

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7950 OF 2014

Poona Christian Medical Association,
(Jalna Mission Hospital),
Jalna, Tq. and Dist. Jalna,
through the Medical Superintendent.

..Petitioner

VERSUS

Sanjay Kamuwel Pakhare,
Aged 43 years, Occ. Service,
R/o Kranti Nagar, Jalna
Tq. and District Jalna.

..Respondent

...
Advocate for Petitioner : Shri Prabhakaran T.K.
Advocate for Respondent : Shri Kamble Manik M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 10, 2015
...

ORAL JUDGMENT :-

1. I have heard the learned Advocates for the respective parties at length.
2. Rule. By consent, Rule is made returnable forthwith and the petition is heard finally.
3. The petitioner takes an exception to the impugned orders passed by the Labour Court, dated 7.4.2014 below Exhibit U-17 in Complaint (ULP) No.3 of 2013 and the judgment and order dated 19.6.2014, delivered by the

Industrial Court in Revision (ULP) No.40 of 2014.

4. In the light of crystallized law, I propose to pass an order which does not require advert to all the submissions put forth by the respective sides. I would advert to those submissions of the learned Advocates, which need consideration, while passing this order.

5. The respondent / employee has been dismissed from the employment for proved mis-conducts, by order dated 11.6.2013. Complaint (ULP) No.3 of 2013 has been preferred by the respondent for challenging the dismissal from service. The learned Labour Court has framed issues on 21.11.2013, which are as follows:-

“ 1. Whether the complainant proves that inquiry is not fair and proper?

2. Whether the complainant proves that findings of the inquiry officer are perverse?

3. Whether the punishment of dismissal is shockingly disproportionate?

4. Whether the complainant proves that the respondent has committed unfair labour practices as per item No.1(a), (b), (d), (f) & (g) of Schedule IV of M.R.T.U. & P.U.L.P. Act, 1971?

5. Whether the complainant is entitled for relief as prayed?

6. What order”

6. Needless to state, in the light of the recent judgment of this Court, in the matter of Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam (2014 (3) CLR 547), Issue Nos.1 and 2, framed by the Labour Court will have to be decided as preliminary issues, as it would constitute the Part I order, settling the two issues in the said case.

7. This Court has also laid down the law with regard to the trial of the issue Nos.1 and 2 as preliminary issues in the case of Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. and another Vs. Vasant Ambadas Deshpande [2014 I CLR 878 = 2014(3) Mh.L.J.339]. It is thus a settled position of law that the burden of proving violation of principles of natural justice in conducting an enquiry and perversity in the findings of the enquiry officer, lies on the workman / complainant. In doing so, the complainant has to rely upon the entire enquiry proceedings (record and proceedings) to establish his grievance. No fresh evidence is required to be adduced since the first two issues pertain to the proceedings that have occurred in the domestic enquiry.

8. In the above backdrop, Shri Prabhakaran, assails the order of the Labour Court dated 7.4.2014, passed below Exhibit U/17, thereby directing the petitioner to produce such documents, which may not form a part of the R & P of the domestic enquiry. Shri Prabhakaran clarifies that the

petitioner has no hesitation in producing the original R & P of the domestic enquiry before the Labour Court, since issue Nos.1 and 2 have to be decided peremptorily on the basis of such record.

9. He further submits that without assigning any reasons, thereby demonstrating non-application of mind, the Labour Court has allowed Exhibit U/17, which was a notice for production of documents filed by the respondent. For similar reason, he assails the judgment of the Industrial Court, dated 19.6.2014, dismissing the Revision Petition filed by the petitioner for challenging the order of the Labour Court dated 7.4.2014.

10. Shri Kamble has strenuously submitted that the suppression of documents from the Court is a dis-service to the Court and also causes serious prejudice to the workman who does not have the custody of the document, which he had sought for below Exhibit U/17. He further submits that the Labour Court has rightly ordered the production of documents mentioned in Exhibit U/17 and the Industrial Court has rightly dismissed the Revision Petition of the petitioner.

11. Shri Kamble has relied upon the following judgments of the Apex Court:-

1. *AIR 1994 SC 853 (S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. and others)*,

2. *AIR 1996 SC 2592 (Indian Bank vs. M/s. Satyam Fibres (India) Pvt. Ltd),*
3. *AIR 2000 SC 1165 (United India Insurance Co. Ltd. vs. Rajendra Singh and Ors.) and*
4. *2010 AIR SCW 50 (Dalip Singh V. State of U.P.and others).*

12. I do not find that the judgments, cited by Shri Kamble, could have any applicability to the case in hand at this stage, more so, in view of the fact that the petitioner is agreeable and is willing to produce the entire enquiry proceedings before the Labour Court.

13. In the light of the law laid down in the Maharashtra State Cooperative Cotton Growers' case (supra) and the MSRTC case (supra), the production of the entire R & P of the domestic enquiry would be sufficient to enable both the parties to canvass their contentions in relation to the first two issues and would equally assist the Labour Court in arriving at its conclusions on the said two issues.

14. As such, the impugned order passed by the Labour Court directing production of documents, which were not a part of the domestic inquiry proceedings, is unsustainable as the said documents are not required at the stage at which the case is before the Labour Court. Needless to state, consequentially, the impugned judgment of the Industrial Court, dated

19.6.2014 is, therefore, unsustainable.

15. The statement of the petitioner that it would produce the entire R & P of the domestic enquiry concerning the charge sheet, is recorded and the petitioner shall therefore, produce the said proceedings (Enquiry Officer's file), within eight weeks before the Labour Court in Complaint (ULP) No. 3 of 2013.

16. The petition is, therefore, allowed. Impugned order dated 7.4.2014 below Exhibit U-17 in Complaint (ULP) No. 3 of 2013 and the judgment dated 19.6.2014 delivered in Revision (ULP) No. 40 of 2014 by the Industrial Court are quashed and set aside.

17. Rule is accordingly made absolute.

(RAVINDRA V. GHUGE, J.)

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