
(2012) 07 BOM CK 0111
In the Bombay High Court
Case No : Writ Petition No. 4301 of 2011

Arvind Lipane

APPELLANT

Vs

Mula Sahakari Sakhar Karkhana Ltd.

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Citation : (2012) 114 BOMLR 2612

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

Bench : Single Bench

Advocate : A.A. Mukhedkar, for the Appellant; S.S. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This writ petition is filed challenging the common judgment and order dated 5.10.2010, passed by the learned Member, Industrial Court, Ahmednagar in Revision (ULP) No. 58 of 2007 and in Revision (ULP) No. 1 of 2010. The petitioner herein was working as "Lab Chemist" with the respondent Karkhana. During his service period, certain misconducts, against the petitioner, were reported and more particularly, the misconducts of absenteeism, disobedience of the orders of the superiors, indiscipline behaviour etc. To conduct the enquiry of the said misconduct, an Inquiry Officer was appointed. Charges were framed and the charge sheet was served on the petitioner. Domestic enquiry was held. The petitioner did participate in the said enquiry. Enquiry Officer had submitted his report holding the petitioner guilty for the charges of misconduct levelled against him and by way of punishment, his services came to be terminated.

2. The petitioner, being aggrieved by the said punishment imposed by the respondent Karkhana, had challenged the legality and validity of the said termination order, by filing complaint (ULP) No. 72 of 2000 before the Judge, IInd Labour Court, Ahmednagar, alleging unfair labour practice on the part of the respondent Karkhana. The claim of the petitioner was resisted by the respondent

Karkhana by filing a detail written statement, which was supported by the relevant documents.

The learned Judge, IInd Labour Court, Ahmednagar, firstly decided the issue of legality of domestic enquiry on 26.7.2006 and it was accordingly held and declared that the domestic enquiry, so conducted against the petitioner, is legal, fair and proper.

Thereafter, the complaint filed by the petitioner was heard on merits and the Labour Court finally decided the original complaint on 31.7.2007 and was pleased to pass judgment and order holding that the respondent Karkhana is engaged in unfair labour practice under Item I (a) and (b) Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter for the sake of brevity referred to as "the said Act") and directed the respondent Karkhana to reinstate the petitioner with continuity of service but without any back wages.

3. Being aggrieved and dissatisfied with the judgment and order dated 31.7.2007, passed by the learned Judge, IInd Labour Court, Ahmednagar in compliant (ULP) No. 72 of 2000, the respondent Karkhana had filed Revision (ULP) No. 58 of 2007. The petitioner herein had also filed Revision (ULP) No.1 of 2010, aggrieved by the order of the Labour Court to the extent of declining him to grant back wages. The learned Member of the Industrial Court, had heard both the Revisions together and decided the same on 5.10.2010, by the common judgment and order, which is impugned herein. By the said judgment, the learned Member has allowed the Revision filed by the Karkhana and the Revision, filed by the petitioner herein. came to be dismissed. Hence, this writ petition.

4. The learned counsel appearing for the petitioner submits that the view taken by the Labour Court regarding reinstatement of the petitioner is proper and the revision filed by the respondent ought to have been dismissed by the Industrial Court. It is submitted that the Labour court has rightly observed that the petitioner has served for 19 years with the respondent Karkhana and considering the charges levelled against the petitioner, the punishment of termination from service, is too harsh. It is submitted that entire service record of the petitioner with respondent is clean and unblemished. It is submitted that the respondent Karkhana has indulged in unfair labour practice, as contemplated in clause 1 (a) and (b) of Schedule Iv of the said Act and thus the complaint was very well maintainable before the Labour Court. The departmental enquiry initiated against the petitioner was conducted by the Inquiry Officer with bias mind. The petitioner was not provided with the documents, based upon which the enquiry was conducted. A farce was created by the respondent Karkhana in conducting the enquiry, as the said enquiry was completed in a day only. It is submitted that, the Industrial Court has not considered that the petitioner did not remain absent in his duty without communicating about the same to the respondent Karkhana. On every occasion, when he was absent from duty, he had submitted an application for sanctioning the leave. However, the same was being rejected by

the respondent with a prejudice mind. It is submitted that, the petitioner was absent for duty since he had met with an accident, while proceeding on scooter. As such, his absence was accidental and not intentional. Furthermore, the respondent ought to have sanctioned leave to the petitioner, in the light of the aspect that the petitioner was having paid-leaves left in his leave account. It is submitted that, though the respondent framed charges regarding non satisfactory work of the petitioner, however, the respondent Karkhana neither placed on record any evidence of whatsoever in nature in support of the said contention nor has pleaded any material in support of the said contention. It is submitted that, the petitioner has never admitted the charges put forth before him. Under the garb of reinstatement of the services of the petitioner, the enquiry Officer took in writing from the petitioner that he has admitted the charges. It is submitted that, the enquiry conducted against the petitioner suffers from violation of principles of natural justice and fair play. The enquiry officer has acted in a bias manner in conducting the enquiry. It is submitted that, the petitioner has served for about 19 years continuously with the respondent Karkhana. At present his age is of 52 years. The termination order is dated 20.4.2000, which means that from one decade, he is not in service. By taking into consideration the charges of absenteeism from duty, it can be considered that the petitioner has suffered a lot of punishment, till now. It is submitted that, at present petitioner is jobless. The punishment of termination from service is disproportionate and harsh looking to the charges levelled against the petitioner. It is submitted that, the Supreme Court in the case of Syed Zaheer Hussain Vs. Union of India (UOI) and Others, , held that the punishment of dismissal from service is too harsh for the charges of unauthorized absenteeism from service. The learned counsel submitted that the observations of the Industrial Court that, "It is settled principle of law that when there is possibility of two opinions on one set of facts, the finding drawn by the Inquiry Officer is to be treated as not perverse" are contrary to the settled principles of law. Therefore, the learned counsel appearing for the petitioner relying upon the pleadings in the petition, the grounds taken therein, the annexures thereto and the reasons recorded by the labour court would submit that this writ petition deserves to be allowed.

5. On the other hand, the learned counsel appearing for the respondent Karkhana submits that in pursuance to the charge sheet issued to the petitioner herein, a domestic enquiry was conducted by appointing independent enquiry Officer. The said enquiry was conducted in accordance with the principles of natural justice. The petitioner did participate in the enquiry. The Enquiry Officer submitted his findings holding that the petitioner herein is guilty of the charges of misconduct levelled against him. It is submitted that the findings of the inquiry Officer and entire past record of the petitioner, which was not satisfactory and the respondent Karkhana has terminated the services of the petitioner by passing order dated 20.4.2000, by holding thorough inquiry. It is submitted that the Labour Court has also decided the issue of legality of the domestic enquiry on 26.7.2006 and it was accordingly held and declared that, the domestic

enquiry was conducted against the petitioner herein is legal, fair and proper. It is submitted that once having been accepted the findings of the enquiry Officer, the Labour Court is not right in holding that, the respondent Karkhana is engaged in unfair labour practice under Item 1 (a) and (b) of Schedule IV of the said Act. It is submitted that the learned Labour Court has neither assigned any cogent reasons while recording a finding that, the respondent Karkhana has engaged in unfair labour practice under Item 1(a) and (b) of Schedule IV of the said Act, nor given any justification about the said finding. The findings so given by the labour Court do not corroborate with the operative part of the order and therefore, being perverse, are rightly set aside by the Industrial Court. It is submitted that the Labour Court held that, the punishment of dismissal imposed upon the petitioner is disproportionate, looking at the service rendered by the petitioner. However, in the operative part of the order, the Labour Court has not at all declared any unfair labour practice on the part of the respondent Karkhana. It is submitted that the Labour Court has not given any finding about the misconduct so committed by the petitioner, which are proved against him in the domestic enquiry. It is submitted that the domestic enquiry so conducted against the petitioner herein is legal, fair and proper, whereas the findings of the Inquiry Officer are also not perverse. In such circumstances, the interference in the punishment, imposed on the petitioner by the respondent Karkhana, is not at all warranted. As such, the findings of the labour court to that effect are perverse. It is further submitted that the Labour Court ought to have considered that the misconduct committed by the petitioner and proved against him is so serious and it is having far reaching consequences on the discipline of the petitioner Karkhana in general. The punishment of dismissal is quite proportionate and justified. It is submitted that though the powers of the Labour Court are very limited while interfering in the punishment; still the Labour Court has shown misplaced sympathy in favour of the petitioner and passed erroneous order. It is submitted that the misconduct, so committed by the petitioner and proved against him, is of a serious nature and punishment of dismissal imposed upon the petitioner is also quite just, proper and legal.

The learned counsel also invited my attention to the fact that on number of occasions, the petitioner was absent from duty. It is submitted that, perusal of paragraph No.9 of the judgment of the Labour Court, would make it abundantly clear that, on number of occasions the petitioner remained either absent from duty or abstained himself for hours together from the duty. It is submitted that, the Industrial Court has reached to the correct conclusion that, the employer has not engaged in unfair labour practice under item 1(a) and (b) of Schedule IV of the said Act, by holding that the said provisions are not attracted at all in the facts of this case since the enquiry report is accepted by the petitioner employee.

The learned counsel further submitted that the Industrial Court has rightly placed reliance on the exposition of the Supreme Court in the case of *The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others*, , in

which the view is taken by the Supreme Court that, if the enquiry is fair and proper then, in absence of any allegation, the Labour Court has no power to interfere in the punishment imposed. Therefore, the learned counsel for the respondent Karkhana would submit that the petition is devoid of merits and the same be dismissed.

6. I have given due consideration to the rival submissions advanced by the respective counsel. The Labour Court as well as the Industrial Court have held that the enquiry held by the Enquiry Officer is legal, fair and proper, as it is evident from the findings recorded by the Labour Court as also by the Industrial Court that, the petitioner herein i.e. original complainant has accepted all charges mentioned in the charge sheet, in his statement recorded on 28.3.1999. Even the statements of two employees of the respondent Karkhana are recorded and the petitioner declined to cross examine those two witnesses viz. Shri Kailas Balkrishna Kale, working as a clerk and Shri A.N Yadav, working as Security Officer with the respondent Karkhana. The Labour court has adverted to the fact that the complainant has given his final statement on 4.7.1999, in which he has candidly admitted that the entire evidence brought on record during the course of enquiry, either written or oral, is accepted by him. The misconduct committed by him is also admitted by him. He has also stated in his statement that he will not indulge in any further indisciplined behavior. The Labour Court reached to the conclusion that the enquiry is properly held. The conclusions drawn by the enquiry Officer are not inconsistent with the material brought on record before him. In short, the Labour Court has rejected the contention of the petitioner that, there was no proper enquiry by the enquiry officer or the conclusions drawn by the enquiry officer are not correct. Therefore, the Labour Court has endorsed the conclusions reached by the enquiry officer. The Labour Court has observed that the original complainant has accepted the charges levelled against him.

7. It appears that the Labour Court felt that the punishment imposed on the petitioner i.e. original complainant is disproportionate to the charges levelled against him. The Labour Court was of the opinion that for the charges of the unauthorized absenteeism, the punishment of dismissal/termination of the services is too harsh. The Labour Court, in operative part of the order, held that the respondent employer has indulged in unfair labour practice under item 1(a) and (b) of Schedule IV of the said Act and accordingly the Labour Court directed the respondent Karkhana to reinstate the complainant from the date of termination, however, without back wages.

8. When the judgment and order of the Labour Court was assailed before the Industrial Court, the Industrial Court found that the Labour Court has not assigned any reason while holding that, the respondent Karkhana is engaged in unfair labour practice under item 1(a) and (b) of Schedule IV of the said Act. At this juncture, it would be apposite to reproduce herein below, the provisions of Item 1(a) and (b) of Schedule IV of the said Act, which read thus:

(a) By way of victimization

(b) Not in good faith, but in colourable exercise of employer's right.

Bare perusal of above said provisions would make it abundantly clear that, if the employer is indulged in unfair labour practice by way of victimization, or not in good faith, but in colourable exercise of employer's right, in that case, only it can be held that, the employer has engaged in unfair labour practice under Item 1 (a) and (b) of Schedule IV of the said act.

In the present case, the petitioner has admitted the charges levelled against him in the enquiry. He has also accepted his mistake. He has also stated in his final statement recorded before the enquiry officer that in future, he will not indulge in any indisciplined behavior. The Labour Court has observed that the Inquiry conducted by the Inquiry Officer was fair and proper and to that extent the argument of the complainant that, the enquiry was not fair, has been negated by the labour Court. Therefore, it is beyond comprehension to hold that, the respondent Karkhana has terminated the services of the complainant by way of victimization or not in good faith but in colourable exercise of the employee's right.

9. Therefore, in my opinion, the Industrial Court, after considering the relevant provisions has reached to the correct conclusion. The Labour Court was not right in holding that the respondent Karkhana i.e. the employer has engaged in unfair labour practice under Item 1(a) and (b) of Schedule IV of the said Act. The Industrial Court has rightly observed that there are no reasons recorded by the Labour Court while holding that the respondent Karkhana i.e. the employer has indulged in unfair labour practice under item 1(a) and (b) of Schedule IV of the said Act. On careful scrutiny of the judgment of the labour Court, it appears that the Labour Court has not discussed how the said provisions of Item 1(a) and (b) of Schedule IV of the said Act are attracted in the facts of this case and more particularly when the petitioner i.e. the complainant in his final statement recorded before the Inquiry Officer has admitted the charges levelled against him that, he has committed mistakes in the past and he would not indulge in any indisciplined behavior in future. The Industrial Court has rightly placed reliance on the judgment of the Supreme Court in the case of *South Indian Cashew Factories Workers' Union (supra)*, in which the Supreme Court has taken a view that if the enquiry is fair and proper, in absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere in the punishment imposed. Upon careful perusal of the service record of the petitioner, as reflected in the judgment of the Labour Court, it seems that the petitioner has remained absent continuously on more than one occasion, that too without any substantial ground. It also seems that, during the course of enquiry, the petitioner has accepted the charges levelled against him. Considering the nature of duty, entrusted to the petitioner, I am of the opinion, there is no error committed by the Industrial Court in passing the impugned order. In the result, the view taken by the Industrial Court is a correct and possible view. Therefore, no interference is warranted to exercise writ jurisdiction, in the impugned

judgment and order of the Industrial Court. The writ petition is devoid of merits and hence, the same stands dismissed.