

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4326 OF 2015
AND
CIVIL APPLICATION NO.6893 OF 2015

1. Loni Vyankanath Vividh Karyakari
Seva Sahakari Society Ltd.
Loni-Vyankanath,
At and post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar,
Through its Chairman.

2. Loni Vyankanath Vividh Karyakari
Seva Sahakari Society Ltd.
Loni-Vyankanath,
At and post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar,
Through its Secretary.

..Petitioners

Versus

Dhanraj Dada Kakde,
Age 32 years, Occ. Nil,
At and post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar.

..Respondent

WITH
WRIT PETITION NO.4327/2015
AND
CIVIL APPLICATION NO.6894 OF 2015

1. Loni Vyankanath Vividh Karyakari
Seva Sahakari Society Ltd.
Loni-Vyankanath,
At and post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar,
Through its Chairman.

2. Loni Vyankanath Vividh Karyakari
Seva Sahakari Society Ltd.
Loni-Vyankanath,
At and post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar,
Through its Secretary.

..Petitioners

Versus

Sachin Narayan Khatate
Age 39 years, Occ. Nil,
At and post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar.

..Respondent

WITH
WRIT PETITION NO.4328/2015
AND
CIVIL APPLICATION NO.6895 OF 2015

1. Loni Vyankanath Vividh Karyakari
Seva Sahakari Society Ltd.
Loni-Vyankanath,
At and post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar,
Through its Chairman.

2. Loni Vyankanath Vividh Karyakari
Seva Sahakari Society Ltd.
Loni-Vyankanath,
At and post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar,
Through its Secretary.

..Petitioners

Versus

Deelip Dattatraya Gade
Age 39 years, Occ. Nil,
At Mahadevwadi, post Loni-Vyankanath,
Tq. Shrigonda, Dist. Ahmednagar.

..Respondent

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Advocate for Petitioners : Shri Latange V.P.
Advocate for Respondents : Shri Barde P.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 30, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners seek to challenge the judgment and order dated 17.12.2013, delivered by the Labour Court in Complaint (ULP) Nos. 20, 19 and 18 of 2011, respectively in these petitions. Similarly, the petitioners seek to challenge the judgment dated 21.1.2015, delivered by the Industrial Court in Revision (ULP) No. 10, 11 and 12 of 2014, respectively.

5. The common factors, emerging from these three petitions, in the submissions of Shri Latange, learned Advocate are as follows:-

(a) All the respondents herein were issued with identical notices, dated 20.3.2011, levelling serious charges of mis-conducts of the nature of riotous and dis-orderly behaviour.

(b) Vide Resolution No.3, dated 20.3.2011, all the respondents have been terminated for having committing mis-conduct, by the same orders.

(c) The respondents filed the above referred three Complaints under item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Labour Court.

(d) Since there was no enquiry conducted, the issue as regards the inquiry and the findings of the Enquiry Officer were not required to be framed.

(e) Interim relief in the nature of reinstatement was granted to the respondents on 24.7.2012.

(f) The Revision Petitions filed by the petitioners, for challenging the interim orders dated 24.7.2012 were dismissed and thereafter, the Writ Petitions preferred by the petitioners were dismissed by this Court.

(g) By judgment and order dated 17.12.2013, the Labour Court allowed the Complaints and granted reinstatement with continuity of service to the respondents.

(h) Full back-wages were granted by the Labour Court since the petitioners failed to comply with the interim order dated 24.7.2012 granting reinstatement to the respondents.

(i) The petitioners challenged the final judgment of the Labour Court dated 17.12.2013 by filing three Revision Petitions, which were dismissed by the Industrial Court by judgment dated 21.1.2015.

6. The contention of the petitioners is that both the impugned judgments are rendered unsustainable since a proper notice dated 20.3.2011 was issued, by which the respondents were terminated from service as the petitioners came to a conclusion that they had committed grave and serious mis-conducts. It is pointed out that the petitioners had reserved their right to issue a charge sheet to the respondents and conduct an enquiry and thereafter, award proper punishment to the respondents. It is, therefore, strenuously canvassed by Shri Latange that the impugned judgments of the Labour Court and the Industrial Court deserve to be

quashed and set aside.

7. He has further strenuously submitted that back-wages to the extent of 100% could not have been granted by the Labour Court on the principle of “*No Work No Wages*”. He has placed reliance upon the judgment of the learned Division Bench of this Court in the matter of Vajidali T. Kadri Vs. 2007 (6) Mah.L.J. 650]. Shri Latange indicates that the learned Division Bench of this Court has concluded that even in a case where no enquiry was held, prior to dismissal of the employee, the employer's right to justify the action by leading necessary evidence in support of such action for the first time before the Labour Court remains unaffected.

8. He, therefore, submits that the impugned judgments be set aside and the matter be remitted to the Labour Court for conducting a de novo enquiry.

9. Shri Barde, learned Advocate has opposed the petitions on the ground that a stigmatic termination without enquiry is unsustainable. The order of reinstatement, which was granted at the interim stage on 24.7.2012 was challenged before the Industrial Court and before this Court by the petitioners. Their Revision Petitions and Writ Petitions were dismissed. The interim order had, therefore, attained finality till the judgment of the Labour Court was delivered in the Complaint. He, therefore, submits that if the Complaint is to be remitted for a de novo enquiry, that stage of recording oral evidence will have to be restored at which stage, the interim

order would become effective and operative.

10. He submits that the said order has not been implemented. Similarly, the order of dismissal does not set out reasons as to why the petitioners could not conduct an enquiry against the respondents. He, therefore, opposes the prayer for a remand.

11. Having considered the rival submissions and having gone through the petition paper book, I find that there is no dispute that a stigmatic dismissal order was passed on 20.3.2011. The procedure laid down in law was not complied with. A stigmatic termination is unsustainable in the absence of the charges being proved.

12. The petitioners have indicated through a portion on internal page 5 of the Written Statement that the petitioners desired to issue a specific charge sheet and conduct an enquiry before the Labour Court. However, it also appears that this option was not exercised by the petitioners. In a case where the employee is dismissed for misconduct without conducting an enquiry, it is trite law that the employer has to pass a reasoned order setting out the circumstances which were beyond the control of the employer, which prevented the employer from conducting an enquiry in accordance with the Standing Orders. The termination order placed on record is a clear indicator of the high-handedness of the petitioners. Allegations of violence have been levelled upon the respondents and the termination is based on such charges of violence.

13. It has been held by the Supreme Court, in the case of Amar Chakravarty and others Vs. Maruti Suzuki (I) Ltd. [2011 I CLR 22 = (2010) 14 SCC 471], that the employer has to justify the circumstances as to why it could not conduct a domestic enquiry before dismissing an employer on charges of misconduct. It is apposite to reproduce the observations of the Apex Court in paragraph Nos.16 and 17 of the said judgment, as follows:-

*"16. In our opinion, the decisions in **Manager, Reserve Bank of India (supra)** and **Talwara Cooperative Credit and Service Society Limited (supra)** relied upon by the learned Counsel for the respondent have no bearing on the issue at hand in as much as the said decisions deal with the onus of proof in relation to proving 240 days of continuous service and entitlement to back wages respectively, for which the claims were made by the workmen, which is not the case here. In the present case, as stated above, the assertion to the effect that it was not practical to hold domestic enquiry to prove the misconduct of the workman was by the employer and therefore, the assertion has to be proved by the employer and not by the workman.*

17. In view of the aforesaid position in law, the inevitable conclusion is that when no enquiry is conducted before the service of a workman is terminated, the onus to prove that it was not possible to conduct the enquiry and that the termination was justified because of misconduct by the employee, lies on the management. It bears repetition that it is for the management to prove, by adducing evidence, that the workman is guilty of misconduct and that the action taken by it is proper. In the present case, the services of the appellants-workmen having been terminated on the ground of misconduct, without holding a domestic enquiry, it would be for the

management to adduce evidence to justify its action. It will be open to the appellants-workmen to adduce evidence in rebuttal. Therefore, the order passed by the Labour Court, shifting the burden to prove issue No. 1 on the workmen is fallacious and the High Court should have quashed it."

14. The learned Division Bench of this Court in the Vajidali's case (supra), has concluded in paragraph Nos.11 to 13 as follows:-

"11. In Punjab National Bank Ltd. v. Employees Federation and Anr. : All India Punjab National Bank (1959) II LLJ 666 SC, the Supreme Court observed as under:

But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be proper order to make.

12. *In Delhi Cloth and General Mills Co. v. Ludh Budh Singh , the Supreme Court has observed as under:*

(I) if no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision

thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

13. *In The Workmen of Firestone Tyre and Rubber Co. of India Pvt. Ltd. v. The Management and Ors. : (1973)ILLJ278SC , the Supreme Court reiterated the same view. The Supreme Court was, inter alia, considering whether Section 11A of the Industrial Disputes Act has made any change in the legal position. The Supreme Court observed that the right in the management to sustain its order by adducing independent evidence before the Tribunal if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years and it has not been disturbed by Section 11A."*

15. By the conclusions of this Court, based on the judgments delivered by the Apex Court, the employer is given the right to justify the action by leading necessary evidence before the Labour Court.

16. In the light of the above, Complaint (ULP) Nos. 18, 19 and 20 of 2011 will have to be remitted to the Labour Court for enabling the petitioners to serve a charge sheet upon the respondents / employees and thereafter, conduct an enquiry before the Labour Court. However, it is noteworthy that with the revival of the Complaints and remitting them back to the Labour Court would also lead to the revival of the interim order, dated 24.7.2012, passed by the Labour Court below Exhibit U/2 - Application for interim relief. It needs mention that the said order was challenged by the petitioners in Revision Petitions before the Industrial Court and Writ

Petitions before this Court, all of which have been dismissed.

17. As such, these three Writ Petitions are partly allowed. The impugned judgments and orders, dated 17.12.2013, delivered by the Labour Court and the Industrial Court are set aside. Complaint (ULP) Nos.18, 19 and 20 of 2011 are remitted to the Labour Court to enable the petitioners to conduct an enquiry before the Labour Court.

18. Since the Complaints are relegated to the stage of recording of evidence, the order dated 24.7.2012, directing the petitioners to reinstate the respondents in service stands restored. The petitioners shall have to implement the said order within a period of four weeks from today, as a precondition for commencing an enquiry before the Labour Court.

19. This Court by order dated 21.4.2015 had directed the petitioners to deposit back-wages in this Court within six weeks. On the said condition, the petitioners were granted ad-interim protection. It is noteworthy that the said order has not been implemented even today.

20. Shri Latange, learned Advocate submits that the petitioner - Society is a weak financial condition. Shri Barde confirms the statement and adds that the back-wages that were to be deposited in this Court, should be deposited before the Labour Court as a security deposit since if finally the Complaints are allowed after holding that the charges are not proved, the petitioners would not implement the orders of the Labour Court on the

ground of financial weakness. So also, the respondents are entitled to the said amount as it fell due owing to the interim order of the Labour Court.

21. I find that the petitioners had enjoyed the interim order passed by this Court on the condition of deposit of back-wages. The petitioners could have frankly made a statement before this Court about financial weakness, when the order was passed by this Court on 21.4.2015. The petitioner kept silent about its alleged financial weakness and was granted ad-interim protection. This Court believed that the petitioners would comply with its orders. Now that the petitioners have put forth the plea of financial weakness after enjoying the interim protection of this Court, creates an apprehension about the petitioners bonafides.

22. It is in this backdrop that I direct the petitioners to deposit the back-wages of the respondents from the date of their termination till their reinstatement, before the Labour Court. The said amount shall be deposited within two months from today and shall be a condition precedent for commencing the recording of evidence by the petitioners to prove the charge against the respondents before the Labour Court. Needless to state, if the interim order dated 24.7.2012 and the order of this Court to deposit the back-wages is not complied with, the petitioners shall forfeit their right to conduct an enquiry before the Labour Court.

23. The petitions are, therefore, partly allowed and Rule is made partly absolute in the above terms.

24. Pending Civil Applications, if any, in view of the disposal of the main Writ Petitions, do not survive and accordingly stand disposed off.

(RAVINDRA V. GHUGE, J.)

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