimed at ensuring their absence from duties the gravity of misconduct gets multiplied. In this connection, reliance by Mr. Joshi on the Judgment of the Apex Court in ***Bengal Bhaatdi Coal Ltd*** (supra) appears to be apposite. The Constitution Bench has held in para 6 as under:

> 6. Now there is no doubt that though in a case of proved misconduct, normally the imposition of a penalty may be within the discretion of the management there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the nature of offence that the tribunal may be able to draw an inference of victiminsation merely from the punishment inflicted. But we are of opinion that the present is not such a case and no inference of victimisation can be made merely from the fact that punishment of dismissal was imposed in this case and not either fine or suspension. **It is not in dispute that a strike was going on during those days when the misconduct was committed. It was the case of**

> the appellant that the strike was unjustified and illegal and it appears that the Regional Labour Commissioner Central, Dhanbad, agreed with this view of the appellant. It was during such a strike that the misconduct in question took place and the misconduct was that these thirteen workmen physically obstructed other women who were willing to work from doing their work by sitting down between the tramlines. This was in our opinion serious misconduct on the part of the thirteen workmen and if it is found as it has been found proved punishment, dismissal would be perfectly justified. It cannot therefore be said looking the nature of the offence that the punishment inflicted in this case was grossly out of proportion or was unconscionable, and the tribunal was not justified in coming to the conclusion that this was a case of victimisation because the appellant decided to dismiss these workmen and was not prepared to let them off with fine or suspension.
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> *(emphasis and underlining supplied)*

21. In my view, therefore the misconduct alleged against the workman was not minor or insignificant. The Industrial Court has also given weightage to the fact that the Workman had not indulged in any misconduct in the past and that the Company failed to produce any past service record. In my view, once serious misconduct is proved in the enquiry, it is not necessary for the employer to prove commission of any misconduct in the past. If the solitary misconduct proved in the inquiry itself is grave, past record of the employee becomes irrelevant. In this regard, the judgment of the Apex Court relied upon by Mr. Joshi in **Depo, APSRTC** (supra) appears apposite. The Apex Court held in para 7 as under:

> 7. We fail to understand how the incident could be characterised as accidental. The mere fact that this was the first occasion when the respondent was caught, is no ground to hold that it was accidental. What weighed with the learned Judges was the fact that the respondent had

not been found to be involved in such irregularities earlier. In our view that is not very material in the facts of this case.

22. In my view, therefore the past conduct of the Respondent was absolutely irrelevant for the purpose of determining the gravity of misconduct or proportionality of punishment. The Industrial Court has therefore committed error in setting aside the order of dismissal holding the same to be disproportionate. It is well settled that Courts or Tribunals cannot interfere in the quantum of penalty, unless they come to the conclusion that penalty shocks their conscience. In the present case, threatening the co-workers and preventing them from performing duties leading to production losses cannot be considered as misconduct not worthy of dismissal from service. The penalty does not shock my conscience. The Part-II Award of the Industrial Tribunal thus suffers from palpable error and deserves to be set aside.

23. I am therefore of the view that the final Award dated 5 December 2019 of the Industrial Tribunal is indefensible and is liable to be set aside.

24. I accordingly proceed to pass the following order:

i) Writ Petition No. 14018 of 2022 filed by the workman is dismissed.

ii) Writ Petition No. 992 of 2022 filed by the Employer is allowed by setting aside Award dated 05 December 2019 in Reference (IT) No. 22 of 2014.

25. Rule in Writ Petition No. 14018 of 2022 is discharged and Rule in Writ Petition No. 992 of 2022 is made absolute. There shall be no order as to costs.

SANDEEP V. MARNE, J.