

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).273/2007

(From the judgement and order dated 02/09/2006 in LPA No.406/2006  
of the HIGH COURT OF JHARKHAND AT RANCHI)

TATA MOTORS LTD.FORMERLY KNOWN AS TELCO

Petitioner(s)

VERSUS

I.KHAN . Respondent(s)  
(With prayer for interim relief and office report )

Date: 14/11/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR  
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s) Mr. R.N. Karanjawala,Adv.  
Mrs Manik Karanjawala,Adv.  
Ms. Nandini Gore,Adv.  
Mr. Debmalya Banerjee,Adv.

For Respondent(s) Mr. Navin Prakash,Adv.  
Mr. Abhishek Vikas,Adv.

UPON hearing counsel the Court made the following  
ORDER

The appeal is allowed in terms of the signed order.  
There will be no order as to costs.

(Ganga Thakur)  
P.S. to Registrar

(Juginder Kaur)  
Court Master

Signed order is placed on the file.  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6666 OF 2008  
(Arising out of SLP(C) No.273/07)

TATA MOTORS LTD. FORMERLY KNOWN AS  
TELCO

...APPELLANT (S)

Versus

I. KHAN

..RESPONDENT  
(S)

ORDER

Leave granted.

The respondent No.2 was an employee of the appellant-Company. In February, 1980, the said respondent left for Libya on leave for a period of six months which was to end on 15<sup>th</sup> November, 1980. The said leave was extended upto 15<sup>th</sup> February, 1981, and, admittedly, the said respondent did not join his duties after 15<sup>th</sup> February, 1981. On 2<sup>nd</sup> March, 1981, the appellant wrote to the respondent No.2, informing him that he was absenting himself unauthorizedly without leave. Acknowledging the said letter, the respondent by his reply on 23<sup>rd</sup> March, 1981, sought further extension of the leave granted to him till 15<sup>th</sup> May, 1981, which request was, however, rejected.

Since there was no response from the respondent No.2, a charge sheet was issued to him to explain his unauthorized absence and, ultimately, after a domestic

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enquiry, the said respondent was found guilty of mis-conduct and was discharged from his services on 10<sup>th</sup> September, 1981. After the expiry of five years from the date of discharge, the said respondent No.2, on 16<sup>th</sup> December, 1986, appeared before the appellant and prayed for reinstatement and back wages, which prayer was not entertained. The conciliation proceedings taken thereafter failed and the dispute was referred to the Labour Court under Section 11 A of the Industrial Disputes Act, 1947. On 1<sup>st</sup> April, 2000, the Labour Court passed an Award holding that although the domestic enquiry had been conducted in accordance with the principles of natural justice and the respondent No.2 was rightly found to be guilty of mis-conduct, it was of the view that termination from service was disproportionate to the mis-conduct and directed reinstatement of the respondent No.2 in service with full back wages making it clear that no back wages shall be paid from the date of termination till the date of Notification.

The aforesaid Award was challenged by the appellant before the High Court in Writ Petition No.3302 of 2000. By his judgment and order dated 20th July,2006, the learned Single Judge confirmed the Award passed by the Labour Court, but modified the grant of back wages

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to 50%. The Division Bench confirmed the order of the Single Judge and the same is the subject matter of the present appeal.

While issuing notice in this matter, on 19th January,2007, this Court had only granted stay of payment of back wages but, we are informed by the learned counsel for both the parties that, ultimately, the respondent No.2 was not reinstated in service and that he has since attained the age of superannuation. Appearing in support of the appeal, Mr. Arun Jaitley, learned Senior Counsel, submitted that the Award as well as the judgment of the learned Single Judge and the Division Bench of the High Court could not be supported on account of the fact that the respondent No.2 had no proper explanation to offer regarding his unauthorized absence for a period of five years and it was within the discretion of the appellant-Company to terminate his services. Mr. Jaitley further submitted that the view taken by the Labour Court as well as the High Court could not also be supported on the ground that no proper grounds have been given by the said forum for passing the Award and the subsequent orders except for holding that the punishment awarded was excessive.

On behalf of the respondent No.2, it was contended that since the Labour Court had exercised its

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discretion under Section 11 A of the Industrial disputes Act,1947, both the learned Single Judge and the Division Bench were fully justified in choosing not to interfere with such discretionary order and that, in the result, there was no reason to interfere with the impugned order of the Division Bench.

Having regard to the submissions made on behalf of the

respective parties, we are unable to agree with the learned counsel for the respondent No.2 that merely because discretion has been exercised by the Labour Court, this Court ought not to interfere with the judgment and order of the courts below. We are entitled to examine as to whether such discretion has been exercised correctly, in the facts and circumstances of the case. It is well-established that in certain cases where there is gross misconduct it is better to leave it to the Management's direction to take such action as may be necessary. In this case, having regard to the unexplained delay and unauthorized absence of 5 years, we are of the view that the discretion exercised by the Labour Court, as upheld by the High Court, was improper. In our view, this is a case of misplaced sympathy and will only encourage indiscipline. A few days, or even a few months' unauthorized absence backed by a reasonable explanation can be understood and accepted, but not a lapse of this nature.

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In the circumstances, we allow the appeal and set aside the Award passed by the Labour Court on 1st April, 2007 and the subsequent orders passed by the learned Single Judge and the Division Bench of the High Court. However, there will be no order as to costs.

.....J.  
( ALTAMAS KABIR )

.....J.  
( MARKANDEY KATJU )

New Delhi,  
November 14, 2008.