

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1538 OF 1994

The Chief Executive Officer,
Zilla Parishad, Jalgaon.

..Petitioner

Versus

Maharu Kautik Patil
(deceased, through L.Rs.):-

1A. Rajendra Maharu Patil
Age 35 years,

1B. Sanjay Maharu Patil
Age 30 years,

1C. Vijay Maharu Patil
Age 3 years,

1D. Shrikant Maharu Patil
Age 19 years,

1E. Mrs. Latabai Subhash Patil
age 40 years,

1F. Kalpana Gangadhar Patil
age 32 years,

1G. Mrs. Swapana Sarjerao Patil
Age 28 years,

All residents of village
Shirsasgaon, Tq. Chalisgaon,
District Jalgaon.

..Respondents

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Advocate for Petitioner : Shri Vijay Sharma
Advocate for Respondent 1A to 1G : Shri B.R.Warma

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CORAM : RAVINDRA V. GHUGE, J.

Dated: June 25, 2015

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ORAL JUDGMENT:-

1. By this petitioner, the petitioner challenges the judgment and award dated 2.8.1993, delivered by the Labour Court, Jalgaon in Reference (IDA) No. 3 of 1985.

2. The petitioner has, primarily, prayed for the following relief in this petition:-

“(A) That the record and proceedings of the judgment and award dated 2.8.1993 passed by Presiding Officer, Labour Court, Jalgaon in Reference (IDA) No. 3/85 be called for and after examining the legality, validity and propriety thereof, the judgment and order dated 2.8.1993 passed by Presiding Officer, Labour Court, Jalgaon in Reference (IDA) No. 3/85 and annexed to the petition at Exh.A hereto be quashed and set aside and the claim statement made under reference to the Labour Court, Jalgaon by the respondent be dismissed with cost;”

3. The Labour Court, by the impugned award has ordered in Clause (i), (ii) and (iii) as under:-

“(i) The 1st party employer by name the Chief Executive Officer, Zilla Parishad, Jalgaon, District Jalgaon is hereby directed to pay to the 2nd Party workman by name Maharu Kautik Patil a sum of Rs.50,000/- in lump-sum by way of compensation within a month

from the date of passing of this order.

(ii) The 1st party employer is further directed to pay Rs.1,000/- towards the costs of this litigation to the 2nd Party workman.

(iii) No order as to costs. Award be drawn accordingly.”

4. By order dated 15.7.1994, this Court admitted the matter and granted interim relief in terms of prayer clause (B), by which, the impugned judgment and award was stayed.

5. Subsequently, by order dated 24.9.1998, passed by this Court in Civil Application No. 5496 of 1998, the petitioner was directed to deposit an amount of Rs.50,000/- in this Court. It was further observed that the amount will not be withdrawn by the respondent - employee without orders from this Court.

6. By order dated 23.2.2000, delivered in Civil Application No.2079 of 1999, the respondent was allowed to withdraw the amount deposited by furnishing security to the satisfaction of the Additional Registrar of this Court. It is informed that the respondent has withdrawn the whole amount.

7. The respondent has passed away and his L. Rs. are on record.

8. Shri Sharma, learned Advocate for the petitioner has strenuously canvassed that the impugned award deserves to be quashed and set aside

since a proper domestic enquiry was conducted against the deceased - respondent and he was dismissed from service by way of punishment on 12.8.1980. The Labour Court has dis-regarded the fact that an enquiry was conducted and the charges were proved. The deceased respondent was held guilty of mis-appropriation. Notwithstanding whether the amount of mis-appropriation was meager or large, such an employee cannot be retained in employment. So also, the grant of compensation of Rs.50,000/- in 1993 can be said to be a huge compensation awarded to the deceased respondent purely out of misplaced sympathy and leniency shown by the Labour Court. He, therefore, prays that the petition be allowed.

9. Shri Warma, learned Advocate on behalf of the legal heirs of the deceased respondent submits that though the issues were cast by the Labour Court in the light of the pleadings of the rival sides, the domestic enquiry conducted by the petitioner was given up. As such, the case proceeded on the premises of there being no enquiry in the eyes of law.

10. He, therefore, submits that the employer could have conducted a *de novo* enquiry before the Court, if it desired to prove the charges against the deceased - respondent. Since, the petitioner did not lead any evidence, it ought to be concluded that the charges are not proved against the respondent. He, however, clarifies that the deceased respondent did not choose to challenge the impugned judgment and award on this count and, therefore, the impugned award to the extent of the respondent will tantamount to have been accepted by him.

11. He further submits that the respondent has passed away long ago. Money has been withdrawn by the deceased. None of the legal heirs had utilized the said money. Therefore, it would be too harsh to recover the said amount from the legal heirs of the deceased in the event this Court comes to a conclusion that the petition deserves to be allowed.

12. I have considered the submissions of both the learned Advocates, who have taken me through the petition paper book.

13. A peculiar situation emerges from the record. The petitioner, through its Written Statement, with preliminary objections filed before the Labour Court in Reference (IDA) No. 3 of 1985 has correctly reserved its right to prove the charges against the respondent before the Labour Court in the event the Labour Court concluded that the enquiry deserves to be set aside.

14. In this backdrop, it is necessary to refer to the issues cast by the Labour Court on 11.7.1986, which are as under:-

Sr.	Issues	Findings
1.	Whether the domestic enquiry held was not fair?	Deleted.
2.	Whether the finding is perverse ?	Deleted.

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| 3. Whether Party No.1 is not an Industry and Party No.2 is not a workman? | No. |
| 4. Whether the reference is not tenable? | No. |
| 5. Whether approach notice was necessary? | No. |
| 6. Whether the reference is barred by limitation ? | No. |
| 7. Whether the punishment is shockingly disproportionate? | Yes. |
| 8. In the alternative, does Party No.1 prove that Party No.2 is guilty of mis-appropriation? | Partly. |
| 9. Whether Party No.2 is entitled to reinstatement? | No. |
| 10. Whether Party No.2 is entitled to back wages? | No. |
| 11. What order? | As per the order below. |

15. Though an order was passed by the Labour Court on 11.7.1986, that “Issue Nos.1 to 7 would be tried as preliminary issues”, I am not required to go into the said aspect, despite the fact that the issue No.7 could not have been dealt with as a preliminary issue since the said issue is to be dealt with at the final stage in the proceedings in the event of the enquiry being upheld or in the event of the charges being proved in a *de novo* enquiry.

16. What has surprised me is that the Labour Court has passed an order on 7.12.1987 as follows:-

“ In view of Exhibit 48, issue Nos.1 and 2 are deleted as party No.1

is not relying on the enquiry. In view of Exhibit 49, all the issues would be tried together.”

17. It appears from paragraph No.20 of the impugned judgment that the petitioner - employer had led evidence. Based on the same, the Labour Court has come to a conclusion that the charge of mis-appropriation is proved against the workman. In paragraph No.21, the Labour Court has held that, *“So a lenient view can be taken by inflicting lesser punishment in place of harsh and extreme punishment of dismissal from the services. Accordingly, my finding is that the punishment of dismissal from the services is shockingly dis-proportionate too.”*

18. In the above backdrop, the Labour Court has concluded in paragraph No.23, as under:-

“ In this circumstance, when the serious allegation of mis-conduct of mis-appropriation of the Government revenue alleged to have been committed by the delinquent employee and when his employer has proved it, in these circumstances, I am of that view that this type of tendency should not be remained in service or would not be allowed to remain in service if he is allowed to be reinstated at this juncture, the other employees of the Zilla Parishad under whose control this workman was working will take undue advantage of such situation and there will be bad tendency and practice will follow if this type of tendency is not curled (curbed). Accordingly, in my

opinion, it would be equitable as well as to meet the ends of justice that the second party workman is not allowed to be reinstated.”

19. Despite the above, the Labour Court has awarded Rs.50,000/- as lump sum compensation to the deceased respondent and has also imposed costs of Rs.1,000/- on the petitioner employer.

20. It is trite law that once the charges of grave and serious nature are held to be proved against an employee, no leniency could be shown towards him. Mis-placed sympathy in such circumstances is an anathema. In view of the charge of mis-appropriation, having been proved in the Labour Court, I am unable to reconcile the conclusions drawn by the Labour Court in paragraph No.21 (reproduced portion) and paragraph No.23. The impugned judgment, therefore, deserves to be quashed and set aside.

19. However, the peculiar situation is that the amount of Rs.50,000/- has already been withdrawn by the deceased - respondent. The legal heirs on record are pursuing this litigation, purely on the basis of being the legal representatives of the deceased. It is in these fortuitous circumstances, that I am not inclined to direct the L. Rs. of the deceased to repay the entire amount withdrawn by the deceased from this Court.

22. In the light of the above, this petition is partly allowed. The impugned judgment and award, dated 2.8.1993, delivered in Reference (IDA) No.3 of 1985 is quashed and set aside. Reference (IDA) No.3 of 1985

stands dismissed. There shall be no order to recover the amount of Rs.50,000/- from the legal heirs / L.Rs. of the deceased.

23. Rule is, accordingly, made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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