
(2015) 06 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition No. 3627 of 2007

Durga	Vs	APPELLANT
Amraoti University		RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 5 ALLMR 814 : (2015) 6 BomCR 515 : (2015) 5 MhLj 887

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : M.P. Jaiswal, for the Appellant

Judgement

Z.A. Haq, J.—Heard Shri M.P. Jaiswal, the learned advocate for the petitioner. None appears for the respondent. The record shows that there has not been appearance on behalf of the respondent since last few dates.

2. The petition is filed by the widow of the employee challenging the orders passed by the subordinate Authorities dismissing the complaint filed by the employee.

3. Shri Nandan Mahadeorao Deogade was working as Peon with the respondent/ University since 18th April, 1984 and was also given the work of Choukidar time to time. At the relevant time, Shri Nandan Deogade was working as Choukidar.

4. The Enquiry Officer, along with communication dated 28th May, 1987, had given the copy of statement of allegations and copy of charge-sheet to Shri Nandan Deogade alleging misconduct on the part of Shri Nandan Deogade. The statement of allegations was signed by the Disciplinary Authority and the charge-sheet was signed by the Enquiry Officer. It is the case of the respondent/ University that Shri Nandan Deogade had admitted the guilt, however, the enquiry was conducted against Shri Nandan Deogade and after the enquiry was completed, the Enquiry Officer found that the charges levelled against Shri Nandan Deogade were proved. The Registrar of the respondent/University, by the

communication dated 6th January, 1988 dismissed Shri Nandan Deogade.

5. Shri Nandan Deogade challenged the order of dismissal by filing complaint under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court by the order dated 17th July, 1995 concluded that the findings of the Enquiry Officer were not perverse and that the dismissal of Shri Nandan Deogade did not amount to unfair labour practice on the part of the respondent/University. The complaint was dismissed.

Shri Nandan Deogade challenged the order passed by the Labour Court in revision before the Industrial Court. The Industrial Court by the impugned order has dismissed the revision. In the meantime, Shri Nandan Deogade died. The petitioner -widow of Shri Nandan Deogade has filed this writ petition.

6. Shri Jaiswal, the learned advocate for the petitioner has raised several points. It is submitted that the enquiry was not conducted fairly and properly and Shri Nandan Deogade was not given opportunity to cross-examine Shri Mishra who is examined in the enquiry. The most important and appealing submission made on behalf of the petitioner is that the Enquiry Officer was appointed before issuance of statement of allegations and the charge-sheet, and that the charge-sheet was prepared and given to Shri Nandan Deogade by the Enquiry Officer which is not permissible in law. In support of this submission, Shri Jaiswal the learned advocate has relied on the judgment given by the Hon"ble Supreme Court in the case of State of Punjab Vs. V.K. Khanna and Others, (2000) 3 JT 349 Supp : (2000) 7 SCALE 731 : (2000) 5 SCR 200 Supp : (2000) AIRSCW 4472 : (2000) 8 Supreme 105 .

With the assistance of the learned advocate for the petitioner I have examined the documents placed on the record of the writ petition. The service conditions of the non-teaching employees of the respondent/University were, at the relevant time, governed by the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984 [for short Standard Code Rules of 1984]. Rule 46 of the Standard Code Rules of 1984 provides for the procedure for imposing major penalty. Rule 46(2) of the Standard Code Rules of 1984 lays down that where it is proposed to hold enquiry against any employee, the Disciplinary Authority shall draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite or distinct articles of charge. Rule 46(3) of the Standard Code Rules of 1984 lays down that the Disciplinary Authority shall deliver or cause to be delivered to the employee, in Form 10 of Appendix I appended to the Rules, a copy of the articles of charge, the statement of imputation of misconduct and misbehaviour and a list of documents and of the witnesses by which each article of charge is proposed to be sustained, and shall by a written notice require the employee to submit to it within such time as may be specified in the notice, a written statement of his defence, and to state whether he desires to be heard in person. Rule 46(4)(a) of the Standard Code

Rules of 1984 lays down that on receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charges as are not admitted, or, if it considers it necessary to do so, appoint an Enquiring Authority for that purpose. Rule 46(4)(b) of the Standard Code Rules of 1984 lays down that if no written statement of defence is submitted by the employee, the Disciplinary Authority itself may enquire into the articles of charge or may appoint Enquiring Authority.

It is clear that under the scheme of Standard Code Rules of 1984, the Disciplinary Authority has to proceed with the enquiry in the stages as laid down and the imputation of misconduct or misbehaviour and the articles of charge are required to be given to the employee by the Disciplinary Authority. The Enquiry Officer can be appointed by the Disciplinary Authority only after the stage of submission of written statement of defence is over. In the present case, the articles of charge are framed by the Enquiry Officer, which is not permissible under the provisions of Rule 46 of the Standard Code Rules of 1984.

The preparation and giving of articles of charge by the Enquiry Officer is a serious lapse and impermissible under the service jurisprudence. The object of the enquiry is to ascertain the truthfulness or otherwise of the allegations/charges levelled against the employee. It is unacceptable that the articles of charge are permitted to be prepared by the Enquiry Officer. If such an exercise is permitted, it will amount to permitting a person to be a judge in his own cause. The Enquiry Officer cannot be permitted to articulate the articles of charge and conduct an enquiry into the truthfulness of those charges also.

7. Though this point was not raised before the subordinate Courts, this point has been raised in the petition and has been argued by the learned advocate for the petitioner. The serious lapse on the part of the respondent/University cannot be condoned and I feel it necessary to take cognizance of it though the point is raised for the first time before this Court. The dismissal of Shri Nandan Deogade from his service is not only illegal, being in contravention of the provisions of the Standard Code Rules of 1984 but is violative of the guarantee enshrined under Article 14 of the Constitution of India. Shri Nandan Deogade could not have been dismissed from services without following the procedure prescribed by the Standard Code Rules of 1984.

8. In view of the above, it has to be held that the order of dismissal dated 6th January, 1988 is illegal and unsustainable in law. The impugned orders are also required to be set aside.

In the normal circumstances, consequent to the quashing of dismissal order, the matter would have been remitted to the respondent/University for conducting the fresh enquiry against Shri Nandan Deogade. However, as Shri Nandan Deogade has expired, fresh enquiry against him is not possible. Shri Jaiswal, the learned advocate for the petitioner has submitted that there is no provision under the Standard Code Rules of 1984 which permits the respondent/University to conduct

the enquiry after the death of the employee.

As it is found that the dismissal of Shri Nandan Deogade from his services was illegal, in my view, he would be entitled for the consequential benefits.

9. Hence, the following order:

(i) The impugned orders passed by the Labour Court and the Industrial Court are set aside.

(ii) The order dated 6th January, 1988 issued by the Registrar of the respondent/ University dismissing Shri Nandan Deogade from his service is quashed.

(iii) It is held that Shri Nandan Deogade should be treated to be in continuous service from the date of his appointment till the date of his death i.e. 27th January, 2007.

(iv) The petitioner should be given the monetary benefits for which Shri Nandan Deogade would have been entitled for, i.e. arrears of salary from the date of his dismissal till 27th January, 2007.

(v) The petitioner would be entitled for further consequential benefits according to the Rules.

(vi) Rule is made absolute in the above terms.

In the circumstances, the parties to bear their own costs.