

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8060 OF 2015

SHAIKH AJHAR SHAIKH VAJIR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Shri Gaikwad Amol R.
AGP for Respondents: Smt. Shinde V.A.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 05, 2015

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PER COURT :-

1. The petitioner is challenging the interim order passed by the Industrial Court dated 9.7.2015, delivered in Complaint (ULP) No.24 of 2015.

2. The petitioner submits that he was appointed as a Valve-man by order dated 1.4.1993. A Complaint was lodged by some villagers, alleging that the petitioner has demanded illegal gratification for regularizing their unlawful water connections. He was therefore, placed under suspension pending disciplinary proceedings, by order dated 13.1.2015. He preferred a Complaint before the Industrial Court for challenging the order of suspension dated 13.1.2015.

3. Grievance of the petitioner is that since he has challenged his suspension in the Complaint, the Industrial Court should have allowed the application for interim relief, thereby staying the suspension order.

4. The petitioner further submits that the charge sheet has still not been issued to the petitioner and an enquiry has not yet commenced. He relies upon the judgment of the Apex Court in the case of Ajay Kumar Choudhary Vs. Union of India [2015 SCC Online SC 127]. It is, therefore, submitted that notwithstanding whether the enquiry has commenced or not or has been concluded or not, the suspension of the petitioner cannot continue beyond three months.

5. I have considered the submissions of the learned Advocate for the petitioner and have gone through the petition paper book and its annexures.

6. The petitioner has been suspended pending domestic enquiry. This Court has already concluded in the matter of Bapu Parvati Urmude Vs. Premier Industries, [2014 (5) Mh.L.J. 130], that a domestic enquiry is normally expected to be completed within thirty days. An employee, who is suspended pending enquiry, is entitled for suspension allowance in accordance with the Model Standing Orders.. Even if the enquiry is not completed in 90 days, it would not result in the abortion of the disciplinary proceedings.

7. The observations of this Court in the Bapu's judgment (supra), in paragraph Nos.6 and 10 to 18 read as under:-

“6. The sum and substance of the submissions of the Petitioner is that, the fact that the enquiry was not completed within 90 days renders the enquiry bad in law. The Petitioner also makes a serious grievance that he was not paid any wages from 22nd October, 2002 till his dismissal from service eventually ordered on 4th April, 2005. It is clarified that the said dismissal has been challenged through Reference (IDA) No. 21 of 2012.

10. As per Standing Order No. 25, Sub clause (3) of the Model Standing orders, no order of dismissal can be passed without holding an enquiry. Sub Clause (4) enables the charge-sheeted workmen a right of defence and opportunity of being defended. Evidence recorded in the enquiry is required to be recorded in a concise summary form.

11. For clarity, Standing Order No. 25(4) and proviso thereto is reproduced as below:

"25. (1) A workman guilty of misconduct may be,-

(a) ...

(b) ...

(c) ...

(d) ...

(4) A workman against whom an inquiry is proposed to be held shall be given a charge sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office-bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman

shall be permitted to produce witness in his defence and cross- examine any witness on whose evidence the charges rests. A concise summary of the evidence led on either side and the workman's plea shall be recorded.] 6 wp4568-11 All proceedings of the inquiry shall be conducted in English, Hindi or Marathi according to the choice of the workman concerned and the person defending him.

The inquiry shall be completed within a period of three months:

Provided that the period of three months may, for reasons to be recorded in writing, be extended to such further period as may be deemed necessary by the enquiry officer."

12. *In the light of the contentions of the respective Advocates of the parties and the provisions of law as enunciated under Standing Order 25 (4), I am unable to accept the submissions put forth by the Petitioner. It is not an anathema to conduct an enquiry beyond a period of three months.*

13. *Primary consideration while conducting an enquiry is adherence to the principles of Natural Justice and grant of a reasonable and adequate opportunity of defence to the charge-sheeted workman. If a deadline of three months was mandated, there was a possibility of its misuse. It could turn out to be a tool in the hands of an employer to rush through the enquiry in haste and complete it within the time frame of three months. So also, a workman could claim that the enquiry is invalid if conducted beyond three months. It would, thus, be counter productive.*

14. *Whether Standing Order 25(4) regarding completion of*

enquiry within a period of 3 months is a mandatory provision or could it be interpreted to mean a directory provision, is to be seen under the provisions of the Model Standing Orders.

15. *Standing Order 25(4), read in tandem with the Proviso thereunder, leaves no room for doubt. In fact, the proviso clearly indicates that if an enquiry cannot be concluded within a period of three months, the enquiry officer can record his reasons in writing and extend the period as may be deemed necessary by him. Failure to record reasons would not be fatal to such proceedings, since what is needed to be ensured is that the parties to the enquiry are given adequate opportunity in defence and the principles of natural justice are adhered to.*

16. *"Enquiry Shall be completed within a period of 3 months" in Standing Order 25(4) appears to be a mandate. The word "shall" is normally interpreted to indicate a mandate. However, the proviso thereof gives liberty to the enquiry officer to extend the enquiry beyond three months for a period as he may deem necessary, but by recording reasons. Standing Order 25 (5-A) enables an employer to place the charge-sheeted employee under suspension, pending enquiry. Standing Order 25(5-A)(i) entitles a suspended workman, subject to the condition of not taking up any employment during the period of suspension, to subsistence allowance. For the first ninety days of the suspension period subsistence allowance is 50% of his normal daily wages. Under Standing Order 25(5-A)(ii), a suspended workman is entitled to subsistence allowance beyond the 8 wp4568-11 period of 90 days "if the enquiry gets prolonged and the workman continues to be under suspension for a period exceeding ninety days", @ 75% of his normal daily wages. Similarly, under Standing Order 25(5-A) (iii), if the enquiry is not completed within a period for 180 days, the workman shall be entitled to full wages as subsistence allowance. This provision of the Standing Order clearly*

indicates that though it is desirable to complete an enquiry within a period of 90 days, it would not be an anathema to conduct the enquiry beyond 90 days.

17. *The entire scheme under the above referred provisions of the Model Standing Orders clearly indicates the intent and object of law. It emerges that an enquiry, if not completed within 3 months, would neither render it a nullity nor an illegality. The Model Standing Orders clearly provide for dealing with enquiries which are continued beyond the period of 90 days. In the light of these provisions, I am of the considered view that though the enquiry should be completed ideally within a period of three months, it is permissible for the enquiry officer to proceed with conducting the enquiry even after the completion of three months. As such, I hold that the provision of completing the enquiry within a period of three months is directory in nature and not mandatory.*

18. In this view of the matter, I have no doubt that the proviso requiring reasons to be recorded for conducting an enquiry beyond three months renders 9 wp4568-11 Standing Order 25(4) 'directory' in nature and ought not to be construed to be 'mandatory'. Nevertheless, it would be due compliance of the provisions, if an enquiry officer was to record the reasons for conducting an enquiry beyond three months. I am also of the view that it is desirable for the enquiry officer to record his reasons. Failure to do so however will not render the enquiry a nullity."

8. In the Ajay Kumar's case (supra), before the Apex Court, the appellant was employed in the Armed Forces. The Rules applicable were considered by the Honourable Supreme Court, while dealing with the grievance of the appellant. Considering the Rules applicable and the fact

that the appellant was an employee of the Armed Forces, the Apex Court deemed it proper that the suspension ought not to have continued beyond 90 days.

9. The conclusions of the Apex Court as in paragraph No.15 of the Ajay Kumar Case (supra), are as under:-

"15. So far as the facts of the present case are concerned, the Appellant has now been served with a Charge sheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review."

10. In the instant case, the engagement of the petitioner is restricted to the Municipal Council, Beed, which does not cover a large area. The petitioner is a Valve-man. He cannot be allocated work in any other department, much less, the clerical department. He is legally entitled to draw suspension allowance. The employer / department is under an obligation to pay suspension allowance to the petitioner.

11. Since the petitioner has also made a grievance that the domestic / departmental enquiry has not yet commenced against the petitioner, I deem it proper to observe that the respondents shall issue a charge sheet to the petitioner as expeditiously as possible and shall commence the departmental enquiry in accordance with the Rules, without causing any

grievance.

12. In the light of the above, I am not inclined to interfere with the impugned order in this petition. The petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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