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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Reserved on: 07.05.2026******Date of decision: 19.08.2026******Uploaded on: 19.08.2026***# **CNR No: DLHC010005242013**

+ W.P.(C) 820/2013

DEFENCE SERVICES OFFICERS INSTITUTEPetitioner

Through: Mr. Santosh Kumar Pandey,
Adv.

versus

AJIT SINGH

.....Respondent

Through: Mr. R. N. Sharma, Mr. Rahul
Sharma, Adv.**CORAM:****HON'BLE MS. JUSTICE SHAIL JAIN****JUDGMENT****SHAIL JAIN, J.**

1. The present Petition has been instituted under Article 226 of the Constitution of India assailing the Award dated **05th October, 2012** (hereinafter also referred to as the "**impugned Award**"), passed by the learned Presiding Officer, Labour Court No. XVI, Karkardooma Courts, Delhi, in **Industrial Dispute (I.D.) No. 777/06/05**. By the impugned Award, the learned Labour Court directed the Petitioner to reinstate the Respondent herein with continuity of service, together with back wages and all consequential benefits, excluding the period of 20 days of leave.

2. The dispute herein arises out of the termination of the



Respondent's services by the Petitioner on the ground of unauthorized absence and misconduct. The Petitioner contends that the Respondent had repeatedly remained absent from duty without prior sanction of leave, whereupon a domestic inquiry was conducted, culminating in the termination of his services by Order dated 23rd July, 2004. The Respondent challenged the said termination before the learned Labour Court, which, by the **interim Order dated 14th August, 2009, held the domestic inquiry to be vitiated**, and subsequently **vide impugned Award dated 05th October, 2012, set aside the order of termination**, and directed reinstatement of the Respondent with continuity of service, full back wages and consequential benefits. Aggrieved by the said Award, the Petitioner has preferred the present Writ Petition.

FACTUAL BACKGROUND

3. The brief factual background leading to the filing of the present Petition is set out hereunder.

a. The Petitioner is stated to be a proprietary club established for providing social, recreational, sporting and welfare facilities to serving and retired officers of the Army, Navy and Air Force, as well as their families. It is stated to be a private body funded through the Defence Services Welfare Fund and registered under the Societies Registration Act, 1860.

b. It is the case of the Petitioner that the Respondent joined the services of the Petitioner on 07th August, 1985 as a Peon-*cum*-Packer on an *ad hoc* basis. Subsequently, on 10th February,



1996, he was promoted to the post of Assistant Stores.

c. According to the Petitioner, during the course of his employment, the Respondent exhibited a pattern of indiscipline and unauthorized absence from duty. It is stated that on 20th November, 1994, he was issued a warning letter after he was allegedly found under the influence of alcohol while on duty.

d. Thereafter, in June, 1999, the Respondent was again issued a warning letter for remaining absent from duty without obtaining prior leave on 03rd June, 1999 and 04th June, 1999 up to 10:15 a.m.

e. The Petitioner further states that during the year 2002, the Respondent repeatedly remained absent from duty without obtaining prior permission or sanction of leave. He allegedly remained absent for 31 days, from 23rd January, 2002 to 22nd February, 2002. Thereafter, he again remained absent for 27 days, covering the periods from 17th April, 2002 to 02nd May, 2002 and 04th May, 2002 to 15th May, 2002. It is further alleged that he remained absent for 12 days, from 04th July, 2002 to 15th July, 2002, and thereafter for 19 days, from 27th September, 2002 to 15th October, 2002.

f. According to the Petitioner, the Respondent thus remained absent without authorization for an aggregate period of approximately 89 days during the calendar year 2002.

g. The Petitioner further alleges that the Respondent again absented himself from duty without obtaining prior permission or intimating the management from 16th January, 2003 to 09th



March, 2003, amounting to a continuous period of 53 days. Consequently, the Petitioner issued a Show Cause Notice (hereinafter also referred to as “SCN”) dated 25th February, 2003, calling upon the Respondent to explain his unauthorized absence. Thereafter, the Respondent resumed duties on 10th March, 2003.

h. According to the Petitioner, shortly after resuming duty, the Respondent was allegedly found under the influence of alcohol while on duty on 12th March, 2003. On the very same day, he was placed under suspension pending further action.

i. Subsequently, by order dated 15th March, 2003, the Petitioner constituted a Court of Inquiry to investigate the circumstances relating to

a. the Respondent's unauthorized absence from 16th January, 2003 to 09th March, 2003, and

b. the allegation that he had attended duty under the influence of liquor on 12th March, 2003.

j. It is the Petitioner's case that the Respondent participated in the inquiry proceedings and was afforded adequate opportunity to defend himself.

k. The Petitioner further states that even during the pendency of the inquiry proceedings and thereafter, the Respondent allegedly remained absent from duty without authorization for a further period of 147 days, which, according to the Petitioner, constituted misconduct under the Employees' Service and Conduct Rules, 1990.



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l. Upon conclusion of the inquiry proceedings, the Court of Inquiry found that the charge of unauthorized absence for 53 days stood established and recommended initiation of disciplinary proceedings against the Respondent. However, in respect of the allegation that the Respondent had attended duty under the influence of alcohol on 12th March, 2003, the Inquiry concluded that there was insufficient evidence to substantiate the said charge.

m. Thereafter, the Petitioner issued a Show Cause Notice dated 18th June, 2004, proposing termination of the Respondent's services. The Respondent submitted his reply thereto on 28th June, 2004, which, according to the Petitioner, was not satisfactory. The Respondent was simultaneously granted a further opportunity to submit his response to the inquiry report within seven days and to explain as to why his services should not be terminated on account of his unauthorized absence. The Petitioner states that despite the said opportunity, the Respondent failed to submit any further reply.

n. Consequently, after considering the material available on record, the Petitioner passed an Order dated 23rd July, 2004, terminating the services of the Respondent with immediate effect.

o. Thereafter, the Respondent, through his counsel, issued a Demand Notice dated 28th July, 2005, calling upon the Petitioner to reinstate him in service along with payment of back wages and other consequential benefits.

p. Upon failure of the conciliation, the Respondent raised an



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industrial dispute, which came to be registered as Industrial Dispute No. (I.D. No.) 777/06/05 before the learned Presiding Officer, Labour Court No. XVI, Karkardooma Courts, Delhi.

q. Before the learned Labour Court, the Workman pleaded that he was initially appointed by the Management on 08th August, 1985, as a Helper on a monthly salary of Rs.350/- (Rupees Three Fifty only) plus other admissible allowances. Subsequently, he was promoted to the post of Assistant on 01st December, 1996.

r. According to the Workman, he suffered from jaundice in January, 2003 and remained under medical treatment from 16th January, 2003 to 09th March, 2003. He stated that he was admitted to Metro Hospital, Najafgarh, from 16th January, 2003 to 19th January, 2003, and was thereafter advised four weeks' complete bed rest commencing from 20th January, 2003. Owing to continued physical weakness, he resumed duties only on 10th March, 2003. It was his case that throughout the period of illness, he kept the Management informed by submitting leave applications along with medical certificates.

s. The Workman further contended that despite being aware of his medical condition, the Management issued a Show Cause Notice dated 25th February, 2003 directing him to resume duties, failing which his name would be struck off the rolls. After he reported for duty on 10th March, 2003, he was served with a suspension letter dated 12th March, 2003 alleging that he had reported for duty under the influence of liquor. He denied the



allegation, asserting that no medical examination was conducted to substantiate the charge.

t. The Workman also challenged the validity of the domestic inquiry, alleging that it was conducted in violation of the principles of natural justice without affording him a reasonable opportunity to defend himself. According to him, the inquiry was conducted behind his back, and neither the relevant documents nor the statements of the Management's witnesses were supplied to him.

u. Upon consideration of the pleadings, the domestic inquiry record, and the evidence led by the parties, the learned Labour Court framed the following issues for determination:

I. Whether the domestic inquiry was fair, proper and conducted in accordance with the principles of natural justice?

II. Whether the termination of the workman was illegal and/or unjustified, and if so, to what relief was he entitled?

v. While adjudicating Issue No. 1, the learned Labour Court held that the domestic inquiry stood vitiated for non-compliance with the principles of natural justice. The learned Labour Court relied upon the testimony of the inquiry Officer (MW-1), who admitted that there was no documentary material to establish that the relevant documents had been supplied to the workman or that he had been afforded an opportunity to cross-examine the Management's witnesses. The Inquiry Officer also admitted that the allegation of the workman reporting for duty under the



influence of liquor on 12th March, 2003 had not been established during the inquiry. Consequently, by an interim order dated 14th August, 2009, the learned Labour Court set aside the domestic inquiry and permitted the Management to lead independent evidence before the Court in support of the charges.

w. While deciding Issue No. 2, the learned Labour Court independently examined the evidence adduced by the parties. It held that the allegations relating to the Respondent's previous instances of absence during the year 2002 could not be relied upon, as they did not form part of the disciplinary proceedings. Insofar as the allegation that the Respondent had attended duty under the influence of liquor on 12th March, 2003 was concerned, the learned Labour Court found that the Management had failed to produce any medical evidence or examine the officer who had allegedly noticed the Respondent in an intoxicated condition. The said charge was, accordingly, held to be unproved.

x. With respect to the charge of unauthorized absence from 16th January, 2003 to 09th March, 2003, the learned Labour Court accepted the medical records produced by the Respondent, which showed that he had remained hospitalized and had thereafter been advised bed rest. However, it held that while the medical evidence satisfactorily explained a substantial part of the period of absence, the Respondent had failed to justify his absence for approximately twenty days beyond the period of medically advised rest. Consequently, only the said period was



treated as unauthorized absence.

y. Accordingly, by the impugned Award dated 05th October, 2012, the learned Labour Court set aside the order of termination dated 23rd July, 2004 and directed the Petitioner to reinstate the Respondent within one month from the date of publication of the Award, together with continuity of service, full back wages from the date of termination till reinstatement, and all consequential benefits, excluding the aforesaid period of twenty days treated as unauthorized absence.

z. Aggrieved by the Order dated 14th August, 2009, whereby the domestic inquiry was held to be vitiated, and the final Award dated 05th October, 2012, granting reinstatement with continuity of service, full back wages and consequential benefits, the Petitioner has preferred the present writ petition.

4. In addition to the above, the principal grounds urged by the Petitioner in respect of the reliefs claimed in the present Petition are as follows:

a. It is submitted that the learned Labour Court erred in holding the domestic inquiry to be vitiated on alleged violation of the principles of natural justice, despite the Respondent having participated in the inquiry, been afforded adequate opportunity to defend himself, and having failed to demonstrate any prejudice. Reliance is also placed upon the decision of the Supreme Court in ***Haryana Financial Corporation &Anr. v. Kailash Chandra Ahuja***, (2008) 9 SCC 31.



b. It is further contended that the learned Labour Court committed an error in deciding the validity of the domestic inquiry as a preliminary issue and, even assuming the inquiry was defective, ought to have permitted the Petitioner to establish the charges instead of directing reinstatement.

c. The Petitioner submits that the learned Labour Court failed to appreciate the gravity of the Respondent's misconduct, particularly his repeated unauthorized absence, habitual indiscipline, failure to intimate the management regarding his alleged illness, and continued absenteeism even during the pendency of the disciplinary proceedings. It is urged that maintenance of discipline was of paramount importance in the Petitioner's establishment.

d. It is further contended that the direction for reinstatement with continuity of service, full back wages and consequential benefits was granted mechanically, without considering that the termination was founded on misconduct and that such reliefs are not an automatic consequence of reinstatement.

e. Lastly, the Petitioner submits that the learned Labour Court failed to consider that the Respondent raised the industrial dispute after a considerable delay following the order of termination.

5. Before this Court, the Respondent has substantially reiterated the stand taken before the learned Labour Court. It is the Respondent's case that the domestic inquiry was conducted in violation of the



principles of natural justice, inasmuch as the relevant documents were not supplied to him and he was not afforded a fair opportunity to defend himself. In support of the said contention, reliance has been placed upon the cross-examination of MW-1, Shri Brijesh. The Respondent has further maintained that the period of absence in question was on account of medical illness and that the leave availed by him was for *bona fide* medical reasons.

ISSUES INVOLVED

6. In light of the facts and grounds noted hereinabove, the questions that arise for consideration before this Court are set out hereunder.

I. Whether the learned Labour Court erred in holding that the domestic inquiry conducted by the Petitioner was not fair, proper and in accordance with the principles of natural justice, and consequently in setting aside the order dated 23rd July, 2004 terminating the services of the Respondent?

II. Whether any misconduct was established on the part of the Workman and, if so, whether the learned Labour Court was justified in interfering with the punishment of termination imposed upon the Respondent and directing his reinstatement with continuity of service, full back wages and other consequential benefits?

III. Whether the impugned Award dated 05th October, 2012 suffers from any illegality, perversity or jurisdictional error warranting interference by this Court under Articles 226 and 227



of the Constitution of India?

SUBMISSIONS OF THE PARTIES

7. As regards the submissions of the parties, the following contentions were urged on behalf of the Petitioners.

I. Status of the Petitioner

Learned counsel for the Petitioner submits that the Petitioner is a private body registered under the Societies Registration Act, 1860, established for the welfare of serving and retired Armed Forces personnel and their families. It is contended that the learned Labour Court erroneously treated the Petitioner as a Government organisation without any pleading, issue or evidence in that regard.

II. Misconduct of the Respondent

It is submitted that the Respondent was a habitual absentee, having remained unauthorizedly absent for 89 days in the year 2002 and thereafter for a continuous period of 53 days from 16th January, 2003 to 09th March, 2003. Learned Counsel submits that despite being afforded adequate opportunity in the domestic inquiry, the Respondent failed to establish that he had intimated the management of his illness or obtained sanctioned leave. It is further submitted that the Respondent remained absent for an additional 147 days during the pendency of the inquiry. Upon the charge of unauthorized absence being established, his services were terminated by order dated 23rd July, 2004 after due process.

III. Challenge to the Impugned Award



Learned counsel submits that the learned Labour Court failed to appreciate the Respondent's repeated misconduct, past service record and the Petitioner's right to maintain discipline within its establishment. It is contended that the direction for reinstatement with continuity of service, full back wages and consequential benefits is contrary to settled law, as reinstatement and back wages are not automatic consequences, particularly in cases involving proved misconduct.

IV. Reliance on Judicial Precedents

In support of the aforesaid submissions, reliance is placed upon *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao*, (2012) 1 SCC 442, *Bharat Kumar Gardner (Mali) v. New Delhi Public School*, W.P.(C) 3687/2018, and *State of Punjab & Others v. Ex. Constable Satpal Singh* (Civil Appeal No. 312 of 2012, decided on 29th August, 2025), to contend that loss of confidence, an employee's previous misconduct, and the principle that back wages are not automatic are relevant considerations while adjudicating the present dispute.

V. Subsequent Development

Learned counsel lastly submits that the Respondent expired on 23rd March, 2024 during the pendency of the present proceedings and that a sum of Rs. 8,78,590/- (Rupees Eight Lakh Seventy Eight Thousand Five Hundred and Ninety) has already been paid by the Petitioner.



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8. In response to the aforesaid contentions, the following submissions have been made on behalf of the Respondent.

I. Unauthorized Absence was on Medical Grounds

Learned counsel appearing for the Respondent submits that the Respondent fell seriously ill with jaundice on 16th January, 2003, remained hospitalized till 19th January, 2003, and was advised bed rest for four weeks. It is contended that the Respondent continued to remain under medical treatment till 09th March, 2003 and had been regularly submitting leave applications along with medical certificates to the Petitioner. According to the Respondent, the allegation of unauthorized absence is therefore unsustainable.

II. Domestic Inquiry was Conducted in Violation of Principles of Natural Justice

Learned counsel submits that the domestic inquiry was vitiated by gross procedural irregularities. It is contended that no charge-sheet, list of witnesses or relied upon documents were supplied to the Respondent; nor was he informed of his right to be represented through a defence assistant. It is further submitted that the witnesses examined by the management were not produced for cross-examination and no documentary evidence, including attendance records, was adduced to establish the alleged misconduct.

It is further submitted that the Inquiry Officer himself accepted the Respondent's medical records and recorded that the Respondent had remained hospitalized from 16th January, 2003



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to 19th January, 2003 and was advised bed rest thereafter. According to learned counsel, at best, the inquiry attributed unauthorized absence only for the period from 18th February, 2003 to 09th March, 2003.

III. Findings of the Labour Court are Based on Evidence

Learned counsel submits that the learned Labour Court rightly held the domestic inquiry to be unfair and contrary to the principles of natural justice by its order dated 14th August, 2009. It is contended that the said order was never challenged independently by the Petitioner and thus had attained finality. It is further submitted that even during the subsequent proceedings, the management failed to establish the alleged misconduct through cogent evidence, and the cross-examination of the management witness clearly demonstrated the procedural lapses committed during the inquiry.

IV. Award of Reinstatement Calls for No Interference

Learned counsel submits that, in view of the Petitioner's failure to establish the misconduct and the admitted violation of the principles of natural justice, the learned Labour Court rightly set aside the order of termination and granted reinstatement with continuity of service, full back wages and consequential benefits. It is further submitted that the punishment of dismissal was harsh and disproportionate to the alleged misconduct.

V. Reliance on Judicial Precedents

In support of the aforesaid submissions, reliance is placed upon *Pepsu Road Transport Corporation v. Laxman Dass Gupta*,



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(2001) 9 SCC 523, *Union of India v. Giriraj Sharma*, AIR 1994 SC 215, and *Ved Prakash Gupta v. Delton Cable India Pvt. Ltd.*, Civil Appeal No. 1673 of 1984, to contend that where the disciplinary proceedings are vitiated for violation of the principles of natural justice and the punishment imposed is disproportionate, reinstatement with consequential benefits is justified.

ANALYSIS AND DISCUSSION

9. The Court has heard the learned Counsel for the respective parties and perused the record. Accordingly, this Court proceeds to determine the issues arising for consideration on the basis of the material available on record, the submissions advanced on behalf of the parties, the precedents relied upon, and the settled principles of law laid down in a catena of decisions of the High Courts and the Hon'ble Supreme Court.

10. Before adverting to the issues framed in the present Petition, it is apposite to observe that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, while examining an Award passed by the Labour Court, is supervisory in nature and circumscribed in scope.

11. It is well settled that the High Court does not act as an appellate authority over the findings returned by the Labour Court. Interference is warranted only where the Award suffers from patent illegality, perversity, jurisdictional error, or where material evidence has been ignored.



12. The Supreme Court in the judgment of **Syed Yakoob v. K.S. Radhakrishnan**, 1964 AIR 477, clarified the aforesaid position. The relevant part of the judgment is extracted hereunder.

“..... The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque (1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3)).”

13. Therefore, it is trite that interference is justified only where the Award is vitiated by patent illegality, perversity, or an error apparent on the face of the record. The present petition does not call upon this Court to re-appreciate the evidence or re-evaluate findings of fact but is confined to scrutinising the legality and correctness of the relief granted by the learned Labour Court. Thus, where the Labour Court fails to consider relevant evidence or misapplies settled principles governing industrial disputes, interference by this Court would be justified.

14. That being said, it may be noted that Issue Nos. 1 and 2 herein pertain to the scope of interference by the learned Labour Court with the findings recorded in the domestic inquiry by the Court of Inquiry, and the determination of Issue No. 3 herein, which is whether the impugned Award is perverse, is directly dependent upon the findings returned on Issue Nos. 1 and 2.



15. A perusal of the impugned Award shows that the learned Labour Court undertook a detailed examination of the domestic inquiry at the preliminary stage and concluded that the same had not been conducted in accordance with the principles of natural justice.

16. At this stage, it, therefore, becomes necessary for this Court to first examine whether the course adopted by the learned Labour Court was in accordance with the settled legal principles governing the examination of the validity of a domestic inquiry as a preliminary issue.

17. In the aforesaid backdrop, the legal position governing the scope of interference by a Labour Court with the findings of a domestic inquiry is well settled. Once a domestic inquiry is held to be fair and in compliance with the principles of natural justice, the Labour Court does not sit as an appellate authority over the findings of the Inquiry Officer. Interference is permissible only where the findings are perverse, based on no evidence, or are such that no reasonable person could have arrived at.

18. To substantiate the aforesaid, reference may be taken from the judgment of the Hon'ble Supreme Court in **B. C. Chaturvedi v. Union of India**, (1995) 6 SCC 749, wherein it has been held as under:

"12. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere



with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

[emphasis supplied]

19. In light of the aforesaid, this Court notes that the learned Labour Court, in the present case, exercised its jurisdiction both to examine the legality and fairness of the domestic inquiry by framing Issue No. 1, and to determine the legality and proportionality of the punishment of termination.

20. Further, it is apposite to mention the judgment of the Hon’ble Apex Court in the case of **“Neeta Kaplish vs Presiding Officer, Labour Court & Anr.** (1999) 1 SCC 517, wherein, while referring to several other judgments, the procedure to be followed by the Labour Court when a report of a domestic inquiry comes before it, has been clearly laid down. The relevant paragraphs of the judgment are extracted hereunder.

“18. In ‘Delhi Cloth & General Mills Co. v. LudhBudh Singh’ the Court held that where no inquiry was conducted by an employer or the inquiry itself was found to be defective, the employer shall have to be given a chance to adduce evidence before the Tribunal for justifying his action provided the employer asks for the permission of the Tribunal to adduce fresh evidence to justify its action. Such request has to be made “while the proceedings are pending” and not after the proceedings had come to an end.

The following propositions were laid down: (SCC pp. 615-17, para 61) (.....)

“..... (3) When the management relies on the inquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the



inquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the inquiry proceedings conducted by the management are valid and proper. If the Tribunal is satisfied that the inquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the inquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic inquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic inquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be under such circumstances, it is open to the Tribunal to deal with, in the first instance, as a preliminary issue, the validity of the domestic inquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra [.....]”

[emphasis supplied]

21. In the present case, the record *prima facie* reveals that the Respondent admittedly participated in the inquiry proceedings. It is also not in dispute that he produced medical records before the Court of Inquiry in support of his explanation for his absence from duty. In



fact, the Court of Inquiry accepted those medical records to the extent that they established his hospitalisation from 16th January, 2003 to 19th January, 2003 and the advice of bed rest thereafter. The allegation regarding intoxication was itself found not to be proved during the inquiry.

22. Further, as far as the validity of the inquiry proceedings is concerned, the Labour Court examined the testimony of MW-1, namely the Inquiry Officer himself. The Inquiry Officer admitted during cross-examination that there existed no documentary material to establish that the documents relied upon during the inquiry had been supplied to the Respondent. He further admitted that there was no record to demonstrate that the Respondent had been afforded an opportunity to cross-examine the Management's witnesses. The Inquiry Officer also accepted that the allegation of the Respondent reporting for duty under the influence of liquor on 12th March, 2003 had ultimately not been established during the inquiry.

23. These admissions assume considerable significance.

24. Moreover, the Petitioner, in this regard, has argued that since the Respondent participated in the inquiry proceedings, produced medical records and submitted his explanation, it cannot subsequently be contended that the inquiry was unfair.

25. This submission, though attractive at first blush, cannot be accepted in its entirety.

26. Participation in disciplinary proceedings undoubtedly constitutes a relevant circumstance while examining allegations of denial of natural justice. However, mere participation cannot operate



as a complete waiver of procedural safeguards. An employee may participate in an inquiry despite procedural irregularities, particularly when refusal to do so may itself result in adverse consequences. The question, therefore, is not whether the Respondent participated, but whether such participation amounted to an effective and meaningful opportunity of defence.

27. Natural justice contemplates not merely an opportunity to remain present but an opportunity to effectively contest the allegations.

28. In common parlance, if the employee is unaware of the documents relied upon by the employer or is denied the opportunity to test the credibility of witnesses through cross-examination, his participation remains substantially impaired. Such deficiencies cannot be brushed aside as inconsequential irregularities.

29. Thus, as far as the present case is concerned, this Court finds merit in the reasoning adopted by the learned Labour Court that the Management failed to establish compliance with the procedural safeguards ordinarily expected in a disciplinary inquiry. Once MW-1 admitted that no documentary proof existed regarding supply of documents or grant of opportunity for cross-examination, the burden shifted upon the Management to demonstrate otherwise. No such evidence appears to have been produced.

30. It is thus safe to say that the findings recorded by the Labour Court were not founded merely upon technical objections raised by the Respondent. Rather, they were based upon admissions made by the Management's own witness regarding the procedure adopted during



the inquiry.

31. The submission of the Petitioner that the Labour Court ought not to have examined the fairness of the inquiry as a preliminary issue is equally without merit.

32. Moreover, the course adopted by the Labour Court in the present case is entirely consistent with the law declared by the Hon'ble Apex Court in a series of judgments. The Labour Court did not stop after invalidating the inquiry. By its interim Order dated 14th August, 2009, it expressly granted liberty to the Petitioner to adduce independent evidence before the Court to establish the alleged misconduct. The Management availed the said opportunity. Thus, no prejudice whatsoever can be said to have been caused to the Petitioner by the procedure adopted by the Labour Court.

33. Hence, the approach adopted by the learned Labour Court is clearly in consonance with the settled position of law. Time and again, it has been categorically held by the Hon'ble Supreme Court that, before interfering with the findings of a disciplinary authority, the adjudicatory forum must confine itself to examining, *inter alia*, whether the principles of natural justice have been complied with.

34. Accordingly, this Court is of the considered view that **the conclusion reached by the learned Labour Court on Issue No. 1 neither suffers from perversity nor discloses any jurisdictional error warranting interference under Articles 226 and 227 of the Constitution. The finding in regard to the validity of the inquiry proceedings is based upon the evidence led before the Labour Court, particularly the admissions made by the Inquiry Officer**



himself, and reflects a correct appreciation of the principles governing domestic enquiries.

35. The contention of the Petitioner that the inquiry ought to have been upheld merely because the Respondent participated therein cannot, in the facts and circumstances of the present case, be accepted.

36. Issue No. 1 is, therefore, answered against the Petitioner and in favour of the Respondent. The learned Labour Court committed no error in holding that the domestic inquiry stood vitiated for non-compliance with the principles of natural justice.

37. Once the domestic inquiry was held to be vitiated, the Labour Court was required to examine whether the alleged misconduct of the Workman stood established on the basis of the evidence independently led before it. The validity of the domestic inquiry and proof of the underlying misconduct constitute distinct aspects and were required to be considered accordingly.

38. After having upheld the finding of the learned Labour Court that the domestic inquiry stood vitiated, the next question that arises for consideration before this Court is whether any misconduct was, in fact, established and whether the learned Labour Court was justified in thereafter examining the issue of misconduct, interfering with the punishment imposed upon the Respondent, and subsequently granting the consequential relief of reinstatement with continuity of service, full back wages and other consequential benefits.

39. At the outset, in regards to the misconduct alleged on part of the Workman, the learned Labour Court declined to consider the allegations pertaining to the workman's absence during the year 2002



and confined its scrutiny to the two charges which had actually formed the subject matter of the domestic inquiry, namely,

- i. the workman's absence from 16th January, 2003 to 09th March, 2003, and
- ii. the allegation that he had reported for duty under the influence of liquor on 12th March, 2003.

In this regard, the Labour Court observed that no disciplinary inquiry had ever been conducted in respect of the alleged instances of absence during the year 2002 and, therefore, reliance upon those allegations would be contrary to the settled principles governing disciplinary proceedings. Although the show cause notice dated 25th February, 2003, referred to the workman's earlier absence during the year 2002, the Labour Court found that neither the domestic inquiry nor the evidence led before it established that those allegations had ever been made the subject matter of disciplinary proceedings.

40. With regard to the allegation that the Workman had reported for duty under the influence of liquor on 12th March, 2003, the learned Labour Court held that the Management had failed to discharge its burden of proving the charge. The Court observed that no medical examination had been conducted to ascertain whether the workman had consumed alcohol and that the Management had failed to examine the material witness, namely, the Manager, Billing Section, who had allegedly noticed the workman in an intoxicated condition. The Labour Court further noted that even during the domestic inquiry, the said charge had not been found to be proved. It held that an allegation of intoxication while on duty, being a serious charge of misconduct,



could not be sustained merely on suspicion or unsubstantiated assertions, but required cogent and reliable evidence. In the absence of any medical evidence or corroborative testimony, the allegation remained wholly unsubstantiated.

41. Having discarded the allegations relating to the year 2002 and the charge of intoxication, the learned Labour Court proceeded to examine whether the workman's absence from 16th January, 2003 to 09th March, 2003 constituted misconduct warranting disciplinary action.

42. The Court observed that the workman had never disputed his absence during the said period. His consistent defence was that he had remained absent on account of illness. According to the Workman, he had contracted jaundice, remained admitted to Metro Hospital from 16th January, 2003 to 19th January, 2003, and was thereafter advised complete bed rest for four weeks. It was further pleaded that, even after the expiry of the prescribed period of bed rest, he continued to suffer from physical weakness and was unable to resume duties immediately.

43. The learned Labour Court further found that the medical documents relied upon by the workman were not seriously disputed by the Management. On the contrary, the show cause notice itself recorded that the workman had submitted medical records evidencing his hospitalisation and the advice of bed rest. The Court also relied upon the testimony of MW-1, who admitted during cross-examination that the workman had remained admitted to Metro Hospital during the relevant period and had produced the requisite medical documents



before the Management.

44. Upon appreciation of the evidence, the learned Labour Court accepted that the workman's illness, hospitalisation and the medically advised period of bed rest satisfactorily explained his absence from 16th January, 2003 until the expiry of the prescribed period of rest.

45. However, the learned Labour Court held that the workman had failed to furnish any satisfactory explanation for his continued absence for approximately twenty days thereafter. Consequently, while holding that the initial period of absence stood duly explained on medical grounds, the Labour Court concluded that only the remaining period of approximately twenty days could legitimately be treated as unauthorised, and not the entire period of absence.

46. Therefore, the Labour Court ultimately arrived at the following conclusions:

- a. the allegations relating to the workman's absence during the year 2002 could not be relied upon, as they had never formed the subject matter of a disciplinary inquiry;
- b. the allegation that the workman had reported for duty under the influence of liquor on 12th March, 2003, was not proved by the Management;
- c. although the workman had remained absent from 16th January, 2003, to 09th March, 2003, his illness, hospitalisation and the medical advice prescribing bed rest satisfactorily explained a substantial portion of the said absence;
- d. only the balance period of approximately twenty days remained insufficiently explained by the workman.



47. In addition, the learned Labour Court held that although the workman had failed to satisfactorily explain a limited portion of his absence, the Management had failed to establish the more serious allegation of reporting for duty under the influence of liquor and could not rely upon earlier instances of absence which had not been made the subject matter of disciplinary proceedings. Considering the workman's prolonged service, his medical condition during the relevant period and the limited nature of the misconduct ultimately proved, the Labour Court held that the punishment of dismissal was grossly disproportionate and liable to be interfered with under Section 11-A of the Industrial Disputes Act.

48. In this backdrop, it is pertinent to note that misconduct in the workplace is not confined to acts involving dishonesty, insubordination or other overt forms of indiscipline. An employee is equally bound by the obligations arising from the terms of his employment, including the obligation to attend duty regularly and to comply with the applicable rules and directions governing such employment. Unauthorised absence from duty, particularly where the employee neither seeks prior permission nor furnishes a satisfactory explanation for such absence, constitutes a breach of the discipline expected in an employer-employee relationship.

49. The first charge in the present case related to the allegation that the Respondent had reported for duty under the influence of liquor on 12th March, 2003. It is reiterated that a perusal of the impugned Award reveals that the Labour Court found that the Management had failed to substantiate the said allegation. No medical examination was



conducted. The officer who allegedly noticed the Respondent in an intoxicated condition was not examined. No contemporaneous record evidencing intoxication was produced. Significantly, even the Inquiry Officer had earlier concluded that sufficient evidence was not available to establish this charge.

50. This Court is of the view that the allegation of intoxication constituted a serious charge carrying grave civil consequences. In the absence of medical evidence or convincing oral testimony, the Labour Court cannot be faulted for declining to sustain such an allegation merely on the basis of suspicion.

51. The second and more substantial charge concerns the Respondent's unauthorised absence from 16th January, 2003 to 09th March, 2003, and, more broadly, his repeated absence from duty without obtaining prior sanction of leave.

52. Insofar as the aforesaid period is concerned, which also formed the subject matter of the Show Cause Notice, the learned Labour Court carefully examined the medical documents relied upon by the Respondent. Upon appreciation of the evidence, it accepted that the Respondent had remained hospitalised from 16th January, 2003 to 19th January, 2003, and had thereafter been advised complete bed rest for a period of four weeks. Consequently, the learned Labour Court held that the Respondent had satisfactorily explained a substantial part of his absence.

53. At the same time, the learned Labour Court recorded that the Respondent had failed to satisfactorily explain the remaining period of approximately twenty days beyond the medically advised period of



rest. The said period was, therefore, treated as unauthorised absence.

54. Thus, contrary to the submissions advanced on behalf of the Respondent, the learned Labour Court did not completely exonerate him of misconduct. Equally, contrary to the Petitioner's submissions, the learned Labour Court did not hold that the entire period of absence was wilful or deliberate. Rather, it arrived at a finding that while the medical evidence satisfactorily explained a substantial portion of the absence, the unexplained remainder constituted misconduct.

55. In the considered opinion of this Court, **the learned Labour Court erred in confining the misconduct to the period of approximately twenty days**, without appreciating the matter in the entirety of the facts and circumstances of the present case.

56. In the present case, it is an admitted position that the Workman was absent for a lot of days and was unable to furnish any explanation for such absence for the aforesaid period of 20 days. It is also not disputed that the said absence was without any intimation to the Management. Further, the testimony of the MW, when considered in the context of the proceedings before the learned Labour Court, was subjected to cross-examination essentially with regard to the conduct and validity of the inquiry, and not on the substantive facts constituting the alleged misconduct. Thus, the material relating to the Workman's absence was not effectively displaced or rebutted by the Workman in the proceedings before the learned Labour Court.

57. Moreover, admittedly, the Workman did not give any intimation to the Management regarding his treatment, hospitalisation or ill health during the days of absence, which subsequently resulted in the



issuance of the Show Cause Notice dated 25th February, 2003. The documents supporting the Workman were produced only after issuance of the Show Cause Notice, which, according to this Court, does not reflect the requisite degree of diligence on the part of the Workman.

58. Equally, what cannot be overlooked is that the Workman had remained absent during the year 2002, in respect of which the Management had, at that stage, afforded him an opportunity to improve his conduct. It was only thereafter that the Show Cause Notice came to be issued to the Workman.

59. In these circumstances, the learned Labour Court, having already held the domestic inquiry to be vitiated by its interim order, was required to determine the question of misconduct solely on the basis of the evidence independently led before it. The question before the learned Labour Court was whether the misconduct stood established on that evidence.

60. The Petitioner has consistently contended that the Respondent was a habitual absentee and that his previous service record justified the punishment of dismissal. In support of the said contention, reliance has been placed upon ***State of Punjab & Others v. Ex. Constable Satpal Singh and Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao***, (2012) 1 SCC 442.

61. There can be no dispute with the proposition that an employer is entitled to take into consideration the past service record of an employee while determining the existence of misconduct. Habitual absenteeism undoubtedly affects discipline, efficiency and the smooth



functioning of an establishment. Equally, repeated instances of unauthorised absence may legitimately give rise to a loss of confidence on the part of the employer.

62. However, the record reveals that the learned Labour Court specifically noticed that the previous instances of absence during the year 2002, though referred to in the Show Cause Notice, did not constitute independent charges forming part of the disciplinary proceedings culminating in the order of dismissal. The principal misconduct examined in the inquiry and ultimately adjudicated upon related to the Respondent's absence during the period 16th January, 2003 to 09th March, 2003.

63. Therefore, in the considered opinion of this Court, misconduct was established on the part of the Workman. Even assuming, for the sake of argument, that the previous conduct was not required to be taken into account for the purpose of establishing the present charge, the absence for approximately twenty days remained unauthorised and was not intimated to the Management.

64. Accordingly, this leg of Issue No. 2 is answered in favour of the Management and against the Respondent.

65. The next question requiring adjudication within Issue No. 2 is whether interference with the punishment imposed upon the Respondent was justified.

66. In essence, what is required to be determined is whether the punishment of dismissal was proportionate to the misconduct established and whether the learned Labour Court was justified in interfering with the punishment imposed by the disciplinary authority.



67. Learned counsel for the Petitioner submits that the learned Labour Court exceeded the jurisdiction vested in it under Section 11-A of the Industrial Disputes Act, 1947. According to the Petitioner, even after granting liberty to lead independent evidence, the learned Labour Court failed to appreciate the gravity of the misconduct established before it. It is further contended that the Respondent was not merely absent for fifty-three days during the relevant period but was a habitual absentee who had remained unauthorisedly absent for nearly eighty-nine days during the preceding year and had thereafter continued to remain absent even during the pendency of the disciplinary proceedings. It is further urged that the Respondent never produced any evidence to establish that he had intimated the Management regarding his illness or obtained sanction of leave from the competent authority. Learned counsel submits that the repeated acts of indiscipline completely eroded the confidence of the employer and justified the order of dismissal.

68. *Per contra*, learned counsel appearing for the Respondent submits that the learned Labour Court rightly appreciated the evidence led by the parties and recorded findings of fact which do not warrant interference in exercise of the supervisory jurisdiction of this Court. It is contended that the Respondent had satisfactorily established that he had suffered from jaundice during the relevant period, remained admitted in hospital and was medically advised bed rest. The learned Labour Court, after examining the evidence, accepted the medical explanation for a substantial portion of the alleged absence and found only approximately twenty days to be unauthorised. According to the



Respondent, dismissal from service for such absence was wholly disproportionate, particularly when the allegation of reporting for duty under the influence of liquor had itself failed.

69. As regards the punishment in the disciplinary proceedings, the learned Labour Court held that the Workman was entitled to reinstatement with back wages and consequential benefits and accordingly set aside the termination order of the Court of Inquiry.

70. The aforesaid findings of the learned Labour Court require examination in the backdrop of the powers conferred upon the Labour Court under Section 11-A of the Industrial Disputes Act. The relevant provision reads as follows-

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

71. Therefore, the power under Section 11A of the Industrial Disputes Act, 1947, to interfere with the domestic proceedings and the



punishment imposed by the Disciplinary Authority is neither absolute nor unbridled. The discretion vested under Section 11A is required to be exercised judiciously and within the well-settled parameters laid down by judicial precedent.

72. The scope of Section 11-A was authoritatively explained by the Supreme Court in **Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management**, (1973) 1 SCC 813, wherein it was held that even where misconduct is proved, the Labour Court possesses the jurisdiction to interfere with the punishment if the facts and circumstances justify such interference. However, such power is judicial and not arbitrary. The Labour Court is expected to exercise restraint and interfere only where the punishment shocks the judicial conscience or appears grossly disproportionate to the nature of misconduct established.

73. The principle was reiterated by the Supreme Court in **Mahindra and Mahindra Ltd. v. N.B. Narawade**, (2005) 3 SCC 134, wherein it was observed that interference with punishment cannot become the rule and must remain an exception. Courts exercising jurisdiction under Section 11-A are required to balance the competing interests of industrial discipline and fairness to the workman.

74. Therefore, it is settled that interference with the quantum of punishment is permissible only where the punishment is found to be shockingly disproportionate to the nature and gravity of the misconduct, or where the findings themselves are unsustainable in law. The Labour Court cannot, under the guise of exercising powers under Section 11A, substitute its own subjective assessment of the



misconduct or dilute the gravity of the charges without adequate reasons.

75. Furthermore, prior to the introduction of Section 11-A, the jurisdiction of the Labour Court in disciplinary matters was considerably restricted. Once misconduct was established through a valid inquiry, the Labour Court ordinarily refrained from interfering with the punishment unless the disciplinary action was vitiated by mala fides or victimisation. However, Section 11-A fundamentally altered the legal position by empowering the Labour Court not merely to examine the validity of the disciplinary proceedings but also to interfere with the punishment where it finds the punishment to be unjustified.

76. In light of the aforesaid principles, this Court is of the view that the learned Labour Court was also required to take into consideration the Workman's previous record of absence, including the instances of absence during the year 2002, while assessing the gravity of the misconduct and the proportionality of the punishment imposed. Repeated or unexplained absence from duty, particularly when coupled with failure to intimate the Management, is a relevant circumstance while assessing the nature and gravity of misconduct and the consequential relief to be granted.

77. In disciplinary jurisprudence, previous misconduct may undoubtedly be considered while determining the appropriate quantum of punishment, provided the charge presently under consideration stands duly established.

78. Moreover, the aforesaid principle has to be considered in



conjunction with the doctrine of loss of confidence, which assumes significance in the facts of the present case.

79. The doctrine of loss of confidence is a recognised principle in service jurisprudence. As observed by the Hon'ble Supreme Court in ***Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao (supra)***, maintenance of discipline constitutes an essential requirement of every organisation, and persistent misconduct may legitimately erode the confidence reposed by the employer in its employee.

80. Equally, however, the doctrine cannot be invoked as an abstract proposition divorced from the factual matrix of each case. The employer must establish objective circumstances demonstrating that continuation of the employee has become genuinely incompatible with the efficient functioning of the establishment.

81. In the present case, the Petitioner has consistently emphasised that the Respondent had repeatedly absented himself from duty without obtaining prior sanction of leave and has placed the relevant documents on record in support thereof. The Court of Inquiry also recorded findings regarding the Respondent's repeated acts of indiscipline, which stood corroborated by the testimony of the witnesses examined during the inquiry.

82. Even if the matter is confined only to the period forming the subject matter of the Show Cause Notice, namely 16th January, 2003 to 09th March, 2003, this Court finds that the Respondent has failed to furnish any satisfactory explanation as to why he resumed duties only on 10th March, 2003, despite the Show Cause Notice having been



issued as early as 25th February, 2003.

83. Equally significant is the absence of any material on record to establish that the Respondent had, at any point during the relevant period, intimated the Petitioner regarding his continued inability to report for duty beyond the period of medically advised bed rest. While the medical records explain the Respondent's initial absence, they do not establish that the Management was informed of his continued absence or that leave had been sought and sanctioned in accordance with the applicable service rules.

84. An employer-employee relationship is founded upon mutual trust, discipline and accountability. While every employer is expected to accommodate genuine medical exigencies of its employees, the corresponding obligation upon the employee to keep the employer informed of his inability to attend duties cannot be diluted. Prior intimation, or at the very least prompt communication explaining the continued absence, constitutes an essential facet of service discipline, particularly where the absence extends over a considerable period.

85. Having regard to the cumulative facts and circumstances, this Court finds merit in the Petitioner's contention that the Respondent's conduct had resulted in a genuine loss of confidence.

86. Consequently, this Court is unable to agree with the conclusion reached by the learned Labour Court that the punishment of dismissal was so disproportionate as to warrant interference under Section 11-A of the Industrial Disputes Act, 1947.

87. The learned Labour Court appears to have confined its consideration principally to the period of absence explained by the



Respondent's medical records, without assigning due weight to the Respondent's unexplained absence thereafter, the absence of any prior intimation to the Management, and the overall circumstances demonstrating repeated indiscipline.

88. Once the learned Labour Court itself concluded that the Respondent was guilty of unauthorised absence for approximately twenty days, and there was no material to establish that the Management had been informed regarding such continued absence, interference with the punishment of dismissal was not warranted in the peculiar facts of the present case.

89. Consequently, the direction granting reinstatement with continuity of service, full back wages and all consequential benefits cannot be sustained. The impugned Award proceeds on the premise that once the domestic inquiry stood vitiated, reinstatement necessarily followed. Such an approach is inconsistent with the settled principles governing industrial adjudication.

90. Even assuming, for the sake of argument, that the punishment of dismissal was harsh, the impugned Award contains no discussion whatsoever regarding the factors governing the grant of reinstatement, back wages or consequential benefits. There is no finding regarding the Respondent's gainful employment during the intervening period, the financial implications for the employer, or the effect of the Respondent's own conduct upon the relief ultimately granted.

91. The Award, therefore, suffers from a clear omission insofar as the exercise of discretion under Section 11-A of the Industrial Disputes Act, 1947 is concerned.



92. This Court finds merit in the Petitioner's contention that **the learned Labour Court was not justified in interfering with the punishment imposed upon the Respondent.** Accordingly, the finding insofar as the **question of punishment in Issue No. 2 is concerned, the same is answered in favour of the Petitioner,** and the impugned Award warrants interference to the aforesaid extent.

93. In view of the foregoing discussion, insofar as Issue No. 3 is concerned, **this Court holds that the learned Labour Court rightly found the domestic inquiry to be vitiated for non-compliance with the principles of natural justice.** However, having concurrently found the Workman guilty of misconduct, the learned Labour Court was not justified in invoking its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947, to interfere with the **punishment of dismissal.** The findings of the learned Labour Court with regard to the nature of the misconduct and the proportionality of the punishment suffer from perversity and patent illegality and disclose a jurisdictional error warranting interference by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India.

94. Viewed in its entirety, therefore, **the impugned Award cannot be sustained in its present form.** While the findings recorded by the learned Labour Court holding the domestic inquiry to be vitiated do not warrant interference, its conclusions regarding the proportionality of punishment and the consequential relief granted are contrary to the settled principles governing industrial adjudication and cannot be sustained.



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95. **This Court is of the considered view that the learned Labour Court was not justified in granting reinstatement with continuity of service, back wages and consequential benefits. To this extent, the impugned Award warrants modification.**

96. **Accordingly, the impugned Award dated 05th October, 2012 is modified. The Award in respect of the direction granting reinstatement with continuity of service, back wages, and consequential benefits is, thereby set aside.**

97. **However, it is clarified that any amount already paid to the Workman pursuant to the impugned Award shall not be recovered, including the amount paid to the legal representatives of the Workman after his death.**

98. **Therefore, the present Writ Petition is accordingly partly allowed in the aforesaid terms. Pending applications, if any, also stand disposed of. There shall be no order as to costs.**

**SHAIL JAIN
JUDGE**

AUGUST 19, 2026/MM