

(2015) 07 BOM CK 0406

In the Bombay High Court

Case No : Writ Petition No. 2921 of 1994

M/s kirloskar Oil Engines Ltd, Ahmednagar

APPELLANT

Vs

Satish Dattatraya Gosavi, Ahmednagar

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28(1), Section 30(2)

Citation : (2016) MCR 80

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Writ Petition No. 2921 of 1994.; Shri B.B. Yenge, Advocate, for the Petitioner/Management; Shri P.V. Barde, Advocate, for the Respondent/Workman; Writ petition no.3529 of 1994.; Shri P.V. Barde, Advocate, for the Petitioner/Workman; Shri B.B. Yenge, Advocate, for the Respondent/Management

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.(Oral)—At the very outset, the learned Advocates submit that they have no objection if this Court hears these petitions.

2. Both these petitions were admitted by the orders dated 15.09.1994 and 20.10.1994. Interim relief in terms of prayer clause (F) was granted in the first petition which was preferred by the Management. As a consequence, the impugned judgment of the Industrial Court dated 10.08.1994 in Revision (ULP) No.11/1992 has been stayed. Consequentially, the Workman has not been reinstated.

3. Both these petitions are in relation to the same litigating sides. For clarity, they shall be referred to as the Management and the Workman in this judgment.

4. Having heard the learned Advocates appearing for the respective sides at length, I am not adverting to all of their submissions and contentions, since I am remanding Complaint (ULP) No.71/1990 to the Second Labour Court at

Ahmednagar.

5. It is undisputed that the Workman was charged for having assaulted an officer with an iron rod by entering into his residence as a fallout of a dispute between the two which seems to have occurred in the course of their duties in the factory. After conducting a domestic enquiry, the Workman was awarded the punishment of dismissal from service w.e.f. 23.06.1990. The Workman preferred Complaint (ULP) No.71/1990 before the Labour Court under Section 28(1) r/w Item (1)(a), (b) and (f) of Schedule IV of the MRTU & PULP Act, 1971. An application for interim relief under Section 30(2) was also preferred.

6. After hearing the learned Advocates, I find that both the Courts below have failed to follow the due procedure laid down in law in dealing with a case of disciplinary proceedings.

7. It is undisputed that the Workman had pleaded in paragraph 3 of the complaint as follows:-

"3. The complainant submits that the Inquiry Officer is a company's lawyer and related to the said R.S. Shukre, upon whom the alleged assault is said to have been committed by the complainant. The said Inquiry Officer Shri C.J. Shukre has apparently given the report under the thumb and in favour of the management for this reason and for reason that the said engineer Mr. R.S. Shukre is related to him. Thus, the inquiry report is vitiated on account of the bias on the part of the inquiry officer and thus is in violation of the principle of natural justice."

8. It is settled law that the issues have to be cast based on the pleadings of the parties. The Workman had questioned the enquiry alleging non adherence to the principles of natural justice and has also termed the findings of the Enquiry Officer as being perverse on the ground that the Enquiry Officer is related to the officer of the Company who has allegedly suffered injuries on account of the assault of the Workman.

9. The Labour Court has not framed the issues as to "(i) whether, the Complainant proves that the enquiry is vitiated on account of non adherence to the principles of natural justice?" and "(ii) whether, the Complainant proves that the findings of the Enquiry Officer are perverse?"

10. This Court, in the case of MSRTC, Beed v. Syed Saheblal Syed Nijam reported in 2014 (III) CLR 547, has considered the law as laid down by the Apex Court, to conclude that the conclusions on the first two issues are crucial and the enquiry can be set aside if the findings are held to be perverse or that the enquiry is held in violation of the principles of natural justice.

11. Needless to state, in the light of the challenge to the enquiry and the findings of the Enquiry Officer, it was incumbent upon the Labour Court to frame the two issues as noted above and to deal with the said issues peremptorily in order to constitute it's Part-I order.

12. In a similar set of facts, this Court in the matter of Permanent Magnets Ltd., Mumbai v. Vinod Vishnu Wani reported in 2002 (3) Mh.L.J. 413 : 2002 (93) FLR 32, has dealt with the aspect of the failure on the part of the Labour Court either in framing the issues or framing the issues and dealing with the two issues along with rest of the issues so as to constitute a single judgment.

13. The observations of this Court in paragraphs 12, 13 and 14 in the Permanent Magnets (supra) read as under:-

"12. The contention sought to be raised by the respondent in this regard is that the prayer to frame issue is restricted to the validity and legality of the Domestic Enquiry and, therefore, right reserved by the petitioner to lead evidence was only in case the enquiry is held to be not in accordance with the principles of natural justice. It cannot be disputed that strict interpretation of the pleadings would disclose a prayer to frame issue in relation to validity and legality of the Domestic Enquiry. The pleadings do not disclose a specific prayer for framing of any other issue. However, it is always to be remembered that framing of issue is primarily the function of the Court and it is not for the party to make prayer in that regard. The issues are to be framed based on the pleadings of the parties. Merely, because the party does not pray for framing of an issue, the Court is not absolved of its duty of framing the issues, which otherwise arise from the pleadings of the parties. This does not mean that the parties are forbidden from rendering necessary assistance to the Court in framing of issues. However, it is primarily the duty of the Court to frame issues, based on the pleadings. Viewed from this angle, mere absence of the prayer to frame issue cannot result in any prejudice to the petitioner. The Apex Court in Makhan Lal Bangal v. Manas Bhunia and others reported in 2001 AIR SCW 90, has ruled that an obligation is cast on the Court to read the plaint/petition and written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues.

13. The pleadings of the petitioner in the written statement quoted above, disclose that the petitioner had specifically stated that in case enquiry is held to be affected by breach of any principle of law either relating to natural justice or otherwise, the petitioner would lead evidence to substantiate charges of misconduct and to justify the final action against the complainants/respondents herein. The petitioner's statement therein is clear to the effect that it craved leave to substantiate the charges of misconduct and justify the final action against the complainants by leading evidence in case the enquiry is held to be in breach of any principles of law either relating to natural justice or otherwise. It cannot be disputed that the pleadings in question do not expressly use the

phraseology like "the employer reserve its right to lead evidence in case the Labour Court holds the findings arrived at by the Enquiry Officer to be perverse". But, at the same time, it has stated that in case the enquiry is held to be not in accordance with the law applicable thereto, and the same is held to be not in compliance with the principles of natural justice or otherwise, the employer would lead necessary evidence to prove the charges and for justification of punishment imposed. In interpreting the pleadings, as has been held by the Apex Court in *Ram Sarup v. Bishun Narain* reported in AIR 1987 SC 1242 no pedantic approach should be adopted to defeat justice on hair splitting technicalities and it is the duty of the Court to ascertain the substance of the pleadings. At this stage, it is also necessary to consider the contention of the learned Advocate for the petitioner that the question of opportunity of leading the evidence in support of justification of the charges of misconduct and action thereupon by the employer could arise only in case where the findings of the Enquiry Officer are held to be perverse and not otherwise. To put in exact words of the learned Advocate "the right to lead evidence to the employer is borne (read born) only on the finding of the Labour Court that the findings of the Enquiry Officer are perverse." It cannot be disputed that once it is held that the Domestic Enquiry has been conducted in fair and proper manner and in accordance with the principles of natural justice, that by itself would not lead to conclusion that the findings arrived at by the Enquiry Officer were also perverse. Much to the contrary, the finding to that effect would be specifically required by the Labour Court. Once it is stated by the petitioner in the written statement that he craves leave to substantiate the charges of misconduct by leading proper evidence and to justify the final action, in case enquiry is to be held vitiated for non compliance of principles of natural justice or otherwise and considering the law laid down by the Apex Court regarding the reading and understanding of the pleadings. It is to be held that the petitioner had conveyed its intention to the Labour Court to lead evidence in case the Labour court comes to the conclusion that the inquiry was vitiated either on account of non compliance of the procedure or for violating the principles of natural justice or the findings arrived at by the Enquiry Officer being held to be perverse. On this count, therefore, the contentions of the learned Advocate for the respondent that the pleadings do not disclose reservation of right of the employer to lead evidence, in case of findings of Enquiry Officer being held as perverse, cannot be accepted.

(Emphasis supplied)

14. Referring to the decision of the learned Single Judge in *Chandrikaprasad's* case, it was strenuously argued by the learned Advocate for the respondent that there was not even an attempt on the part of the petitioner in the course of argument to submit that the petitioner would lead evidence in support of the charges of misconduct, in case the Labour Court holds the findings of the Enquiry Officer to be perverse. Indeed, in *Chandrikaprasad's* case, the learned Single Judge while considering the point of failure on the part of the Labour Court to allow the employer to adduce evidence pursuant to the finding that the domestic

enquiry was not fair and proper and the findings recorded by the Enquiry Officer were perverse. It was observed that in the written statement filed by the employer, no plea was raised in the alternative that in case the enquiry held against the employee is not fair and proper or is held to be perverse, the employer be given an opportunity to prove the charges against the employee and even when issues were framed after the parties had tendered draft issues, the employer had never pressed that the issue regarding fairness of the enquiry or the correctness of the findings recorded by the Enquiry Officer should be tried as preliminary issue. Not only that when during the course of arguments no request was made that if the Court holds that enquiry against the employee was not fair and proper or the findings recorded by the Enquiry Officer were perverse, the employer should be given opportunity to lead evidence. Having sat on the fence and allowed the proceedings to complete, it was not open to the employer, after the proceedings were closed before the Labour Court and judgment was delivered, to raise the contention, during the course of hearing of revision application for the first time even in absence of any ground in memo of revision that Labour Court ought to have asked employer to lead evidence to prove the misconduct on merits before the Labour Court. According to the learned Advocate for the petitioner, the facts of the case in hand are similar to those of Chandrikaprasad's case inasmuch as, there was no request made by the petitioner in the course of arguments for allowing the petitioner to lead evidence in case the Labour Court holds that the findings of the Enquiry officer to be perverse nor, the issue in that regard was requested to be tried as preliminary issue. It cannot be disputed that the petitioner could have certainly drawn attention of the Labour Court at the time of framing issues that the issue in relation to whether the findings of the Enquiry Officer to be perverse, ought to have been tried as preliminary issue. It is also a matter of record that on completion of the evidence led by the petitioner in answer to the evidence, led by the respondent, the petitioner had filed purshis closing its evidence. The impugned order also does not disclose any request having been made by the petitioner to the Labour Court in the course of arguments for reserving its right to lead evidence in support of the charges of misconduct and punishment imposed, in case the Labour Court holds the findings of the Enquiry Officer to be perverse. However, as rightly submitted by the learned Advocate for the petitioner, in spite of these facts, the point which is required to be considered is whether the employer was afforded or not an opportunity to exercise his right to adduce evidence once the tribunal holds that the findings of the Enquiry Officer are perverse. Undisputedly, the decision of the Labour Court that the findings of the Enquiry Officer in the Domestic Enquiry were perverse was arrived in the judgment and order dated 6th April, 1999 itself and not prior to the delivery of the said judgment and order and, thereafter, there was no opportunity made available to the petitioner to lead any evidence in support of the charges against the respondent in spite of the fact that the pleadings in that regard disclose the required alternative plea. Undisputedly, in Chandrikaprasad's case, there was no such plea raised in the written statement. Basically, therefore, the employer had

not disclosed any willingness on its part to lead evidence in support of the charges and punishment imposed by the management in case the Labour Court comes to the conclusion that the findings arrived at by the Enquiry Officer were perverse. Considering the law laid down by the Apex Court in Bharat Forge Company Limited's case and Karnataka State Road Transport Corporation's case, it being the matter of right of the employer on necessary alternative plea being made in the written statement, it was necessary for the Labour Court to afford an opportunity to the employer to lead evidence in support of the charges and punishment imposed once, the Labour Court has held that the findings arrived at by the Enquiry Officer were perverse. In this connection, it was sought to be contended by the learned Advocate for the respondent that there is no procedure prescribed whereby the parties are entitled to lead evidence in piecemeal on every issue. There can be no quarrel about the proposition canvassed by the learned Advocate for the respondent. However, the fact remains that it was necessary for the Labour Court to frame issue as to whether the findings of the Enquiry Officer being perverse along with the issue regarding the Domestic Enquiry to be in accordance with the principles of natural justice or not. For the lapse on the part of the Labour Court, the parties cannot be blamed in that regard. No doubt, the parties also could have assisted the Labour Court by bringing the said fact to the notice of the Labour Court at the time of holding of the enquiry in relation to the point as to whether the Domestic Enquiry was in accordance with the principles of natural justice or not. But, having not done so, apparently, the right of the employer to lead evidence in support of the charges and punishment imposed, once the Labour Court comes to the conclusion that the findings of the Enquiry Officer were perverse, cannot be denied to the employer, and more particularly, when denial of such right has resulted in prejudice to the petitioner."

14. It is, therefore, apparent that the Court is not absolved of its duty in framing proper issues depending upon the rival contentions of the litigating sides.

15. Shri Yenge, learned Advocate, has canvassed that since the issues were not framed and the Workman did not press for framing of the two issues, it leads to the conclusion that the Workman has given up his challenge to the enquiry and the findings of the Enquiry Officer. He further submits that his contentions are fortified by the fact that the Workman did not step into the witness box.

16. Shri Barde, learned Advocate, has countered the said submissions by stating that the Labour Court should have framed the said issues. Having failed to do so, would not lead to the conclusion that the Workman had given up his challenge.

17. I do not wish to go into this controversy for the reason that this Court has already concluded in Permanent Magnets (supra) that even if there is no assistance from the learned Advocates in proposing the issues to the Court, the burden lies on the Court to frame issues in the light of the rival contentions of the parties. As these two issues were not framed, the Labour Court dealt only with the remaining issues which were with regard to the proportionality of the

punishment. Based on the same, the Labour Court concluded that the complaint deserves to be dismissed.

18. The Workman challenged the judgment of the Labour Court dated 05.12.1991 dismissing his complaint, in Revision (ULP) No.11/1992 before the Industrial Court. He has taken up the ground that the charges were not proved against him. The principles of natural justice were violated in conducting the enquiry and the Enquiry Officer's findings are rendered perverse on account of his relation with the Officer of the Company who claimed to have been assaulted by the Workman.

19. In my view, the Industrial Court should have noticed that the two issues, which are mandatorily to be cast in the light of the specific challenge to the enquiry as well as the findings of the Enquiry Officer, had not been cast, which has led to a serious error in following the procedure while deciding the complaint. Primarily on this ground, the Industrial Court should have remanded the complaint to the Labour Court for proper framing of issues and for allowing the parties to deal with the said two issues in the light of the law laid down by the Apex Court which has been considered by this Court in the matter of Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v. Vasant Ambadas Deshpande reported in 2014(1) CLR 878 : 2014(3) Mh.L.J. 339.

20. It is trite law that unless the enquiry is set aside, there could not be a *denovo* enquiry. Similarly, unless the Court comes to the conclusion that the punishment awarded is shockingly disproportionate to the misconduct proved against the Workman, the quantum of punishment cannot be interfered with.

21. In the case before the Industrial Court, neither the enquiry nor the findings of the Enquiry Officer were set aside. Without doing so, the Industrial Court could not have gone into as to whether, the charge is proved against the Workman or not. It could have, at best, dealt only with the proportionality of the punishment since upholding the enquiry and the findings of the Enquiry Officer led to the conclusion that the charges are proved. Even on this count, the Industrial Court could not have interfered with the punishment as the charge said to be proved against the Workman was of assaulting an officer.

22. In the light of the above, it is apparent that the Industrial Court, rather than remanding the complaint to the Labour Court, has dealt with the charge of assault proved against the Workman. Surprisingly, without remitting the complaint to the Labour Court, the Industrial Court allowed the complaint and directed the Management to reinstate the Workman with continuity of service and without back-wages. In my view, both the Courts below have failed in following the due procedure laid down in law.

23. For the above reasons and in the light of the law laid down in the cases of MSRTC Beed, Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. and Permanent Magnets (*supra*), the judgments of the Industrial Court as well as the Labour Court are quashed and set aside.

24. Since I am remanding Complaint (ULP) No.71/1990 to the Second Labour Court for framing of the said above two issues and deciding them peremptorily, Revision (ULP) No.11/1992 before the Industrial Court does not survive.

25. Both the litigating sides shall appear before the Second Labour Court, Ahmednagar on 19.08.2015. The Labour Court shall frame the two issues as noted above and permit the litigating sides to deal with the said issues in the light of the judgment in Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. (supra).

26. As the complaint pertains to the year 1990, both the litigating sides shall refrain from seeking adjournments on unreasonable or trivial grounds. The Labour Court shall endeavour to decide the complaint as expeditiously as possible and preferably on or before 29.02.2016.

27. The record and proceedings pertaining to Complaint (ULP) No.71/1990 be returned to the Second Labour Court, Ahmednagar urgently. All the contentions of the litigating sides are kept open.

28. In the light of the above, Writ Petition No.2921/1994 filed by the Management is partly allowed in the above terms. Rule is accordingly, made partly absolute.

29. Writ Petition No.3529/1994 preferred by the Workman stands dismissed. Rule is discharged.