
(2010) 01 BOM CK 0009

In the Bombay High Court

Case No : O.O.C.J. Writ Petition No. 2345 of 2009

Vishwanath A. Khatal

APPELLANT

Vs

Voltas Ltd.

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28, 44

Citation : (2010) 125 FLR 602

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

**Advocate : Navneet Chahal, for the Appellant; Bharat Goyal and Madhavi
Deshpande, for the Respondent**

Final Decision : Dismissed

Judgement

S.J. Kathawalla, J.—By this writ petition, the petitioner has impugned the following four judgments/orders, all passed against the petitioner by the Sixth Labour Court, Mumbai and the Industrial Court, Mumbai in Revision:

- (i) Judgment of Sixth Labour Court, Mumbai, dated 1st August, 2006 in Complaint (ULP) No. 130 of 2003 (Exhibit "G" to the petition),
- (ii) Judgment of Industrial Court, Mumbai, dated 26th December, 2006 in Revision Application (ULP) No. 216 of 2006 (Exhibit "H" to the petition),
- (iii) judgment of Sixth Labour Court, Mumbai, dated 2nd June/2008 (Exhibit "I" to the petition),
- (iv) Judgment of Industrial Court, Mumbai, dated 23rd January, 2009 in Revision Application (ULP) No. 94 of 2008 (Exhibit "J" to the petition).

The petitioner was in employment with the respondent company as a watchman. Whilst on duty on 17/18th March, 2001 at 2.00 a.m., at the respondent's link

gate, the petitioner misbehaved, became violent and mishandled his superior Mr. Nair. The petitioner was charge-sheeted under the various clauses of the applicable Certified Standing Orders which includes willful insubordination or disobedience, commission of act subversive to discipline and riotous and disorderly behaviour.

2. The petitioner, before he was dismissed by the respondent, filed a complaint being complaint (ULP) No. 130 of 2003 before the Sixth Labour Court u/s 28 read with Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU PULP Act). An interim order directing the respondent not to terminate the services of the petitioner except by following due process of law was passed by the Labour Court, Mumbai. The said complaint (ULP) No. 130 of 2003 was thereafter finally heard on the following two preliminary issues:

(1) Whether the enquiry conducted against the complainant was fair, proper and legal.

(2) Whether the findings of the Enquiry Officer are perverse and biased.

3. By its order dated 1st August, 2006, the Labour Court held that the domestic enquiry was fair and proper and that the findings were not perverse. The petitioner challenged the said order passed by the Labour Court on the above two preliminary issues, by filing a revision application being (ULP) No. 216 of 2006 before the Industrial Court, Mumbai. The Industrial Court by its order dated 26th December, 2006 held that by No. stretch of imagination, it can be said qua the enquiry that there was breach of principles of natural justice or that the findings were perverse. The petitioner thereafter did not challenge the order of the Industrial Court, Mumbai, any further and proceeded with the hearing before the Sixth Labour Court, Mumbai, on remaining issues. The Labour Court vide its judgment and order dated 2nd June, 2008 dismissed the complaint of the petitioner on the ground that he sees no reason to interfere in the order of dismissal and the punishment awarded to the petitioner was not shockingly disproportionate. The petitioner challenged the said order of the Sixth Labour Court dated 2nd June, 2008 before the Industrial Court by filing revision application (ULP) No. 94 of 2008 u/s 44 of the MRTU & PULP Act. The Industrial Court by its order dated 23rd January, 2009 dismissed the revision application and upheld the order of the Labour Court by holding that the order of the Labour Court did not suffer from any error and was not perverse.

4. Though the petitioner had impugned the order of the Sixth Labour Court dated 1st August, 2006 which pertained to the two preliminary issues, before the Industrial Court, Mumbai and the said order passed by the Labour Court was upheld by the Industrial Court by its order dated 26th December, 2006 from which the petitioner did not prefer any further action, the petitioner has once again in this writ petition inter alia impugned the said two orders dated 1st August, 2006 and 26th December, 2006.

5. The learned Advocate appearing for the petitioner has submitted before this Court that the petitioner is desirous of challenging the aforestated four orders passed against the petitioner by the Labour Court as well as the Industrial Court on the following six grounds:

(i) The petitioner at the time of conduct of the said enquiry was not allowed to be represented by an Advocate before the Enquiry Officer and the petitioner was to be represented by a Mechanic,

(ii) The enquiry was conducted in haste and the petitioner was not given a proper opportunity to defend himself.

(iii) That the said Mr. Nair who had initiated the complaint was not brought as a witness in the enquiry,

(iv) The dismissal order was signed by one Mr. S.K. Sharan, the General Manager who was not authorised to sign the said dismissal order,

(v) That though Mr. Nair had alleged, that the petitioner had manhandled/assaulted him, in fact, it was Mr. Nair who had assaulted the petitioner and the medical reports to this effect were not taken into consideration by any of the authorities.

(vi) The Labour Court as well as the Industrial Court failed to appreciate that the punishment awarded to the petitioner is shockingly disproportionate and the petitioner is victimised.

6. The contention of the petitioner that he was not allowed to be represented by an Advocate before the Enquiry Officer has been dealt with in the orders dated 1st August, 2006 passed by the Labour Court and by the Industrial Court, in revision, in its order dated 26th December, 2006. By the said orders, it is recorded that it is an undisputed fact that Certified Standing Orders were applicable to the petitioner. Rule 23(4) of the Certified Standing Orders provides that the workman shall be given an opportunity to answer the charges and permitted to be defended by a workman working in the same establishment as himself. Thus, the said rule is binding on the petitioner. The concerned rule did not confer right on the petitioner to be represented by an Advocate in the enquiry. Therefore, there was no reason to allow the petitioner to be represented by an Advocate in the enquiry. It is further recorded that the petitioner was claiming that he is entitled to appoint an Advocate and that the fees of the Advocate should be borne by the Company for which there is no provision. In any event, the petitioner had engaged Mr. S.P. Chavan, Vice President of the All India Voltas Employees Union, to represent the case of the petitioner.

7. The allegation that the enquiry was conducted in haste and the petitioner was not given a proper opportunity to defend himself is again dealt with in the orders dated 1st August, 2006 and 26th December, 2006 passed by the Sixth Labour Court, Mumbai and the Industrial Court, Mumbai, respectively. It is recorded in the order dated 1st August, 2006 that the petitioner himself has admitted in his

cross-examination as follows:

It is true that suspension letter was issued to me on 18.3.2001. Thereafter, charge sheet was issued to me on 22.3.2001. It is true that I had given reply to charge sheet on 11.4.2001.

Thereafter, enquiry proceeding was continued against me. I had taken part in the enquiry. I had appointed S.P. Chavan as my representative in the enquiry. He was Vice President of All India Voltas Employees Federation Company. Company had examined two witnesses namely, P.P. Jaiswal and R.W. Dhandekar. My representative had cross-examined these witnesses fully. Thereafter I had tendered my oral evidence. M.R. cross-examined me. I had examined two witnesses, namely A.S. Haldhar and B.S. Salunkhe on my behalf. M.R. cross-examined them. I had taken part in the enquiry papers. I used to make endorsement accordingly. It is true that, Enquiry Officer explained me the procedure of enquiry. Enquiry Officer used to furnish the documents to me whenever they filed in the proceedings.

Enquiry Officer had submitted report with findings on 17.2.2003. I had received copy of it alongwith company's letter dated 14.3.2003. It is true that I was asked to give explanation on report and findings by the said letter. I had submitted my written explanation on 14.3.2003.

It is also recorded in the order dated 1st August, 2006 that the enquiry was posted on 27th March, 2001. However since the petitioner was absent on that day, the Enquiry Officer observed:

I find that, charge sheet/notice of enquiry has been dispatched under Speed Post U.C.P on 23.3.2001. In between there was Sunday and a Public Holiday as such the C.S.E. not receiving the charge-sheet/notice of Enquiry cannot be ruled out. Hence in the intent (sic interest) of natural justice, I should give a reasonable opportunity so that the C.S.E. has the notice of the same.

Thereafter, enquiry was posted to 12th April 2001 after which the petitioner participated in the enquiry as set out earlier in his own words.

8. As set out in paragraph 15 of the order dated 1st August, 2006 though an opportunity was given to the petitioner to produce his witness one Mr. Sharma, the petitioner failed to produce him before the Enquiry Officer on 16th December, 2002. The Enquiry Officer was therefore, constrained to conclude the enquiry. However, the Enquiry Officer reopened the enquiry on 15th January, 2003 giving further opportunity to the petitioner since the petitioner and his D.R. were absent on that day, the enquiry was adjourned to 4th February, 2003. However, the petitioner failed to keep Mr. Sharma present even on 4th February, 2003. The Labour Court by its order dated 1st August, 2006 has therefore, rejected the contentions of the petitioner that the principle of natural justice is not followed in the enquiry or that the Enquiry Officer has acted in haste or thus the findings of the Enquiry Officer are perverse or biased. The said findings are upheld by the

Industrial Court in its judgment dated 22nd December, 2006.

9. As regards the contention that Mr. Nair who had initiated the complaint was not brought as a witness in the enquiry, it is repeatedly recorded in the impugned orders and though the company had sent letters dated 20th August, 2001 and 13th September, 2001, Mr. Nair who had left the employment of the respondent did not attend the enquiry. However, Mr. Jaiswal who was admittedly present at the time of the incident on 17th March, 2001 was examined by the respondent and cross-examined on behalf of the petitioner. Mr. Jaiswal has deposed that the petitioner had assaulted Mr. Nair and had become violent and rushed towards Mr. Nair and manhandled him. He pulled Mr. Nair's T-shirt and gold chain and threatened him with dire consequences.

10. As regards the contention that the dismissal order was signed by Mr. Sharan, General Manager, without any authority, it is held inter alia in the order dated 23rd January, 2009 passed by the Industrial Court, Mumbai, that the said contention is without substance. Mr. Sharan was the General Manager and he had power of attorney in his favour. It was also held that the applicant has himself deposed that he does not know whether Mr. Sharan, the General Manager of the respondent was having power to issue the dismissal order. It is, therefore, held that on the said ground, the dismissal cannot be questioned.

11. As regards the contention of the petitioner that in fact it was Mr. Nair who had assaulted the petitioner, and this was borne out of medical reports which were not taken into consideration, apart from the fact that in the order dated 1st August, 2006, it is recorded that the said document were not even identified by the petitioner in the enquiry, it is not in dispute that none of the witnesses produced by the petitioner have deposed that Mr. Nair had assaulted the petitioner. In fact, Mr. Jaiswal who admittedly was present at the time of the incident has deposed that the petitioner had assaulted Mr. Nair and had become violent and rushed towards Mr. Nair and manhandled him. He pulled Mr. Nair's T-shirt and gold chain and threatened him with dire consequences. Nowhere in the medical reports, the name of Mr. Nair is mentioned. No finding can be adduced from the medical report that Mr. Nair had assaulted the petitioner. The medical reports under the above circumstances will be of no assistance to the petitioner.

12. As regards the contention that the Labour Court as well as the Industrial Court failed to appreciate that the punishment awarded to the petitioner is shockingly disproportionate and the petitioner is victimised. The Labour Court, Mumbai, in its order dated 2nd June, 2008 after considering the evidence, the submissions advanced and the case law cited by the learned Advocates for the parties, has opined that it is not just and desirable to reinstate the petitioner. The Management by imposing the punishment of dismissal has not committed any illegality and the Court (Labour Court) finds no cogent reasons on record to interfere with the order of dismissal. The Industrial Court again in its order dated 23rd January, 2009 has infer alia held that the dismissal for such acts of misconduct cannot be said to be victimisation or an act not in good faith nor can

the dismissal be said to be for patently false reasons. The misconduct is not minor or technical. The action of dismissal is therefore, justifiable and taken after following due process of law. Perusal of the order does not show any perversity or patent error.

13. I have heard the learned Advocates appearing for the parties. I have perused all the four orders impugned in the present petition/including the plethora of case law cited before the Labour Court as well as the Industrial Court, Mumbai. I am of the view that all the four orders have after discussing the facts as well as case law, by giving cogent reasons correctly held that the principles of natural justice have been followed by the Enquiry Officer. The enquiry cannot be faulted on any ground and the findings are in no manner perverse. The punishment of dismissal is also not disproportionate to the offence and the petitioner is not in any manner victimised. The submissions made on behalf of the petitioners are baseless and untenable. No case is made out for interference with the said orders under Article 226 of the Constitution of India.

Writ petition is accordingly, dismissed. However, there will be no order as to costs.