

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION No. 2502 OF 2002

Shri Bal s/o. Gangadhar Modak .. Petitioner
(since deceased through LRs.)

1. Smt. Pratibha w/o. Balwant Modak,
Age. 70 years, Occ. Household,
R/o. Flat No.9, Amway Akshay Aptt.,
Rajnagar, Station Road,
Aurangabad.
2. Sow. Ranjana w/o. Sunil Lele,
Age. 47 years, Occ. Service,
R/o. As above.
3. Sow. Bhagyashree Shriram Kunte,
Age. 44 years, Occ. Service,
R/o. Dayadhan Apartment, Gokhale Park,
Chinchwad, Pune.
4. Sow. Supriya Sadanand Sapre,
Age. 38 years, Occ. Household,
R/o. Shubham Apartment, Juna Jakatnaka,
Chinchwad, Pune.

Versus

1. M/s. Godavari Garments Ltd., .. Respondents
Vikas Bhavan, Dr. Rajendra Prasad
Road, Aurangabad.
2. Marathwada Development Corporation Ltd.,
Vikas Bhavan, Dr. Rajendra Prasad Road,
Aurangabad.

3. The Leather Industries Corporation
of Marathwada, Vikas Bhavan,
Dr. Rajendra Prasad Road,
Aurangabad.
4. The State of Maharashtra,
Through its Secretary,
Industries, Engery and Labour Deptt.,
Mantralaya, Bombay – 400 032.

Mr. P.G. Deshmukh h/f. Mr. H.A. Joshi, advocate for the petitioner.

Mr. K.J. Ghute Patil, Advocate for respondent/State.

**CORAM : A.V. NIRGUDE &
V.K. JADHAV, JJ.**

DATED : 08.01.2015

ORAL JUDGMENT [PER : A.V. NIRGUDE, J.] :-

1. This petition has checkered history, which can be narrated as under :-

2. Original petitioner – Bal, was working under the State Government. In 1979 he sought voluntary retirement and then joined respondent company as a Chief Accountant and Administrative Officer. The respondents suspended and charge-sheeted him on 02.04.1985. The respondents appointed Enquiry Officer to conduct enquiry into the charges levelled against the petitioner. He examined witnesses etc. and submitted a report on 18.09.1988. The Enquiry Officer, however, held that most of the charges

levelled against the petitioner were not proved except Charge No.2 & 3 partly. The Enquiry Officer held that the petitioner was not responsible for not sending the selectors for procurements in few cases. He held that the petitioner was guilty of misconduct of making payments without obtaining in some cases signatures of his co-signatory. The report was sent to the Disciplinary Authority. The Disciplinary Authority, however, without hearing the petitioner stated that they did not fully agree with the findings of the Enquiry Officer for coming to such conclusion. They recorded some reasons. A Show Cause Notice was given to the petitioner as to why he should not be dismissed. The petitioner submitted a detailed reply, but the Disciplinary Authority did not accept his defence and dismissed him.

3. The petitioner came to this Court by filing Writ Petition No. 2212 of 1989. The Division Bench of this Court held that after Show Cause Notice was given the petitioner, the disciplinary authority ought to have given personal hearing to the petitioner. It is, thereafter, the Disciplinary Authority could have arrived at his own conclusion by recording findings. Since this was not done in this case, the case was remanded back to the Disciplinary Authority. The matter went back to the Disciplinary Authority and on 5th December, 2001,

personal hearing was afforded to the petitioner, but the Disciplinary Authority in following words confirmed their earlier order.

"After considering your Written Reply dated 16th January, 1989 and your oral submissions made before the Board of Directors on 2nd November, 2001, the Board has decided to confirm the Order dated 7th April, 1989, through which you were dismissed from the services of M/s. Godavari Garments Limited. However, by virtue of the Interim Order dated 7th September, 1989, passed by the Hon'ble High Court of Judicature at Bombay (Bench at Aurangabad) in the abovesaid Writ Petition No.2212/1989, you are hereby allowed to retain the salary and allowance paid to you, as per the said order."

4. Learned Counsel for the petitioner this time rightly pointed out that what was contemplated by the judgment of this Court in para No.7 in Writ Petition No. 2212 of 2007, has not been followed in its true letter and spirit. The direction of the Court was very clear. The Court clearly directed that the Disciplinary Committee ought to hear the petitioner and thereafter must record findings with reasons as to why such findings are arrived at. The reasons annexed to the Show Cause Notice on 21.12.1988 are not relevant at this time. Those reasons were recorded without affording opportunity of hearing to the petitioner. In a way the reasons

recorded then were ex-parte. The disciplinary authority ought to have recorded new reasons in support of their conclusion. In view of this, we have no hesitation to set aside the order of dismissal dated 5th December, 2001. The case is remanded back to the Disciplinary Authority/Committee, who shall re-hear the case giving opportunity of personal hearing to the representatives or legal practitioner of the petitioner and then record reasons for taking their decision. The petitioner's representative is also permitted to give representation regarding dues payable to the petitioner during his service from 07.04.1989 till 05.12.2001. The entire exercise shall be completed within three months from today.

5. The writ petition is disposed of in above terms. Rule made absolute accordingly.

[V.K. JADHAV, J.]

[A.V. NIRGUDE, J.]