

(2013) 04 BOM CK 0101
In the Bombay High Court
Case No : Writ Petition No. 552 of 2013

Shri K.A. Mohandas

APPELLANT

Vs

National Centre for the Performing Arts and Another

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Bombay Shops And Establishments Act, 1948 — Section 38B
Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 2
Industrial Employment (Standing Orders) Act, 1946 — Section 12
Payment of Wages Act, 1936 — Section 2

Citation : (2013) 3 ABR 1212 : (2013) 4 ALLMR 645 : (2013) 138 FLR 332 :
(2013) 138 FLR 162 : (2013) 3 LLJ 364 : (2013) LLR 609 : (2013) 5 MhLj 231

Hon'ble Judges : Ranjit More, J

Bench : Single Bench

Advocate : P.M. Patel, for the Appellant; K.M. Naik instructed by Mr. Sujeet P. Salkar, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit More, J.—Heard learned council appearing for the respective parties. By this writ petition filed under article 226 of the Constitution of India, the petitioner is challenging the concurrent orders passed by lower authorities below whereunder his complaint challenging the dismissal order came to be dismissed.

2. The petitioner was charged for misconduct as defined under Clause (v) of Section 12 of Service Rules of respondent No. 1. The petitioner is alleged to have abused his superior-Mr. Jadhav, Asstt. Supervisor with filthy words and pushed him down the chair thereby physically hurting him. The petitioner thereafter took out the fire axe from FCR and tried to assault and kill Mr. Jadhav with the said axe. The petitioner is further alleged to have taken out a knife from his pocket and attempted to stab Mr. Jadhav in his stomach and also threatened to murder him along with his wife and children if he reported/the incident to anyone. Disciplinary Inquiry was initiated against the petitioner in which he was held

guilty and accordingly dismissed. Initially it was held that the disciplinary inquiry was not fair and proper and opportunity was given to the Respondents to prove the misconduct in the court. Respondents examined four witnesses including Mr. Jadhav, Asstt. Supervisor, and thereafter dismissed the petitioner from his services. The Labour Court, on the basis of this evidence, came to the conclusion that the petitioner's misconduct which is of serious nature stands proved. This finding is confirmed by the Industrial Court in revisions. After hearing learned counsel, I do not find any justification to interfere in the said finding.

3. Learned counsel for the petitioner, however, submitted that respondent No. 2 was a Senior Advisor and, therefore, not competent to initiate departmental inquiry or terminate the petitioner's service. He relied upon the provisions of Industrial Employment (Standing Orders) Act, 1946. Schedule I thereof deals with Model Standing Orders. Learned counsel for the petitioner relied upon Sub-clause (6) of Clause 25 of the Model Standing Orders as well as definition of Manager under Clause 2(b) and submitted that respondent No. 2 not being a Manager, the entire disciplinary action is vitiated. Learned counsel for respondents, on the other hand, stated that the Industrial Employment (Standing Orders) Act, 1946, is not applicable to respondent No. 1. He submitted that there are Service Rules of respondent No. 1 and the disciplinary action is taken against the petitioner under these Rules. He stated that the petitioner had raised similar objections before the Labour Court and after hearing both the sides, the Labour Court by Speaking Order dismissed his application.

4. I have perused the relevant provisions of Industrial Employment (Standing Orders) Act, 1946, with the Service Rules of respondent No. 1 as well as the provisions of the Bombay Shops and Establishments act, 1948. By virtue of provisions of section 38B of the Bombay Shops and Establishments Act, 1948, the Industrial Employment (Standing Orders) Act, 1946 is applicable to all establishments where-under fifty or more employees are employed. However, respondent No. 1 is exempted from the provisions of Bombay Shops & Establishments Act, 1948, which fact is clear from Schedule (1) thereof and reference of respondent No. 1 has come at entry at Serial No. 273. The petitioner raised similar question before the Labour Court. An issue was raised before the Labour Court to the effect that whether the petitioner proved that the charge-sheet and disciplinary act were not in consonance with the Model Standing Orders. The petitioner insisted to frame this issue, however, the Labour Court after hearing both the sides refused to frame this issue. The petitioner never challenged this order.

The Industrial Employment (Standing Orders) Act, 1946, is applicable to every Industrial Establishment Wherein fifty or more workmen are employed or were employed on any day of the preceding 12 months. The definition of industrial Establishment is given under clause (e) of section 2 which read as follows:

(e)" industrial establishment" means:--

(i) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, (4 of 1936) or

(ii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948); or

(iii) a railway as defined in clause (iv) of Section 2 of the Indian Railways Act, 1890 (9 of 1890);

There is no dispute among the learned counsel appearing for the respective parties that sub-clauses (i) & (ii) of Clause(e) of section 2 are not applicable. So far as clause (i) is concerned, the term "Industrial Establishment" is defined under clause (ii) of section 2 of the Payment of Wages Act, 1936, which reads as follows:

(ii) (industrial or other establishments) means any-

[(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India];

(b) dock, wharf or jetty;

[(c) inland vessel, mechanically propelled;]

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or to the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;

Reading of this definition does not show that respondent No. 1 is covered by the definition of Industrial Establishment. If that be so, the Model Standing Orders are not applicable to respondent No. 1. Similar findings were recorded by the Labour Court in an Order dated 15th November, 2006 passed below application at Exhibit U-15. Thus, the Departmental Inquiry initiated by respondent No. 1 against the petitioner under its Service Rules cannot be faulted with. I do not find any merit in the petition. The writ petition is, accordingly, dismissed.