

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

WRIT PETITION NO. 10558 OF 2015

JAWAHAR MEDICAL FOUNDATION MORANE AND OTHERS
VERSUS
KALPANA DAGA SURYAWANSHI

...
Advocate for Petitioners : Shri Patil Shrikant S.
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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 22nd December, 2015

Per Court:

1 The petitioner is challenging the judgment of the Labour Court dated 12.10.2009, by which, the Complaint was partly allowed and the respondent was granted reinstatement in service with continuity and full backwages, excluding the period set out in the order below Exhibit O-2 i.e. for the period of delay in filing the complaint. The petitioner is also aggrieved by the judgment of the Industrial Court dated 3.2.2012, by which, the Revision (ULP) No. 9 of 2010, filed by the petitioner has been dismissed.

2 I have heard the strenuous submissions of the learned Advocate for the petitioner, who has severely criticized the impugned judgment.

3 Considering the issue involved, I am not required to advert to the entire submissions of the petitioner. Suffice it to say, the respondent / employee was terminated by order dated 11.10.2000, categorically stating therein that since her conduct / behaviour is not good, her services are being terminated. Apparently, this amounts to a stigmatic termination.

4 It is revealed from the record that no domestic enquiry was conducted against the respondent before issuing the order of termination. It is also apparent from the record and as observed by the Labour Court in paragraph No.33 that the respondent / management did not adduce any oral evidence in support of its case. They have also failed to file their written statement notwithstanding the fact that the Advocate had appeared for the petitioner authorities before the Labour Court.

5 It is trite law, in the light of the ratio laid down by the Apex Court in the case of Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh - [1972 (1) SCC 595 = AIR 1972 SC 1031], and Bharat Forge Company Ltd., Vs. A.B. Zodge and another[AIR 1996 SC 1556], that when an employee is terminated on grounds of mis-conducts, if the enquiry conducted is set aside, the case stands on a footing of dismissal without an enquiry. The Apex Court in its judgment (Five Judges' Bench) delivered in the Karnataka State Road Transport Corporation Vs.

Laxmidevamma & another [2001 (II) CLR 640], has held that an employer can reserve its right in the written statement for conducting a de novo enquiry, if the enquiry is set aside.

6 In the instant case, no enquiry was conducted by the petitioner. No written statement was filed. Despite an opportunity given by the Labour Court, the petitioners did not step into the witness box and did not conduct a de novo enquiry. The Labour Court, therefore, partly allowed the complaint.

7 The contention of Shri Patil is that the respondent was working from 4.4.1999 till 11.10.2000 and was a temporary. Therefore, no enquiry was required to be conducted. I do not find this contention to be sustainable in the light of the order of termination. The Apex Court in the case of Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences [(1999) 3 SCC 60 = [AIR 1999 SC 983] and in the case of Novartis India Ltd. Vs. state of West Bengal and others [AIR 2008 SC (Suppl) 836], had concluded that when a stigmatic termination has occurred, notwithstanding whether the employee is a temporary or probationer, the charges will have to be proved since the termination order attaches a stigma.

8 Shri Patil contends that full back-wages have been casually granted by the Labour Court. There was no material before the Labour Court to conclude that the Respondent was unemployed and therefore, was entitled for back-wages.

9 He further submits that even the Industrial Court in its revisional jurisdiction has failed to consider this aspect and has not interfered in the revision at least to the extent of grant of full back-wages.

10 I have considered the submissions of the learned Advocate for the Petitioner in the light of the fact situation before the Labour Court and the revision petition filed before the Industrial Court.

11 As noted above, there was no participation of the Petitioner before the Labour Court. No Written Statement was filed. The testimony of the Respondent/ Employee went unchallenged. Admittedly, no enquiry was conducted prior to the stigmatic termination of the Respondent. A de-novo enquiry was not conducted by the Petitioner before the Labour Court.

12 I find from the revision petition that there is no specific ground taken by the Petitioner that the order of the Labour Court granting

full back-wages deserve to be set aside in peculiar circumstances. It was merely contended that the judgment granting reinstatement with continuity of service and full back-wages was without reason.

13 In this peculiar background, as the Industrial Court has also not interfered with the grant of full back-wages, I am not causing any interference in the said concurrent conclusions keeping in view the limited jurisdiction of this Court in the light of the judgment of the Apex Court in the cases of *Syed Yakoob v/s K.S.Radhakrishnan*, **AIR 1964 SC 477** and *Surya Dev Rai v/s Ram Chander Rai*, **AIR 2003 SC 3044**.

14 In the facts set out above, I do not find that the Labour Court and the Industrial Court have committed any error in delivering the impugned judgment.

15 In the light of the above, this petition is devoid of merits and is, therefore, dismissed. Needless to state, an employer is always within its rights to deal with the mis-conduct of an employee. In the event, the respondent commits any misconduct in the future, the petitioner will have the right to follow the Service Rules / Standing Orders and deal with such employee in accordance with law.