

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6591 OF 2012

Mohan Eknath Upasani,
Age 48 years, Occ. Service
R/o Sai Dham, Room No.13,
Sainagar, Post Shirdi,
Tq. Rahata, Dist. Ahmednagar. ..Petitioner

Versus

Shri Saibaba Sansthan Vishwasta
Vyavastha, Shirdi, At Shirdi,
Tq. Rahata, District Ahmednagar
Through its Chief Executive Officer. ..Respondents

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Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondent : Shri Dhorde Vikram R.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 29, 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 petitioner is aggrieved by the order dated 7.6.2012, passed by the Labour Court below Exhibit U-36 in Complaint (ULP) No. 30 of 2009, and the judgment of the Industrial Court dated 11.7.2012 in Revision (ULP)

No.58 of 2012.

5. The petitioner submits that he had challenged the second show cause notice dated 18.5.2009 issued by the respondent, proposing the punishment of dismissal from service, vide Complaint (ULP) No.30 of 2009. Initially, the petitioner was protected by an ex-parte ad-interim order and he continued in service. Subsequently, the application for interim relief Exhibit U-2 was rejected. He preferred Revision (ULP) before the Industrial Court, which was also dismissed.

6. By order dated 31.12.2009, the petitioner was dismissed from service by way of punishment w.e.f. 1.1.2010. Subsequently, the Labour Court framed two preliminary issues with regard to the fairness of the enquiry and the fairness of the findings of the Enquiry Officer. Since both the issues were answered in the negative, the petitioner preferred a Revision Petition, which was also rejected.

7. By an application, dated 26.4.2012, below Exhibit U-36, the petitioner sought an amendment to the Complaint, since the cause of action put forth in the Complaint was as against the proposed punishment of dismissal and as he was subsequently dismissed, his dismissal was required to be challenged. By the impugned order dated 7.6.2012, application U-36 was rejected. The Industrial Court dismissed Revision ULP) No.58 of 2012 filed by the petitioner. Hence this petition.

8. Grievance is that having challenged the second show cause notice, which is permissible in law, the petitioner needs to challenge his dismissal order, dated 31.12.2009, lest he would be rendered remediless. Shri Barde submits that unless the dismissal order is challenged, he would not stand to gain any relief from the Labour Court. If the pending complaint could be amended and the subsequent cause of action could be assailed, the petitioner is not be required to withdraw the complaint and file a fresh complaint. He does not benefit by causing any delay in challenging his dismissal. He stands to gain no advantage, inasmuch as, laches are not attributed to his conduct.

9. Shri Barde further submits that the Labour Court as well as the Industrial Court lost sight of the fact that in any event, the petitioner is required to assail his dismissal order and since he intends to do so, before the recording of evidence on the pending issues has commenced, no loss or harm of any nature would be caused to the respondents. The Labour and Industrial Courts have concluded that there is a delay caused and hence the amendment does not deserve to be permitted. He, therefore, prays for allowing of this petition.

10. Shri Dhorde, learned Advocate for the sole respondent has strenuously supported the impugned order. He submits that the petitioner cannot pretend about the date of dismissal. Having lost his employment w.e.f. 1.1.2010, the petitioner should have challenged the dismissal order with promptitude.

11. Despite his termination, he contested issue Nos.1 and 2, which were decided by the Labour Court. Both the issues were answered in the negative and the Labour Court concluded that the enquiry was conducted in a fair and proper manner and the findings of the enquiry officer are sustainable. It is, thereafter, that the petitioner has sought an amendment for challenging the order of dismissal after a span of two years and four months.

12. He further submits that the Labour Court rightly considered the undue delay caused by the petitioner and has, therefore, rejected application Exhibit U-36. The Industrial Court, by its judgment dated 11.7.2012 has rightly concluded that the order of the Labour Court is neither perverse nor erroneous. The Revision Petition was, therefore, dismissed. The petitioner is not remediless and he could prefer a fresh complaint or even raise an industrial dispute under Section 2A of the Industrial Disputes Act, 1947. He, therefore, prays for the dismissal of the petition.

13. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

14. It is trite law that an employee who has questioned the second show cause notice proposing the punishment of dismissal, can challenge the order of dismissal, which has been issued subsequent to the filing of the

Complaint or orders passed in the complaint. In the instant case, the only issue to be decided is whether delay in seeking amendment in the pending complaint, so as to challenge the order of dismissal, could be said to be fatal.

15. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed while dealing with the application for condonation of delay, as under :-

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A

litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

16. I do not find that period of two years and four months lost by the petitioner, pursuant to his dismissal could be said to be a deliberate act. It appears that the petitioner was advised to prosecute the complaint as it is. No advantage is derived by the petitioner by delaying an amendment in the complaint. In fact, by the Part I judgment, the Labour Court has already decided the first two issues.

17. Even if the petitioner is to amend his complaint for challenging his order of dismissal, the first two issues in relation to the fairness of the enquiry and the findings of the enquiry officer cannot be reopened for a retrial. The situation prior to the dismissal of the petitioner while deciding the first two issues is no different than the situation post dismissal, since the fairness of the enquiry and the findings of the enquiry officer are to be looked into independent of the quantum of punishment awarded to the petitioner. The issue of proportionality of the punishment is to be considered subsequently after the enquiry has been upheld on all counts or in a de-novo enquiry, as the case may be.

18. I find that neither the petitioner stands to gain any advantage by delaying his challenge to the dismissal order, nor the respondent is seriously

prejudiced by the amendment.

19. Notwithstanding the above, Shri Dhorde is right in his submissions that circumstances precluding the petitioner from challenging the dismissal order promptly, have not been cited or canvassed by the petitioner. He is equally right in submitting that in the event the petitioner finally succeeds, the respondent would have to suffer the brunt of incidental and consequential reliefs even for delay of the last two years and four months i.e. from the date of dismissal i.e. 1.1.2010 till the filing of the application for amendment dated 26.4.2012.

20. I find with due circumspection that in the matters of such nature, equities can be balanced by depriving the petitioner of all benefits for the aforesaid period of two years and four months in the event he succeeds before the Labour Court. A pedantic approach ought not to be taken and the petitioner deserves to be permitted to assail the order of dismissal by amending the complaint. I do not find that laches or oblique motives can be attributed to the conduct of the petitioner.

21. In the light of the above:-

(A) *This petition is partly allowed.*

(B) *The impugned order dated 7.6.2012, passed by the Labour Court below Exhibit U-36 and the judgment of the Industrial Court dated 11.7.2012, delivered in Revision (ULP) No.58 of 2012, on account of being perverse, are quashed and set aside.*

(C) *Application Exhibit U-36 stands allowed.*

(D) *The petitioner shall carry out the amendment within four weeks from today.*

(E) *The respondent is at liberty to file an additional written statement so as to confront the contentions set out in the amended complaint.*

(F) *The issue Nos.1 and 2, already decided by the Labour Court by its Part I judgment shall preclude the petitioner from seeking reopening of the said two issues. In short, the petitioner shall prosecute his complaint to the extent of the remaining issues with regard to the proportionality of the punishment.*

(G) *In the event the petitioner succeeds before the Labour Court or any superior Court, he shall be deprived of all service benefits incidental and consequential thereto for the period 1.1.2000 till 26.4.2012, save and except continuity of service.*

22. Rule is, therefore, made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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