

(2024) 05 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 10055 Of 2011

State Of Maharashtra

APPELLANT

Vs

Chandrakant Dhondiram Gurav

RESPONDENT

Date of Decision : 08-05-2024

Acts Referred:

Maharashtra Civil Services (Discipline And Appeal) Rules, 1979 — Rule 13
Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices
Act, 1971 — Section 28, 44

Citation : (2024) 05 BOM CK 0017

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : M.S. Bane, Kuldeep U. Nikam

Final Decision : Partly Allowed

Judgement

Sandeep V. Marne, J

1) State of Maharashtra has fled this petition challenging the Judgment and Order dated 10 June 2011 passed by the Presiding ofcer, Labour Court, Sangli allowing Complaint (ULP) No. 18/1999 fled by the Respondent under Section 28 read with Item Nos.1(a), (b) (d) and (f) of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) and directing his reinstatement w.e.f. 31 December 1998 with continuity and full backwages. The Judgment and Order dated 16 August 2011 passed by the Member, Industrial Court, Sangli rejecting Petitioner's Revision (ULP) No. 13/2011 fled under Section 44 of the Act is also under challenge.

2) Facts of the case are that Respondent was engaged as 'Ward Boy' in the Government Medical College and Hospital, Miraj, District-Sangli. He was served with Memorandum of Chargesheet dated 10 June 1998 alleging seven charges against him. Charges levelled against him included allegations of threatening, abusing and insulting superior ofcers, failure to obey the directives of superiors,

avoiding performance of assigned duties, publication of defamatory articles in newspapers etc. After holding enquiry into the charge, the Enquiry officer submitted report holding the charges to be proved and recommended imposition of punishment of dismissal. Accordingly, by Order dated 31 December 1998, the Petitioners imposed penalty of dismissal from service on the Respondent.

3) Respondent filed Complaint (ULP) No. 18/1999 before the Labour Court, Sangli challenging the penalty of dismissal. The Complaint was resisted by Petitioner by filing Written Statement. The Labour Court, Sangli proceeded to dismiss the complaint by Judgment and Order dated 20 October 2007. Revision filed by the Respondent against the Labour Court's decision was partly allowed on 31 July 2010 setting aside Labour Court's decision and remanding the complaint back to the Labour Court for fresh decision. In remanded complaint, evidence was led, both by Petitioner as well as by respondent. The Labour Court delivered Order dated 17 January 2011 on preliminary issue of fairness in the enquiry and held that the enquiry was not fair, proper and legal and that the findings of the Enquiry Officer are perverse. Opportunity was given to Petitioner to justify those findings by leading evidence on merits. It appears that despite grant of opportunity, Petitioner failed to lead evidence before the Labour Court and filed a Pursis at Exhibit-C-23 that it did not desire to lead oral evidence. The Labour Court therefore delivered Judgment and Order dated 10 June 2011 allowing the complaint and directing Respondent's reinstatement w.e.f. 31 December 1998 with full backwages and continuity of service. Petitioner filed Revision (ULP) No. 13/2011 before the Industrial Court, Sangli challenging Judgment and Order dated 10 June 2011 of Labour Court. The Industrial Court, however proceeded to dismiss the Revision by its Judgment and Order dated 16 August 2011. Petitioner has filed this petition challenging the decisions of the Labour Court and the Industrial Court.

4) This Court has admitted the petition by Order dated 18 July 2012 and has stayed the orders passed by the Labour and the Industrial Court during pendency of the petition.

5) Ms. Bane, the learned AGP appearing for Petitioners would submit that Respondent committed grave misconduct of threatening, abusing and assaulting Doctors and other senior officials posted in the hospital. That the charges have been duly proved by examination of as many as 8 witnesses in the Departmental Enquiry. That Respondent was duly offered full opportunity of defence in the enquiry. That the Enquiry Officer considered the evidence on record by taking into consideration the defence raised by the Respondent and thereafter gave his findings on each articles of charge. That therefore there was no scope for the Labour Court to interfere in the dismissal order which was passed after grant of due opportunity of defence to the Respondent. That no case of perversity in the findings recorded by the Enquiry Officer could be made out as his findings are supported by the evidence on record. That the Doctors and other senior officials, who have threatened and abused, have given direct evidence in the enquiry and

that therefore there is sufficient evidence on record to hold Respondent guilty of misconduct alleged against him. According to her, in any case Respondent, being a State Government employee, ought to have approached Maharashtra Administrative Tribunal and his Complaint filed before the Labour Court was clearly not-maintainable. She would therefore pray for setting aside the orders passed by the Labour and the Industrial Court.

6) Per-contra, Mr. Nikam the learned counsel appearing for the Respondent-employee would submit that after the Labour Court delivered Part-I Award on the preliminary issues of fairness in the enquiry and perversity in the findings of the Enquiry Officer, Petitioners failed to lead evidence before the Labour Court despite grant of opportunity to do so. That it is well settled law that if the enquiry is held to be not fair and findings are held to be perverse in Part-I Award, the evidence recorded in the enquiry cannot be read or considered. In support of his contention, Mr. Nikam would rely upon the Judgment of the Apex Court in *Neeta Kapish V/s. Presiding Officer, Labour Court*, Anr. 1999 1 CLR 219 and of this Court in *Bomboiy Hospital Trust V/s. Miss. Rita Manwani*, Anr. 2005 II CLR 711.

7) Mr. Nikam would submit that on account of failure of Petitioner to lead evidence before the labour court, there is no evidence on record to prove charges leveled against the Respondent and therefore no fault can be found in the impugned orders of the Labour and the Industrial Court. He would submit that the entire enquiry was conducted in gross violation of principles of natural justice. That Respondent was not even allowed to cross-examine the witnesses and that the entire enquiry was conducted in closed cabin in absence of Respondent. That he was not even supplied copy of the Report of the Enquiry Officer. That therefore the Labour Court has rightly set aside the order of dismissal. He would pray for dismissal of the petition.

8) Rival contentions of the parties now fall for my consideration.

9) It must be observed at the very outset that the manner in which the officials of Petitioner-Hospital have acted throughout the disciplinary enquiry, as well as in the proceedings before the Labour Court is highly intolerable. Respondent faced charges of repeatedly abusing, assaulting and threatening Doctors as well as other senior officials in the hospital. If there was any truth into the charges leveled against Respondent, it appears that Respondent had become highly undisciplined, intransigent and a dangerous element in the hospital, who was not only refusing to work as per the directives of superior officials but had in fact become a threat to the Doctors, Officials and other employees of the Hospital. When such serious charges were leveled against Respondent, it was the duty of the concerned officials of the hospital to ensure that proper enquiry was conducted by affording due opportunity of defence to Respondent so that the finding of guilt recorded in respect of such grave charges are not interfered by any Court or Tribunal on account of any technicalities. However, the procedure adopted by the officials of the hospital, as well as by the District Enquiry Officer, who has conducted the enquiry, is shocking.

10) Perusal of the report of the Enquiry Officer would indicate that as many as 8 witnesses are examined in the enquiry who gave detailed account of Respondent's behaviour. It appears that one of the witnesses, Mr. Ravindra Vishnu Mali, Hygiene Inspector stated in the enquiry that Respondent slapped him in addition to breaking the glass of Hospital's window. Similar evidence is given about threats, abuses, insult and intimidation on the part of the Respondent by other Doctors and officials of the hospital. It appears from their depositions that he was in the habit of charging towards everyone attempting to discipline him with intention of committing assault. In the light of such concrete evidence against Respondent, it was necessary that the Enquiry Officer ought to have given opportunity to him to cross-examine the witnesses. However, what is shocking is the fact that the enquiry was conducted in casual manner and Respondent was not even allowed to remain present when the statements of the witnesses were recorded. There is nothing on record to indicate that Respondent was permitted to cross-examine the witnesses examined in the enquiry. It is incomprehensible as to how the District Enquiry Officer, who is supposed to know all the relevant rules relating to conduct of departmental enquiry, could have allowed conduct of enquiry in absence of Respondent. Despite repeatedly enquiring with Ms. Bane as to whether Respondent was given opportunity to cross-examine any of the 8 witnesses, she is unable to place on record any material to indicate that such opportunity was indeed given. It also appears that the report of the Enquiry Officer was also not provided to Respondent. Mr. S.D. Joshi, who is examined as a Witness before the Labour Court after remand of the complaint, stated in his cross-examination that the enquiry was conducted in a 'secretive manner' and that the Report was also kept 'secret'. If any witnesses felt threatened to depose against Respondent, the Petitioners ought to have dispensed with enquiry and ought to have adopted the route of punishing Respondent under Rule 13 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 by recording reasons in writing that it was not reasonably practical to hold enquiry against Respondent on account of his intimidating character. Once decision to hold inquiry is taken, the procedure under the Rules must be followed by examining witnesses in presence of and by affording opportunity of cross examination to the delinquent employee.

11) Non supply of report of Inquiry Officer to Respondent is yet another illegality. The penalty of dismissal imposed vide Order dated 31 December 1998 is premised on the said report of the Inquiry officer. Thus, decision to punish the Respondent is taken without supplying him copy of the Report of the Enquiry Officer. This is in direct violation of Judgment of the Apex Court in Managing Director, ECIL Vs. B. Karunakar (1994) supp (2) SCC 391.

12) The shocking state of affairs continued during pendency of proceedings before the Labour Court. After the Labour Court delivered Part-I Award holding that the enquiry was not fair and proper and that the findings of the Enquiry Officer were perverse, Petitioner was given opportunity to justify the findings of the Enquiry Officer by leading evidence. However, a Pursis fled before the Labour

Court at Exhibit-C-23 stating that Petitioner did not desire to lead oral evidence. Even in the present petition, Part-I Award is not challenged and what is challenged is only final Judgment and Order dated 10 June 2011.

13) In my view, therefore Petitioners themselves did not leave any valid reason either for the Labour Court or for this Court to uphold the order of dismissal imposed on Respondent. The concerned officials have committed dereliction of duty while conducting enquiry against the Respondent, who is permitted to go scot-free despite availability of sufficient evidence on record to indicate his role in the grave misconduct of threatening, abusing, insulting, intimidating and assaulting Doctors and other officials of the hospital. In absence of any opportunity of cross-examination being given to Respondent, the entire evidence on record has been rendered useless, which is required to be ignored. The said evidence is required to be discarded in absence of cross-examination by the Respondent. At least before the Labour Court, Petitioners ought to have examined the available witnesses who could have deposed about the acts of misconduct allegedly committed by Respondent. Even that opportunity was not availed by Petitioners. In that view of the matter, no case is made out for interference in both the judgments and Orders passed by the Labour Court on preliminary, as well as final issues. There was nothing for the Industrial Court to intervene in the findings of the Labour Court in exercise of revisional jurisdiction under Section 44 of the MRTU & PULP Act.

14) Though Ms. Bane has urged that the evidence recorded during the course of inquiry be taken into consideration, in my view the same cannot be done in view of well settled law that once Part-I Award is delivered granting opportunity to employer to prove the charges, only evidence recorded before Labour Court can be taken into consideration by ignoring the evidence recorded during the course of domestic inquiry. Mr. Nikam's reliance on judgments in Neeta Kapish and of this Court in Bomboiy Hospital Trust in this regard is apposite.

15) Respondent appears to be now at advanced age of 57 years with another year left for his retirement. The Labour Court has awarded full backwages to him from the date of dismissal from service i.e. w.e.f. 31 December 1998. Award of full backwages for such unduly long period of 26 long years would put undue financial burden on the State Government. This liability is created on the State Government on account of negligence on the part of the concerned officials who failed to conduct proper enquiry, as well as to prosecute the proceedings before the Labour Court by adducing evidence. The penalty of dismissal from service imposed on Respondent is required to be set aside on technical ground of failure to grant him opportunity of defence. Otherwise, consideration of depositions of witnesses would indicate the manner in which Respondent was behaving in the hospital by creating an atmosphere of terror. Respondent's complaint was initially dismissed by the Labour Court in the year 2007 and was remanded by the Industrial Court in the year 2010. By the time, Part-I Award was delivered in the year 2011, it was 13 long years from the date of issuance of chargesheet. It

appears to be the reason why Petitioner was unable to lead evidence before Labour Court.

16) Considering the above circumstances, grant of 100% backwages to Respondent would not be justifiable. In my view, the amount of backwages are required to be brought down to 50% considering the reason why the penalty of dismissal is required to be set aside coupled with the long intervening period of 26 years, during which backwages will have to be paid to the Respondent. Till the time he was dismissed from service, Respondent had rendered hardly 5 years of service and even during those 5 years, he was repeatedly involved in allegations of threatening, abusing, intimidating and assaulting Doctors and other officials of the hospital. The relief of reinstatement and continuity would ensure payment of pension and pensionary benefits to the Respondent, if he was a regular government servant. In such circumstances, payment of 100% backwages would not be justified considering the peculiar facts and circumstances of the present case.

17) I accordingly proceed to pass the following order:

(i) Judgment and Order dated 10 June 2011 passed by the Presiding Officer, Labour Court, Sangli in Complaint (ULP) No. 18/1999 as confirmed by the Judgment and Order dated 16 August 2011 passed by the Member, Industrial Court, Sangli in Revision (ULP) No. 13/2011 is modified to the extent that Respondent shall be entitled to 50% backwages for the period from 31 December 1998 till his reinstatement.

(ii) Respondent shall be reinstated in service within 8 weeks.

(iii) The amount arising out of backwages shall be paid to Respondent within 3 months.

(iv) The rest of the order of the Labour Court shall remain undisturbed.

18) With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no order as to costs.

19) After the judgment is pronounced, Ms. Bane, the learned AGP appearing for Petitioner/State seeks stay of the judgment for a period of eight weeks. The said request is opposed by the learned counsel appearing for the Respondent. Since Petitioner is granted period of eight weeks for reinstatement of the Respondent, sufficient time is available for them to test the judgment before the Apex Court. The request for continuation of stay order is therefore rejected.