

**(2001) 02 BOM CK 0074**  
**In the Bombay High Court**  
**Case No : O.O.C.J. W.P. No. 2510 of 1996**

Usha Suryakant Guram

APPELLANT

Vs

Lyka Labs Limited and Another

RESPONDENT

---

**Date of Decision :** 21-02-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2001) 3 ALLMR 430 : (2001) 4 BomCR 297 : (2001) 91 FLR 1227 : (2002) 4 LLJ 971

**Hon'ble Judges :** R.J. Kochar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

R.J. Kochar, J.—The Petitioner was in employment of the Respondent company in its Packing Department from 1977. She was dismissed from employment by an Order dated February 3, 1992. Being aggrieved by the Order of dismissal, she raised an Industrial Dispute challenging the legality and validity of the Order of dismissal and she prayed for relief of reinstatement with full back wages and continuity of service. Her Industrial Dispute was referred for adjudication to the Labour Court u/s 10(1) of the Industrial Disputes Act, 1947. Both the parties filed their pleadings and documents and adduced their evidence before the Labour Court.

2. It appears from the pleadings that the Petitioner had not challenged the fairness and propriety of the domestic enquiry held in the charges levelled against her by the Respondent company. The Labour Court therefore examined the findings recorded by the enquiry officer and held against the Petitioner that the findings of the enquiry officer were not perverse. He has also held that the punishment awarded by the Respondent Company was not harsh and disproportionate. The learned Member of the Labour Court has, therefore, denied the relief of reinstatement with full back wages and continuity of service to the Petitioner-workman by its Award dated July 15, 1996.

3. The Petitioner has filed the present Petition to challenge the said award under Article 226 of the Constitution of India.

4. It appears that on December 20, 1990 while the Petitioner was on duty there appears to have taken place an incident of quarrel between the Petitioner and her co-workman. It appears that as a result of the quarrel the Petitioner complained that she was pushed and was injured. It further appears that the Petitioner complained to the Police Station against the co-workman Shri Jangam, who subsequently apologized in the Police Station for the incident which took place on the premises of the Company. It further appears that the Petitioner was served with a Show Cause Notice and charge sheet dated December 28, 1990 and January 11, 1991 respectively whereby it was alleged against her that she had picked up quarrel with her co-worker Ms. Sunanda Lamge without any rhyme or reason and on a flimsy ground. It was also levelled against the Petitioner that she started abusing her in most filthy language and that she resorted to unruly behaviour and that she threatened Ms. Sunanda Lamge with dire consequences. By a second charge-sheet it was alleged against her that she had refused to accept the communication and that she was guilty of misconduct under Standing Orders 24(k), 24(x) and 24(1). She was suspended pending enquiry. The Petitioner gave her reply to the charge-sheet denying the charges levelled against her. She denied the charge of quarrel with Ms. Lamge and she also denied the charge that she had refused to accept any communication. Not satisfied with her explanation the Respondent Company proceeded to hold a domestic enquiry in the charges levelled against the Petitioner.

5. The Petitioner had participated in the said enquiry. On the basis of the evidence and material on record the enquiry officer recorded his finding that the delinquent workman was guilty of the charges levelled against her. The Respondent Company acting on the basis of the enquiry officer's report passed an order of dismissal dated February 3, 1992 dismissing her from employment. The Petitioner thereafter raised the present Industrial dispute giving challenge to the legality and propriety of the order of dismissal. The State Government referred the said dispute for adjudication to the Labour Court u/s 10(1) read with Section 12(5) of the Industrial Disputes Act.

6. Both the parties completed their pleadings and filed their documents and adduced oral evidence before the Labour Court. It appears that there was no challenge to the fairness and propriety of the procedural part of the domestic enquiry. To be fair in the conduct of the enquiry the delinquent workman Was allowed to be defended by an advocate and that she was given sufficient opportunity to defend herself in the enquiry. Even then the Labour Court has considered the said aspect and has held positively that there was no violation of the principles of natural justice, and therefore, the Labour Court decided the question of findings and proportionately of the punishment. Both these issues were answered by the Labour Court against the Petitioner. The Labour Court has come to its conclusion that the findings of the enquiry officer were not perverse.

He has also recorded that the punishment of dismissal awarded by the Respondent Company was not harsh and disproportionate and therefore, he denied the relief of reinstatement with continuity of service and full back wages to the petitioner. The Petitioner is aggrieved by the aforesaid award of the Labour Court and has challenged it under Article 226 of the Constitution of India.

7. Shri Kadam, the learned advocate for the Petitioner, submitted that the findings of the enquiry officer were perverse and did not flow from the evidence on record. He also contended that the Petitioner was not fairly treated and was discriminated. According to Shri Kadam, admittedly there was a quarrel between two co-workmen i. e. the Petitioner and Ms. Sunanda Lamge in the department. Shri Kadam has submitted that Ms. Lamge was equally responsible for the quarrel and, that no action was taken against Ms. Lamge while the Petitioner was dismissed from employment. Shri Kadam has pointed out from the evidence on record in the enquiry that both were quarrelling in the department. He had drawn my attention to the relevant portion of the evidence to indicate that both the workmen were quarrelling with each other. Shri Nerlekar, the learned advocate for the Respondent Company however pointed out from the evidence of Ms. Lamge that the Petitioner was very aggressive and was using abusive language against Ms. Lamge and that the Petitioner also called her the most heinous word which can never be used against a lady, or a good woman, i.e. "RAND". He also pointed out that according to Ms. Lamge and other witnesses present the Petitioner was shouting and using abusive and filthy language against Ms. Lamge. From the evidence of the another witness Shri Pandurang Jangam it appears that he tried to pacify both the workers but the petitioner was adamant and was not in a mood to heed to the intervention of Shri Jangam. It is also pointed out that the Petitioner used abusive language against him also and that as a decent man he could not repeat those words. He has also averred that even after the incident when he was passing by she hurled abusive language against him and threatened him with dire consequences. She also went to the extent of challenging him by saying that she would come to his house and bury him alive. It further appears that when Shri Sakpal the Supervisor sent by Shri Desai, Supervisor tried to pacify the Petitioner but the Petitioner was not in a mood to keep quiet. It is also pointed out that the Petitioner was in the habit of quarrelling with a number of workmen for one or the other reason. The learned Labour Court has considered the evidence on record witness-wise. It appears from the award that the Labour Court has gone through the entire evidence recorded by the Enquiry Officer. The learned Labour Court has disbelieved the Petitioner's version and has also criticised her for suppressing material facts and that she did not come with clean hands. He has recorded reasons minutely to come to his conclusion that findings were not perverse and that they were based on evidence and were flowing from the material on record. The Labour Court has further considered the case law on the question of punishment. The Labour Court has held that the act of misconduct alleged against the Petitioner was squarely proved before the enquiry officer, and that his findings are legal, fair and proper.

The Labour Court has further considered a fact that almost all the workmen employed in the factory had given a representation to the Management that the Petitioner was in the habit of quarrelling with every one for one or the other reason and that it was not possible for them to work peacefully in the factory. It is also recorded by the Labour Court that in a letter dated January 30, 1992 it was recorded that the Petitioner was in the habit of quarrelling with the other workmen since last two years and that she was using abusive language even against the Union and threatened them. The Union has also advised her not to quarrel with others. It further appears that she was giving a threat that she would close the company and that all the workers would go home. On this material the Labour Court has concluded that the Petitioner was in the habit of quarrelling with the workmen and using abusive language to others and she was picking up quarrels. According to me, the findings recorded by the Labour Court are based on material and cannot be faulted with. 1 The Labour Court has refused to exercise its jurisdiction u/s 11-A of the Act to interfere with "the punishment of dismissal imposed by the respondent Company. He has recorded his reasons for not doing so. It is very pertinent to note that a representation dated January 30, 1992 made by all the 85 workmen against the Petitioner wherein they have complained against her and have expressed their inability to work with her. In these circumstances even the management of the company found itself in difficulty to retain the petitioner- workman. There is no reason why all the 85 workmen had gone against her. In the past also she had given written apology, as there were number of quarrels to her credit.

8. In the aforesaid circumstances it will not be in the interest of the industry to interfere with the order of punishment passed by the Respondent Company and confirmed by the Labour-Court. The Labour Court's Award is a full-fledged consideration of the entire evidence recorded by the enquiry officer. He has independently assessed the entire evidence and come to his own conclusion that the misconduct levelled against the Petitioner was established. I therefore, cannot interfere with the impugned award of the Labour Court under Article 226 of the Constitution of India. The Petition therefore is dismissed. Rule is discharged. No order as to costs.

9. I may however, mention that at a time of hearing of the Petition I had tried to bring about an amicable settlement between the parties on the monetary basis. It was pointed out by Shri Nerlekar that the department in which the petitioner was working was closed. He had also pointed out that the company had floated voluntary retirement scheme. On my suggestion made to the learned advocate to extend the Petitioner the benefits of voluntary retirement scheme, the learned advocate after getting instructions fairly offered to pay the petitioner a total amount of Rs. 1,50,000/- as compensation in full and final settlement. Shri Kadam, the learned advocate for the Petitioner after taking instructions from the Petitioner who was present in the Court insisted that the Petitioner would not accept any amount less than Rs. 2 lakhs. Shri Nerlekar was not able to increase the offer of Rs. 1,50,000/- as that was the limit. Unfortunately the dispute could

not be settled on the monetary basis in the aforesaid circumstances.