

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7955 OF 2012
WITH
WRIT PETITION NO.7956 OF 2012
(The Maharashtra State Co.op.Marketing Federation Ltd.,Mumbai Vs.
Vijaykumar Rajayya Dubba)

Mr.D.N.Suryawanshi and Mr.A.R.Tapse, Advocates for the petitioner.
Mr.V.P.Golewar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 31/08/2015

PER COURT :

1. I have heard the learned Advocates for the respective parties for quite some time.

2. In the first petition, the petitioner has put forth the following prayer :-

- "A) *The record and proceedings of the case may please be called for ;*
- B) *The writ petition may please be allowed ;*
- C) *By issuing appropriate writ, orders or directions in the nature of writ of certiorari, the judgment and order dated 13.2.2009 passed by the learned Industrial Court, Aurangabad in complaint ULP No.43/2004 may please be quashed and set aside.*
- D) *Pending hearing and final disposal of this writ petition, the judgment and order dated 13.2.2009 passed by the learned Industrial Court, Aurangabad in complaint ULP No.43/2003*

may please be stayed.

E) Any other relief may kindly be granted in favour of the petitioner.”

3. In the second petition, the following prayers are put forth :-

“A) The record and proceedings of the case may please be called for ;

B) The writ petition may please be allowed ;

C) By issuing appropriate writ, orders or directions in the nature of writ of certiorari, the judgment and order dated 13.3.2009 passed by the learned Industrial Court, Aurangabad in complaint ULP No.122/2003 may please be quashed and set aside.

D) Pending hearing and final disposal of this writ petition, the judgment and order dated 13.2.2009 passed by the learned Industrial Court, Aurangabad in complaint ULP No.122/2003 may please be stayed.

E) Any other relief may kindly be granted in favour of the petitioner.”

4. The petitioner has strenuously canvassed that even if the respondent employee is permanent in the service of the petitioner, by following Rule 33(7) under Chapter III of the Rules of the Federation, the respondent can be terminated on the basis of the show cause notice. Grievance is that the Industrial Court has failed to apply its mind to the evidence on record and has misconstrued the scope of power of the petitioner/employer in terminating the service of a

permanent employee purely on the basis of a show cause notice.

5. In the first petition, the Industrial Court has noticed that the Management has not produced service rules before the Court. From the evidence of the respondent employee, it was noticed that the Management desired to initiate an enquiry after issuance of the notice for termination of service dated 31.5.2003. Considering the evidence on record, the Industrial Court has concluded that order of termination cannot precede the issuance of a charge sheet and conducting of an enquiry.

6. Learned Advocate for the petitioner strenuously contends that there are voluminous documents against the respondent. An Enquiry Officer's Report dated 12/08/2008 has also been subsequently submitted to the Management. The Management can, therefore, proceed to take a decision under its disciplinary powers and award appropriate punishment to the respondent. It is, therefore, submitted that the Industrial Court has misconstrued the provisions of Law and the powers of the petitioner and has erroneously allowed the complaint.

7. I have considered the submissions of the petitioner. It is not

disputed that the respondent is a permanent employee. It is also not disputed that by the show cause notice dated 31/05/2003, the employees are sought to be terminated on charges of unauthorized absenteeism. It is also not disputed that the Enquiry Officer's Report on record at page No.105 and 88 dated 12/08/2008, respectively are subsequent to the notice of termination.

8. In the light of the above, the Industrial Court has rightly caused an interference and has set aside the notice dated 31/05/2003. A permanent employee cannot be terminated from employment by way of punishment on the charges of mis-conduct without conducting an enquiry. The employer has the liberty to follow the due procedure of Law in initiating disciplinary action against the respondent.

9. I do not find that the impugned judgments of the Industrial Court could be termed as perverse or erroneous.

10. Both the petitions are, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)