

(2004) 08 BOM CK 0123

In the Bombay High Court

Case No : A.S.L.P.A. No. 321 of 2004 and C.A. No. 328 of 2004

State Transport Co-operative Bank Ltd. and Another	APPELLANT
Vs	
Shankar Gopal Pagire and Others	RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79
Evidence Act, 1872 — Section 141, 142, 143
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 59

Citation : (2005) 2 LLJ 80

Hon'ble Judges : S.U. Kamdar, J;A.P. Shah, J

Bench : Division Bench

Advocate : C.J. Sawant, N.M. Makander and P.N. Shastri, for the Appellant;

Judgement

1. Admit. Respondent No. 1 waives services. On the request of counsel for the appellant names of respondent Nos. 2 & 3 are deleted. Heard counsel for the appellant and respondent who is appearing in person.

2. This appeal is directed against the order passed by the learned single Judge in Writ Petition No. 3683 of 1996 dated July 9, 2004. By this order the learned single Judge set aside the orders passed by the Labour Court and Industrial Court and remanded the matter to the Labour Court to be decided afresh in accordance with law. The learned single Judge further directed that the appellant bank will have to prove the misconduct alleged against the respondent workman by leading evidence before the Labour Court and after such evidence is led the Labour Court will have to consider whether the punishment of dismissal was proper.

3. The appellant is a co-operative society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and is inter alia engaged in the business of banking. The respondent was working as a peon in the appellant bank. He was served with a charge sheet alleging that he had committed acts of

misconduct under the standing orders applicable to him. The misconduct alleged against the respondent was that he had abetted, connived or attempted to commit theft, fraud or dishonesty in connection with the business, property or affairs of the bank. The charge sheet was issued on the basis of a complaint received by the bank from one M.N. Jadhav who alleged that the respondent collected Rs. 6000 from him by promising him employment with the bank. A further amount of Rs. 6000 was collected by the respondent after handing over a fabricated and false appointment letter on the bank's letter head. An inquiry was held against him. The enquiry officer found the respondent guilty of the charges levelled against him. The disciplinary authority concurred with the findings of the enquiry officer and observed that the respondent had misused his official position and the bank's letter head by cheating an innocent person for financial gains. The disciplinary authority was of the view that the bank had lost confidence in the respondent and that there was no mitigating or extenuating circumstances to view the misconduct leniently. Therefore the respondent was dismissed from service on December 17, 1992. The respondent being aggrieved by the dismissal order filed departmental appeals which were also rejected.

4. The respondent filed an application under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946. We may mention that prior to dismissal order being issued to the respondent he had filed a complaint on September 20, 1992 under Item 1(a)(b)(d) and (f) of the Schedule IV of the MRTU and PULP Act, 1971 for obtaining orders against continuation of the domestic inquiry. The Labour Court, however, refused to pass any interim order and, therefore, the complaint was withdrawn on October 15, 1992, after which the dismissal order was passed. The bank relied upon the earlier order passed under MRTU and PULP Act and pleaded that application under Sections 78 and 79 of the Bombay Industrial Relations Act was barred in view of the provisions of Section 59 of the MRTU and PULP Act. This contention of the bank was upheld by the Labour Court and the application was dismissed as not maintainable. The appeal preferred by the respondent against the said order of the Labour Court was set aside, against which writ petition filed by the bank was dismissed on April 27, 1994. Consequently the application under the Bombay Industrial Relations Act was heard on merits.

5. After the pleadings were complete and evidence of the respondent and the enquiry officer was led on the preliminary issue, the Labour Court held that the domestic inquiry conducted against the respondent was fair and proper. The respondent raised a plea that the complaint allegedly made by one Jadhav did not disclose specific time and place of incident he having allegedly received the cash from Jadhav. A grievance was also made that he was not allowed to examine his own witnesses. A further contention was raised that the enquiry officer was biased and, therefore, had asked the respondent 72 questions in the form of cross examination. By this, the enquiry officer, according to the respondent, had sought to fill in the lacunae in cross examination of the respondent by the management representative. The inquiry was also challenged

on the ground that the subsistence allowance of only 50% of the wages was paid during the course of enquiry which vitiated the inquiry. The Labour Court after considering the contentions raised by the respondent came to the conclusion that the enquiry officer could put as many questions as he deemed necessary to elicit the information and to get true facts. The Labour Court was of the view that the inquiry was fair and proper. The Labour Court held that the subsistence allowance had also been paid in accordance with the standing orders and, therefore, the inquiry could not be said to be vitiated. The finding of the Labour Court that the inquiry was fair and proper was challenged in appeal before the Industrial Court. The Industrial Court dismissed the appeal and confirmed the order of the Labour Court that the inquiry held against the respondent was fair and proper.

6. Thereafter the Labour Court decided the other issues regarding perversity of findings of the enquiry officer and punishment imposed on the respondent. The Labour Court was of the view that the findings recorded by the enquiry officer were not perverse and that the misconduct alleged against the respondent had been proved. The Labour Court came to the conclusion that it cannot be said that merely because the bank did not take any action by way of criminal proceedings against the respondent he was not guilty of the misconduct. The Labour Court compared the handwriting of the respondent with the handwriting and numbers found on the fabricated appointment letter and came to the conclusion that the respondent was responsible for fabricating the document. As regards punishment, the Labour Court came to the conclusion that the respondent did not deserve a lesser punishment as the misconduct committed by him was grave. The past service record show that the respondent had been issued memos on various occasions for several acts of misconduct including misplacing cheques. However, the Labour Court granted the respondent Rs.50,000 to enable him to maintain his family in future. The claim of the respondent for reinstatement with continuity of service and back wages was rejected. Being aggrieved by this order, the bank as well as the respondent filed appeals. The Industrial Court quashed and set aside the order of the Labour Court granting ex gratia amount of Rs.50,000 to the respondent. The appeal preferred by the respondent was dismissed.

7. Being aggrieved by the Labour Court and the Industrial Court the respondent workman preferred a writ petition which came to be allowed by the learned single Judge on the sole ground that the respondent was asked 72 questions after the management's representative has finished cross examination of the respondent and it is therefore obvious that the inquiry officer had not acted as a judge but rather as a prosecutor and, therefore, the inquiry is liable to be set aside. The learned single Judge has observed:

"In order to satisfy myself that the inquiry proceedings had been conducted correctly, the record and proceedings was called for. On perusal of the same I find that the submission made by the petitioner regarding fairness of the inquiry is justified. The enquiry officer has in fact put to the petitioner 72 questions after

the management representative had finished cross examining the petitioner. The management's representative had asked the petitioner 53 questions by way of cross examinations. An extensive and searching cross examination was conducted by the management representative. After subjecting the petitioner to this cross examination the enquiry officer questioned the petitioner. I have perused the questions asked by the inquiry officer. The questions do not appear to be questions asked in order to seek clarification or elucidation in the matter. Instead, the questions asked by the inquiry officer seek to plug the loopholes in the cross examination conducted by the management's representative.

It is obvious that the enquiry officer has not acted as a judge but rather as a prosecutor and, therefore, the inquiry must be set aside. As held by this Court in the case of *D.S. Patil v. Raptakos Bret and Co. Ltd.* and Ors. 1986 (53) FLR 39, it is not for the inquiry officer to enter into the arena and to conduct everything himself. The record indicates that the inquiry officer questioned the petitioner extensively and the questions asked of the petitioner can by no stretch of imagination be considered necessary to obtain any clarification from the petitioner. The enquiry officer has certainly stepped into the arena and has exceeded his jurisdiction by violating the principles of natural justice. This certainly is a travesty of natural justice and fair play which the Labour Court has failed to appreciate ..."

8. At the outset we may mention that the respondent was given several opportunities to engage a lawyer or to appoint *amicus curiae* but he refused to be represented by any lawyer. The respondent chose to argue the case in person and placed on record his written submissions in Marathi. We have ourselves carefully considered the entire material alongwith other material circumstances and in our opinion the enquiry proceedings do not suffer from any of the vices alleged on behalf of the respondent. It is true that the enquiry officer has asked questions to the respondent some of which were in the nature of cross examination. However, we are unable to agree with the learned single Judge that the entire proceedings are vitiated merely because excessive questions were asked by the enquiry officer to the workman. It is to be borne in mind that in domestic inquiry the detailed procedure of recording evidence as followed in Courts need not be strictly adhered to. To set aside an inquiry on the ground of violation of principles of natural justice it should be proved that real prejudice was caused to the complainant by the procedure adopted in the inquiry. There is no well segregated rules regarding the principles of natural justice. The principles of natural justice provide a duty to act in a just, fair and reasonable manner. Therefore, after complying with the provisions of the rules, if any inquiry is conducted without causing any prejudice to the charge sheeted employee, there is fair play and if reasonable opportunity is given to the workman it cannot be said that the enquiry was conducted in violation of principles of natural justice.

9. In *K.L. Tripathi v. State Bank of India* Supreme Court held that whether a particular principle of natural justice has been violated or not, has to be judged

in the background of the nature of charges, the nature of the investigation conducted, in the background of relevant rules governing enquiries, if any. The basic concept of fair play in action must depend upon the particular facts, if there be any, between the parties. The Court held that if no prejudice is caused on the facts of the case even absence of opportunity to cross examination will not vitiate the enquiry. Thus the principles of natural justice will depend upon the facts and circumstances of each particular case and there is no set of abstract principles. Similar view was taken by the Supreme Court in *Laxmi Shankar Pandey Vs. Union of India and others*, . It was held that what particular rule of natural justice should apply to a given case depends to a great extent on the facts and circumstances of the case. On the facts and circumstances of the present case we are of opinion that no prejudice has been caused to the workman. In fact the workman got an opportunity to explain the evidence against him which was adduced by the management. Moreover there is no rule that enquiry officer cannot question charge sheeted employee as held by the Supreme Court in *The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, . In that case the company was not represented by any officer for presenting their case. The inquiry officer put questions to the witness and elicited answers from them. Thereafter he allowed the witnesses to be cross examined by the workman. The Court held that there was no violation of principles of natural justice. In the present case also the Labour Court has analysed the nature of the questions and found that no prejudice has been caused. In our opinion respondent has failed to show that the procedure followed led to any prejudice as far as he was concerned.

10. Our attention was also drawn to the decision of a learned single Judge of this Court in *Sukhadeo Vishwanath Garaje Vs. M/s Food Corporation of India and others*, wherein the learned Judge observed as under at pp. 283 & 284:

"13. It is true that the inquiry officer has asked questions to the petitioner and his defence witnesses some of which were in the nature of cross examination. However, it is to be borne in mind that in domestic enquiries the detailed procedure of recording evidence as followed in Courts need not be strictly adhered to. The rules of Evidence Act do not apply to departmental inquiries. Very often there is no separate management representative to conduct enquiry proceedings on behalf of the management and only witnesses are sent to the enquiry officer to depose regarding the incident. In such cases the questions to such witnesses are put by the enquiry officer and not by the management. This procedure does not vitiate the principles of natural justice. If the enquiry officer examined the witnesses without the assistance of the management representative then it does not show that he himself was the prosecutor when the record shows that a bona fide enquiry was held. When the enquiry of witnesses is not objectionable so long as due opportunity is given to the delinquent to cross examine them. It is competent for the enquiry officer to put questions to the witnesses to ascertain the real incident. However, when all the questions to the defence witnesses are put by the inquiry officer and it shows

that the workman had no chance to put questions then the principles of natural justice would be violated. It is the duty of the enquiry officer to elicit truth from witnesses. He is even entitled to cross examine the witnesses for the same and this will not bring any bias. In most of the cases the enquiry officer is a layman and not conversant with the procedure of Court. If the enquiry records show that the enquiry officer in his own way tried to do justice to the delinquent and afforded him all the reasonable opportunities then the enquiry cannot be set aside on the ground that the enquiry officer examined the witnesses without any assistance from the management. The rules regarding questions as applicable in Court are laid down under Sections 141, 142 and 143 of the Indian Evidence Act. It should however, be understood that in departmental enquiries the parties who examine the witnesses are not advocates and they are not conversant with the principles of Evidence Act. Such officers may be very competent in their jobs but may not be able to frame the questions in the manner in which they are framed in the manner in which they are framed in the Courts and, therefore, the ban on putting leading questions cannot be made applicable to such inquiries. The Evidence Act is not applicable to the departmental proceedings and the questions cannot be condemned on the ground that they were leading. It is only when the departmental proceedings reflect bias on the part of the enquiry officer that the enquiry can be said to be vitiated. Having perused the enquiry report in the present case, I am satisfied that it is a balanced report in regard to the evidence and material collected during the enquiry. Hence this contention of Mr. Pakale deserves to be rejected."

11. In the above circumstances it is not possible to sustain the order of the learned single Judge. Accordingly we set aside the order of the learned single Judge and restore the order of the Industrial Court.

12. Before parting with the matter we may mention that during the course of hearing attempts were made for amicable settlement of the claim of the respondent and the bank had agreed to pay a sum of Rs. 1 lac to the respondent towards full and final settlement of the case. The learned counsel of the appellant stated that even if on merits the matter goes against the workman the amount may be handed over to him provided he gives a receipt towards full and final settlement of his claim. The appellant bank shall deposit Rs. 1 lac in this Court within two weeks from today. It would be open to the respondent to withdraw this amount by executing a receipt for full and final settlement of his claim. If the amount is not withdrawn by the respondent within three months, the same may be returned to the appellant bank.

13. Appeal and Civil Application stand disposed of accordingly.