
(2010) 12 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 3924 of 1991

M.A. Azim

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 12, 25(F), 25(G), 25(N)

Citation : (2011) 3 ALLMR 219 : (2011) 113 BOMLR 301 : (2011) 130 FLR 502 :
(2011) 3 LLJ 367 : (2011) 3 MhLj 648

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Pradeep Shahane, for the Appellant; R.D. Reddy, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This Writ Petition is filed challenging the Judgment and Order dated 1st of January, 1991, passed by the Presiding Officer, Labour Court, Aurangabad in Reference (IDA) No. 24 of 1987.

2. The Presiding Officer, Labour Court, Aurangabad received reference u/s 10 & 12 of the Industrial Disputes Act, from the Deputy Commissioner of Labour between the employee M.A. Azim and the Works Manager, S.T. Central Workshop, Chikalthana, Aurangabad. In answer to the said notice, the second party i.e. petitioner herein has filed his statement of claim. It was also contended that the petitioner joined service with first party, as clerk on 3rd June, 1968 and he was promoted as Junior Assistant with effect from 18th August, 1977. His service record was clean and unblemished. He was not punished for any type of misconduct at any time. In the year 1980, he became sick and had submitted medical certificate to the respondent, requesting leave for 20 days from 12th July, 1980 to 31st July, 1980. Thereafter, for few days, when health of the second party was improved, he accompanied his old father-in-law to Bombay where, his father-in-law was to go to Makka for pilgrimage. At Bombay, when his father-in-

law arrived and got medically checked, he was advised by the doctor that, he should not go to Makka alone and should take any body with him. The medical advise was given due to the health of the father-in-law of the second party and considering the long journey, as per desire of father-in-law, the second party accompanied him to Makka. This was done, with a view not to hurt feelings of father-in-law. However, on return from Makka, the second party found and learnt that his services are terminated by the respondent with effect from 19th November, 1980.

It is further stated in the statement of claim that the termination is illegal. There was violation of the provisions of Section 25F of the Industrial Disputes Act. He was not given one months notice or in lieu of notice pay before the termination, nor was paid the retrenchment compensation. The termination order is in violation of Section 25G of the Industrial Disputes Act, as junior employees to the second party are still working with the first party. The termination order is void, as it violates the provisions of Section 25N of the Industrial Disputes Act, because before the termination is effected, no prior permission from appropriate Government was obtained by the first party. There is no subsequent approval for the termination. Before termination, no show-cause notice or charge-sheet was given to the second party. No domestic enquiry was conducted. No hearing was given to the second party, and therefore, termination order is in violation of principles of natural justice. The past service record of the second party is not considered, while awarding the punishment of dismissal from the service. It was contended that, the punishment is highly dis-proportionate for the mis-conduct of not present on duty. The work is still available for the second party, with the first party. The first party has not considered the explanation offered by the second party for not remaining present on the duty. The punishment awarded to the second party is by way of victimization, it is arbitrary and in colorable exercise of powers.

3. The second party had filed first appeal on 25th October, 1981 which was not heard by the competent authority. The second party had therefore, filed mercy appeal on 31st May, 1984 which has also not been decided till this date. Therefore, second party i.e petitioner prayed for reinstatement in service, with continuity and back wages.

4. The first party i.e. respondent herein filed written statement at Exh. C-5. It was stated in the written statement that the service record of the second party is not clean and unblemished. He was issued number of memos and warnings and he was also punished for mis-conduct. The second party did not obtain prior permission from the first party and unauthorizedly remained absent and also permission was not taken from the employer to go outside the country. The second party went to Saudi-Arabiya without prior permission without intimation to the first party. It is contended that the provisions of Section 25-F, G and N of the Industrial Disputes Act, are not applicable in the instant case. The second party is dismissed from service after holding domestic enquiry. The second party

was negligent and irresponsible employee, throughout his service remained absent without leave of the respondent/ first party.

The second party remained absent from 12th July, 1980. The Accounts Officer, Central Workshop, reported this fact to the Assistant Personnel Officer on 16th July, 1980. The first party accordingly sent a notice dated 22th July, 1980 to the second party, directing him to report on duty. The second party submitted an application for leave on medical ground along with medical certificate. The second party on 30th July, 1980 sent a letter which was received by the first party on 2nd August, 1980, informing about his so called illness. The first party directed the second party to appear before the Honourary Medical Officer of the State Transport Corporation to have medical check-up. The said letter sent by R.P.A.D. (Registered Post Acknowledgment Due) could not be served on the second party because he was absent / was not available on his registered /given address. The competent authority issued the charge-sheet on 23th August, 1980 to the second party for the charged under Clause 12-b and 35 of the schedule "A" of the D & A procedure. The charge sheet was sent to the second party by R.P.A.D.. The enquiry was made about the so called sickness of the second party, through security branch of the first party and it revealed that the second party had gone out of country. Hence, the competent authority started and completed an enquiry exparte. The competent authority after going through the record reported its findings holding that the charges against the second party are proved. Accordingly, show-cause notice of dismissal dated 22th September, 1980 was sent to the second party by R.P.A.D. The second party did not reply to the show-cause notice. However, the competent authority had given one more chance to the second party to be heard. But the second party did not turn-up. Therefore, the competent authority terminated the services of the second party by final order dated 19th November, 1980. The said enquiry was conducted as per the principles of natural justice. The second party was given full opportunity of being heard. The findings of the competent authority are just legal and proper. The second party went outside the country without permission and intimation to the first party and did not turn-up for as many as four months from the date of his termination. That itself indicates that the second party is not in need of the employment. Therefore, it was prayed that the reference should be rejected.

5. The Presiding Officer, Labour Court, Aurangabad framed as many as four issues for its determination at Exh. O-4 which are as under:

- 1) Whether the domestic enquiry against the I Ind party was fair and proper?
- 2) Whether the findings recorded by the domestic tribunal could be dubbed as perverse?
- 3) Whether order of dismissal is legal and proper?
- 4) Whether the I Ind party is entitled to reinstatement, continuity of service and back wages?

The presiding Officer held that, the issue No. 1 is taken-up for trial as preliminary issue and said issue is answered in affirmative. In para No. 5 of the Judgment the Labour Court has discussed the evidence of second party and also taken note of the evidence produced by the first party and held that the act of the first party to proceed with the enquiry *ex parte* is justified and it cannot be said that the said act was unfair and improper. The Presiding Officer, Labour Court, Aurangabad held that the second party was not available in India, therefore, though the show-cause notice was issued to the second party and also charge sheet was issued through R.P.A.D.. However, same could not be served on the second party since he was not in India. The enquiry was proceeded in absence of the second party and first party was justified in proceeding with the enquiry *ex parte* in absence of the second party. Under this circumstances, the domestic enquiry shall have to be held to have conducted fairly and properly. Therefore, the preliminary issue was decided in the affirmative.

6. It appears that the Trial Court has rendered its findings on issue No. 2 to 4 by recording elaborate reasons and rejected the reference, and accordingly the copy of the award was sent to the Deputy Commissioner of Labour, Aurangabad for its publication.

7. Upon perusal of the reasons while answering issue No. 2 to 4, the Presiding Officer, Labour Court has recorded the evidence of complainant which is at Exh. U-5. The Court has also considered the evidence of first party which was brought on record by way of written statement and it appears that after appreciation of contents of the reference, written statement filed by the first party, evidence led by the parties and rival contentions, the Presiding Officer, Labour Court has rejected the reference by its Judgment and Order dated 1st January, 1991.

8. The learned Counsel for the petitioner relying on the written notes of argument submits that the petitioner has joined the services with respondent on 30th September, 1968 as "Clerk" and he was promoted as "Junior Assistant" on 18th August, 1977. The petitioner is well qualified and also represented the respondent in Hockey and was Captain of Hockey team of Aurangabad Division. As the petitioner has fallen ill he submitted necessary application to the respondent in prescribed format with medical certificate of Dr. Khatri for leave from 12th July 1980 up to 31st July, 1980, and accordingly he went on leave. According to the Counsel for the petitioner the notice was issued notice dated 22th July, 1980 was received by the petitioner and same has been replied by the petitioner by letter dated 30th July, 1980. It was stated in the said reply that the petitioner has filed leave application along with necessary medical certificate to the Accounts Officer, S.T.C.W.C. For the period from 12th July, 1980 to 31st July, 1980.

It is further submitted that, the petitioner after his recovery from illness had been to Bombay with his father-in-law where from his father-in-law had to go to Makka for the pilgrimage. However, the Doctor advised the father-in-law of the petitioner not to go alone and should take somebody with him. The petitioner

considering this situation accompanied the father-in-law. The petitioner after returning from pilgrimage found that his service is terminated by the State Transport Corporation. The petitioner made representation to the respondent to reinstate in service. However, there was no response from the respondent. Therefore, he filed First Appeal on 26th October, 1982 and had given repeated reminders to the respondent to decide his appeal, on 26th October, 1982, 21st December, 1982, 6th June, 1983 and 8th January, 1984, and also filed another appeal on 4th August, 1986. However, there was no response from the respondent. The respondent not responded to the applications and appeal filed by the petitioner. The petitioner has also filed mercy appeal on 30th May, 1984 before the Chairman of the respondent Maharashtra State Road Transport Corporation and has given reminders to decide the same on 2th September, 1984, 4th January, 1985, 5th February, 1985, 13th May, 1985 and 10th October, 1985. However, there was no response from the respondent. Therefore, petitioner raised industrial dispute through Government Labour Officer and subsequently the Deputy Commissioner of Labour referred the matter to the Labour Court for adjudication and the case of the petitioner was numbered as Reference (IDA) No. 24 of 1987. The Counsel appearing for the petitioner submits that the respondent has admitted in his written statement filed before the Labour Court that the petitioner has submitted an application on 19th July, 1980 for leave on medical ground along with medical certificate. However, petitioner has narrated in his statement of claim in para No. 6 about filing of appeals and repeated reminders and applications for deciding the said appeal and said fact is admitted by the respondent in his reply. It is further contention of the Counsel appearing for the petitioner that the Labour Court has not at all properly dealt with the various aspects of the case of the petitioner. The Labour Court failed to appreciate that the enquiry was conducted against the petitioner in absence of the petitioner. The learned Counsel invited my attention to the findings of the enquiry officer and submitted that the charge under Clause 12(b) leveled against the petitioner is not proved and only charge for unauthorized absence (Clause 38) was said to have been proved. If the D.& A procedure applicable to the respondent is perused then it would reveal that the punishment of dismissal is not prescribed punishment for unauthorized absence (clause No. 38) and it can be awarded for charge under clause No. 12(b). Thus, if the enquiry Officer himself during the enquiry while recording the findings stated that Clause 12(b) charge is not proved, then punishment of dismissal, ought not to have been awarded, which is capital punishment for the employee. The respondent ought to have granted minor punishment such as stoppage of two increments etc. but instead the respondent inflicted such a capital punishment. According to the counsel for the petitioner, in Writ Petition bearing No. 4519 of 2003, which is decided by this Court on 5th December, 2003, this Court in some what similar facts like present case, set aside the order of dismissal and directed Maharashtra State Road Transport Corporation to stop three increments of the petitioner therein for the charge of absenteeism. According to the Counsel for the petitioner the facts of the case of the petitioner and said case are almost similar.

It is further submitted that the leave application was submitted accompanied with medical certificate and said fact is admitted by the respondent and as such, charge under Clause 38 for irregular attendance, attendance without leave, absence without permission cannot be said to have been proved. The learned Counsel further submitted that even assuming the said charge under Clause 38 is proved then also the punishment of dismissal is not prescribed punishment for the said charge of unauthorized absence as per the D & A procedure of the respondent, and hence the said show-cause notice is ex-facie illegal. The learned Counsel appearing for the petitioner further submitted that this Court as well as Hon"ble Supreme Court has dealt with this aspect of the matter about unauthorized absence in following cases:

- 1) 1999 1 CLR 1014
- 2) SLP No. 4053 of 1997 decided on 22th March, 1988
- 3) 2002 IIII CLR 299
- 4) 1996 LLR 876
- 5) 191 II CLR 228
- 6) 1988 I CLR 407 and
- 7) 1990 I CLR 439.

The learned Counsel further invited my attention to para No. 7 of the reported Judgment reported in 1991 (2) CLR 228 which reads thus:

If on 13 occasions during period of three and half yeas the petitioner took unauthorized leave for absented from duty mainly due to his illness, it cannot be said that his past record was so bad that he should have been sentenced to economic death by dismissing him from the job

It is further submitted that the Labour Court has exceeded its jurisdiction in recording the finding for leave from 22th August, 1980 onwards. The case of the petitioner revolves around the charge sheet and show-cause of dismissal followed by dismissal order issued by the respondent and therefore the Labour Court ought to have recorded the findings in consonance with the charges leveled against the petitioner in charge-sheet and findings in enquiry recorded about the said charges. The Labour Court has exceeded its jurisdiction vested in it by law by recording unwarranted findings. The Labour Court failed to consider that the punishment of dismissal is shockingly dis-proportionate in as much as it is inflicted in spite of graceful service record of the petitioner and further it is inflicted without there being any provision for the same. The learned Counsel appearing for the petitioner relying on the averments made in the petition and grounds taken therein and on the basis of written note of arguments submitted that this petition deserves to be allowed by quashing and setting aside the termination order dated 19th November, 1980 by granting reinstatement and continuity in service.

9. The learned Counsel appearing for the respondent submitted that the petitioner was appointed in service as Clerk in 1968. He was not promoted but selected as Junior Assistant through competitive examination. The Counsel invited my attention to para No. 1 of the written statement filed before the Labour Court and more particularly page No. 35 and submitted that the service record of the petitioner was not clean, memo and warnings were given, he was punished for earlier misconducts. It is further submitted that the petitioner failed to submit any leave application before proceeding on leave. The petitioner went to Saudi Arabia without prior permission or intimation to the respondent. The petitioner remained absent since 12th July, 1980, as he was negligent and irresponsible employee throughout his service period. The learned Counsel relying on the written statement and office record submitted that, the report given by the Assistant Personal Officer about illegal absence was on 16th July, 1980. The notice dated 22th July, 1980 was sent to the petitioner to report on duty within 24 hours, as he remained absent since 12th July 1980 without permission or intimation. The petitioner replied by letter dated 30th July, 1980 saying that he has submitted leave application for the period from 12th July, 1980 to 31st July, 1980 along with medical certificate. In view of the petitioners application dated 30th July, 1980, the petitioner was directed by the superior officer to appear before the Medical Officer for medical check-up. The letter for medical check-up came to be issued on the address of the petitioner. The petitioner does not dispute about the said address. Admittedly, the petitioner was out of country i.e. he went out side India without intimation or permission of the respondent. The confidential document shows that the petitioner sent leave application on medical grounds on 19th July, 1980 and not prior to that. The termination order is issued on 19th November, 1980, after detail enquiry with effect from 22th November, 1980. Therefore, learned Counsel would submit that the petitioner was rightly removed from service, in view of his misconduct and misbehavior. He remained absent from the duty for total period of four months and seven days i.e. from 12th July, 1980 to 19th November, 1980. The petitioner's absence can be said as consecutive absence. From 12th July, 1980 the petitioner remained absent without prior intimation and tactfully forwarded leave application along with medical certificate to show his initial absence as lawful one. Earlier the petitioner received the notice from office intimating him to attend his duty within 24 hours. After service of this notice his absence can be termed as second consecutive absence enjoyed by him just on the pretext of illness and false medical certificate. Instead of being in hospital or at home for rest on medical ground, the petitioner went on foreign tour and as such letter for medical check-up could not be served upon him. The days he enjoyed unauthorizedly on foreign tour can be termed as third consecutive period of absence from duty continuously. There is admission about above said third unauthorized absence. The petitioner has submitted false certificate of illness, there was no sanction for leave, the whole period of absence on false pretext shows his lack of interest in work, it was voluntary cessation of job by the petitioner. The domestic enquiry is fair and proper and to that effect preliminary

issue is decided by the Labour Court. The said finding was not challenged by the petitioner. The Labour Court rightly rejected the reference (IDA) No. 24 of 1987. The Clause 7 and Clause 6-B of the Discipline and Appeal procedure shows that an employee charged for any of the misconducts shown under Schedule A and B can be punished by removing from service only on giving proper and sufficient reasons, looking to the whole behavior of the employee / petitioner. The petitioner was removed from service on proper and sufficient reasons as directed in the domestic enquiry which was fair and proper. Therefore, counsel appearing for the petitioner would submit that the Writ Petition deserves to be allowed. In support of her contention the learned Counsel appearing for the respondent placed reliance on the reported Judgment of the Hon''ble Supreme Court in a case of "Regional Manager, Bank of Baroda v. Anita Nandrajog, reported in 2009 DGLS 1098" and submitted that the Hon''ble Supreme Court held in said case that no establishment can function if it allows its employees to behave in such a manner that the employees are absent from duty without leave and leaving the country without permission. The learned Counsel further placed reliance on the reported Judgment of the Hon''ble Supreme Court in a case of " Delhi Transport Corporation v. Sardar Singh, reported in 2004 DGLS 530" and submitted that in the said case the Hon''ble Supreme Court has held that if there is unauthorized long absence without obtaining leave, it prima facie shows lack of interest in work. Therefore, learned Counsel for the respondent relying on written statement filed before the Labour Court, findings recorded by the Labour Court and relying on provisions of Discipline and Appeal procedure and also relying on afore said Judgments of the Supreme Court submits that the Writ Petition deserves to be dismissed.

10. At this stage, it would be appropriate to refer to few important judgments of Hon''ble Supreme Court and this Court laying down therein the scope to entertain petition under of Article 226 and 227 of the Constitution of India. The Hon''ble Supreme Court in a case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, " in para No. 30 held thus:

The powers of judicial interference under Article 227 with orders of judicial or quasi judicial nature are not greater than the powers under Article 226. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

Yet in another case, in a case of Surya Dev Rai Vs. Ram Chander Rai and Others, " the Hon''ble Supreme in its conclusion held:

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of

the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

and in a case of "Babulal S/o Navalmal Pipada v. Dropadabai W/o Manohar Gore and Ors., reported in 2010(5) Mh.L.J" this Court has held thus:

One cannot be oblivious of the parameters required to be observed for the purpose of exercising supervisory jurisdiction under Article 227 of the Constitution of India. Unless it is demonstrated that the impugned Judgment suffers from vice of perversity, arbitrariness or is rendered without considering material evidence or is rendered on the basis of no material, interference with the finding of Courts/Tribunals is impermissible. The writ jurisdiction cannot be invoked for re-appreciating of the evidence or for the purpose of rectification of minor errors committed by the Tribunals. Unless it is demonstrated that the view taken by the M.R.T. Is per se against the settled principles of law, it is difficult to interfere with the findings recorded by the Tribunals below.

11. Therefore, it is clear from the pronouncements of Supreme Court and this Court which are referred supra that the Writ Jurisdiction cannot be invoked for re-appreciating the evidence or for the purpose of rectification a minor errors committed by the Tribunals. Supervisory jurisdiction under Article 227 cannot be invoked unless it is demonstrated that the impugned Judgments suffers from vice

of perversity, arbitrariness or is rendered without considering material evidence or is rendered on the basis of no material, interference with the findings of the Court / Tribunals is impermissible. Therefore, in the light of above, it is relevant to summarized here-in-below, the findings recorded by the Labour Court on the basis of evidence brought on record by the parties.

In the instant case, the Presiding Officer, Labour Court, Aurangabad while answering the issue i.e. Whether the domestic enquiry against the second party was fair and proper has answered the said issue in the affirmative. The Labour Court has observed in para No. 5 of the Judgment that, it is pertinent to be noted that the Second party has not stated a single word in his examination in chief about his recovery from ailment and joining his father-in-law at Bombay for going to Makka as contended by him in the statement of claim. He has not produce any documentary evidence on record in that respect. In the cross-examination, he has admitted that immediately after the recovery from ailment, he did not report on duty at the Central work shop, Aurangabad where he use to work. He has not given any explanation for not reporting on duty immediately for recovering from ailment, which was expected from him. From the evidence of the complainant it is clear that since after 12th July, 1980 he did not report on duty till he was dismissed from his service. From the enquiry filed "C" it is clear that the first party has send the charge-sheet notice of enquiry, show cause notice for dismissal to the second party by R.P.A.D. at his registered address. When admittedly, the Second Party was out of country during that period then it is not expected from first party to wait for return of the second party and to keep the domestic enquiry in abeyance, as the first party was not at all informed by the second party for his long absence from the duty except the sanctioned period of absence on medical grounds. The second party has admitted that register post sent by the first party to him is on the address given by him in the office record. Therefore, Labour Court held that the domestic enquiry was conducted by following proper procedure and therefore, no infirmity can be attributed to the enquiry.

Therefore, since the Labour Court has recorded the findings that the enquiry was proper, and same finding is in consonance with the material brought on record and no perversity is shown by the petitioner herein, therefore, in my opinion, the findings recorded by the Labour Court that the domestic enquiry was conducted after following the procedure needs no interference.

12. The Presiding Officer, Labour Court framed the other three issues which are already reproduced in para No. 5 of this Judgment. The Presiding Officer on the basis of material brought on record by the respective parties arrived to the conclusion and recorded the finding that the petitioner herein in his evidence before the Court has stated that he is suffering from Jaundice. However, the medical certificate produced by him at Exhibit C-8 dated 12th July, 1980 issued by Dr. Khatri, wherein it is reported that M.A. Azim is suffering from "infavtus hapititis". It is further recorded that on perusal of the enquiry papers filed at list

Exh. O-6, the Accounts Officer, Central Work Shop, S.T. Aurangabad by his letter dated 16-07-1980 addressed to the Assistant Personal Officer had reported that the Second party Shri M.A. Azim, Jr. Assistant was absent from duty w.e.f 12-7-1980 without any intimation. This letter shows that till 16-7-1980, the second party employee had not intimated the first party and its officers about his illness, nor had submitted any leave application for that purpose. Exh.C-7 is the leave application dated 12-07-1980 submitted by the second party Shri M.A. Azim. This application appears to have been received by the office of the first party on 19-07-1980.

Therefore, on the above findings recorded by the Labour Court it clearly appears that the petitioner herein failed to prove his case that he was suffering from any ailment as stated by him, in his evidence before the Court. Not only this but it appears that though the petitioner was absent from 12-07-1980, he did not sought prior permission of the respondent employer or did not send his application for leave prior to 12-07-1980. However, admittedly he was absent from duty from 12-07-1980. The burden to prove the case of the petitioner that he was suffering from particular ailment was certainly on the petitioner. However, the petitioner failed to discharge the said burden and it appears from the findings recorded by the Labour Court that inconsistent stand has been taken by the petitioner about his ailment before the Court. Therefore, in my opinion, the above findings recorded by the Labour Court are in consonance with the evidence / material brought on record by the parties, and therefore, cannot be said to be perverse.

13. The Labour Court in its Judgment has observed as under:

i) Till 19-07-1980 the department was not informed properly by the Second party employee about his sickness and absence on medical grounds. Though he was absent from duty from 12-07-1980.

ii) The second party workman was not available at his residential address given on the leave application dated 12-07-1980 at Exh. C-7. Exh. C-1 is the office copy of the letter dated 20/22-7-1980 of the workshop Manager, Central Workshop, Chikalthana, Aurangabad. Addressed to the second party workman asking him to resume duties within 24 hours after receipt of this letter. Exh-C-3 is the letter of the second party dated 30-07-1980 in answer to the letter dated 20-07-1980 Exh. C-16, by which petitioner has contended that he had already submitted the leave application with necessary medical certificate to the Accounts Officer, for the period from 12-07-1980 to 31-07-1980 and that he was unable to join duty on medical ground. It is pertinent to note that the leave application C-7, does not mention any specific period of the leave asked for. The Labour Court has observed that the second party workman was raising different grounds, as per his convenience from time to time. Secondly, the Labour Court has also observed that Exh. C-10 is the leave application dated 01-08-1980 submitted by the second party for leave on medical ground from 01-08-1980 to 31-08-1980. In the said application it is mentioned that medical certificate is

being sent separately. However, no such certificate or copy thereof is filed by the second party workman before the Labour Court to substantiate his contention that during the period from 01-08-1980 to 31-08-1980 he was ailing and was under any medical treatment.

iii) By letter dated 06-08-1980 the Works Manager, Central Workshop, S.T. Aurangabad had informed to the second party that his leave will be decided on receipt of medical report from Honorary Medical Officer, for medical check-up. However, the second party did not appear before Honorary Medical Officer Shri Deokar nor produce any medical certificate as asked for by the employer. Therefore, documents produced on record shows that the second party was not at all justified for his absence from duty.

iv) In the cross examination of the second party he has admitted that immediately after recovery from ailment he did not report at the Central Work Shop, S.T. Aurangabad where he was earlier working.

v) Except the medical certificate dated 12-07-1980 Exh. C-8, he has not submitted any other medical certificate to the first party about his ailment. This shows that the second party employee was not at all careful enough to report to the first party immediately after recovery from ailment, if at all he was ailing before proceeding to Bombay. On the other hand his admission that he had been to Bombay without informing the first party corroborates the case of the first party that the second party employee was not ailing at all during the period of his absence from duty, but he was trying to leave the country without any sanction or permission for which he had been to Bombay. It is pertinent to note that the Second party has not examined his father-in-law nor has produced any documentary evidence on record to corroborate his statements that he had to accompany his father-in-law to Makka (Saudi Arabia) as per the advice of the Doctor at Bombay. If all that was the true fact, the second party could have informed the first party by any means of his intention to leave the country and for his absence from duty during that period. On the other hand enquiry papers show that when the first party had deputed the officer to inquiries from the house of the second party about his whereabouts, the brother of the second party informed the officer of the first party that the petitioner left the country.

vi) The Labour Court has also recorded that second party did not find it necessary to take care to inform the first party about his intention to leave the country for any purpose and obtain necessary permission which was required. In the cross-examination the second party has stated after recovery from his ailment he has left the country along with his father-in-law in August 1980. He has further stated that he had not produced any documentary evidence on record as to when he had left the country specifically. The Labour Court in absence of any documentary evidence on record, it has to be held that the second party employee left the country in the month of August, 1980 and in the month of July, 1980 he was making preparations for the same on the false ground of his ailment. In the cross-examination, the second party has tried to

state that on 01-09-1980 he had submitted leave application to Shri Deshpande, Assistant Personal Officer, Central Work Shop, Aurangabad. However, second party has not produced any documentary evidence in that respect, nor has examined Shri Deshpande to prove the said fact.

14. On careful perusal of the findings recorded by the Labour Court, it clearly appears that the petitioner utterly failed to establish his case. The finding recorded by the Presiding Officer, Labour Court are in consonance with the material / evidence brought on record by the respective parties. The story built up by the petitioner that he went up to Bombay along with father-in-law and their Doctor advised father-in-law not to go alone to Makka, unless some body accompany him, and therefore, petitioner accompanied his father-in-law and went abroad at Makka, itself indicates that the absence from the work by the petitioner was not on the ground of ailment but for some other purpose. On the whole it appears that the petitioner has taken different stands at different stages to suit his case, that he was suffering from ailment. The petitioner utterly failed to establish his case. In my opinion, the findings recorded by the Labour Court are not perverse. The petitioner has utterly failed to substantiate demonstrate any perversity in the findings recorded by the Presiding Officer, Labour Court. Therefore, no interference is warranted to upset the findings recorded by the Labour Court based upon concrete evidence.

15. One more point which is raised by the Counsel appearing for the petitioner is that punishment of dismissal is shockingly dis-proportionate. According to the Counsel for the petitioner, if the findings of the enquiry officer are perused it is stated that charge under 12-b of Discipline and Appeal procedure, levelled against the petitioner is not proved and only charge for unauthorized absence was said to be proved. Therefore, counsel appearing for the petitioner submitted that the respondent ought to have granted minor punishment such as stoppage of two increments but instead the respondent inflicted such a capital punishment. The petitioner has also relied upon some reported judgments in this respect. The petitioner has placed on record copy of the Judgment in Writ Petition No. 4519 of 2003 and the conclusion reached by the enquiry officer. It appears that two charges were levelled against the petitioner i.e. 1) fraud, dishonesty or misappropriation in connection with the business and or the property of the Corporation, and 2) irregular attendance, absence without leave and without reasonable cause and absence without prior permission.

16. The enquiry officer after enquiry formed his opinion that, if at all Shri M.A. Azim i.e. petitioner, wanted to go abroad, in that case he should have obtained prior permission and sanction to his leave and then he should have proceeded to go abroad. In case the petitioner has obtained prior permission and sanction to his leave from the employer, in that case first charge should not have been levelled against the petitioner. However, petitioner went abroad without prior permission and without obtaining sanction to his leave from the duty. Therefore, it cannot be said that the petitioner was completely exonerated from the first

charge. The opinion expressed by the enquiry officer itself indicates that the petitioner remained absent without prior permission and without getting leave sanctioned from the employer and as such charge No. 1 was also attracted. The enquiry officer has further opined that allegations leveled in charge No. 1, even if kept set aside, and if the service record and conduct of Mr. M.A. Azim considered, it unequivocally proves second charge that he remained absent without permission, and therefore, the petitioner employee is not in the need of service / employment. It has been further observed by the enquiry officer that in case the employer knew that the petitioner is proceeding on leave in that case the employer should have prepared itself and absence of petitioner should not have been affected on the smooth working of the respondent employer. Taking into consideration all above things it is necessary to take serious view in the matter, and therefore, show cause notice was issued to petitioner why he should not be removed from service.

Therefore, on careful perusal of the opinion formed by the enquiry officer both the charges leveled against the petitioner have been dealt with by the enquiry officer and the enquiry officer has formed his opinion. Therefore, the contention of the counsel for the petitioner that only charge No. 2 has been proved, and therefore, minor punishment should have been inflicted on the petitioner has no substance and same deserves to be rejected.

It is pertinent to mention that, the Judgments relied upon by the Counsel for the petitioner are different on facts and have no application in the instant case.

17. At this stage, it would be relevant to refer two Judgments of the Apex Court relied by the respondent.

In case of "Delhi Transport Corporation v. Sardar Singh, reported in 2004(7) 2004". The Hon"ble Supreme Court held, the requirement is obtaining leave in advance when an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. In the said Judgment the Supreme Court held that, employer was justified in passing order of termination / removal.

18. Yet in another case, in a case of Regional Manager, Bank of Baroda Vs. Anita Nandrajog, " the Supreme Court held that behavior of the respondent therein remaining absent without leave for long period was clearly regrettable and no establishment can function if it allows its employees to behave in such a manner that the employees absent from duty without leave and leave the country without permission. The Hon"ble Supreme Court upheld the action of the appellant bank terminating the services of the respondent. In that case also the employee therein remained absent from duty and rather left abroad without prior permission and without any sanction of leave and the employee did not turn up to join the duties for more than 150 consecutive days. In the present case also the petitioner here remained absent for considerable period. It is admitted position that, no prior permission to leave the country was obtained by the

petitioner from the employer, the application for medical leave was filed subsequently after proceeding on leave. Petitioner in the instant case failed to prove that he was suffering from any ailment. Therefore, in my opinion if the facts and circumstances involved in the present case are taken together read with relevant provisions, leads to conclusion that the punishment awarded to the petitioner was proper. Therefore, taking over all view of the matter, in my opinion the punishment of dismissal / removal from service is proper. In my opinion, the story cooked by the petitioner that he was ill and after recovery from the ailment he went abroad to accompany his father-in-law as per advice of the Medical Officer clearly appears to be concocted and rightly disbelieved by the Lower Court. Showing any indulgence or leniency would be adding premium on dishonesty.

19. In the light of discussion here-in-above, the writ petition is devoid of any merits, and the same stands dismissed. Rule stands discharged, The Civil Application, if any, stands dismissed, in view of the dismissal of the Writ Petition.