

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9103 OF 2014

Agriculture Produce Market
Committee, Jamner, Tq. Jamner,
District Jalgaon, through its
Chairman, Dagadu Vishnu Patil.
Age 71 years, Occ. Agriculture,
R/o Chalisgaon, Tq. Jamner,
District Jalgaon.

..Petitioner

Versus

1. Eknath Damu Patil,
Age 42 years, Occ. Nil,
R/o Indira Lalwani Nagar,
Jamner, Tq. Jamner,
District Jalgaon.

2. The Honourable Minister,
cooperation, Marketing and
Textile Department,
Mantralaya, Mumbai.

..Respondents

...
Advocate for Petitioner : Shri Shinde Abasaheb D.
Advocate for Respondent 1 : Shri Barlinge S.R.
AGP for Respondent 2 : Smt. Shinde V.A.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 24, 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 issue involved in this petition is whether the respondent could have availed of a remedy under Rule 104 of the Maharashtra Agricultural Produce Marketing (Development and Regulation), Rules, 1967 (“the 1967 Rules”), after assailing his dismissal before the Labour Court, Industrial Court and this Court.

5. I have heard the learned Advocates for the respective sides, the undisputed facets of this case are as follows:-

(a) An incident took place on 16.10.2008, in which, the first respondent under the influence of liquor has slapped the Secretary of the petitioner - committee.

(b) On 17.10.2008, the first respondent was suspended.

(c) On 21.10.2008 the first respondent was dismissed from service without conducting a departmental enquiry.

(d) He preferred Complaint (ULP) No. 39 of 2008 before the Labour Court, Jalgaon under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

(e) The petitioner conducted a *de novo* enquiry to prove the charges before the Labour Court.

(f) By judgment and order dated 23.3.2010, the Labour Court held that the charges have been proved against the first respondent and the punishment of dismissal being commensurate to the seriousness and gravity of the mis-conduct, dismissed the complaint.

(g) The first respondent preferred Revision (ULP) No.10 of 2010 before the Industrial Court at Jalgaon, which, by judgment dated 27.10.2010 has dismissed the Revision Petition.

(h) The first respondent preferred Writ Petition No. 411 of 2011 before this Court, which was dismissed on 19.1.2011 upholding the impugned judgments.

(i) Respondent No.1 preferred Civil Application No.49 of 2011, practically seeking review of the order dated 19.1.2011 passed by this Court, which was also rejected by this Court on 21.3.2011.

(j) The first respondent was acquitted by the learned Judicial Magistrate (First Class) on 20.1.2012 in Summary Criminal Case No. 695 of 2008.

(k) The first respondent, prior to his acquittal, preferred Appeal No. A-178 of 2011, under Rule 104, before the learned Divisional Registrar, Cooperative Societies, Nasik.

(l) By an order dated 7.12.2012, the appeal was dismissed on the ground that the order of dismissal has been tested by the Labour Court, Industrial Court as well as the High Court and the same could not be once again challenged.

(m) The first respondent preferred Writ Petition No.1503 of 2013 before this Court challenging the order dated 7.12.2012.

(n) The Writ Petition was disposed off by keeping the option of exhausting an available legal remedy, open.

(o) Appeal No.52 of 2013 was filed before the Honourable Minister, Textile, Cooperation and Marketing.

(p) By an order dated 12.9.2014, impugned in this petition, the Honourable Minister has allowed the appeal on the ground that the first respondent has been acquitted by the learned Judicial Magistrate (First Class) in Summary Criminal Case No. 695 of 2008.

6. Shri Shinde, learned Advocate has seriously questioned the bonafides of the first respondent of approaching the authority under Rule 104, despite the same order of dismissal having been questioned before the Labour Court, Industrial Court as well as this Court. He submits that the first respondent has set the process of law in motion by resorting to a particular

remedy and having exhausted the remedy and failed upto this Court, he could not have fallen back on Rule 104 on the pretext that the order of penalty passed under Rule 103 could be once again put to the test of law before a quasi judicial authority. He further submits that the Honourable Minister should have considered this aspect. He, therefore, contends that not only the impugned order of the Honourable Minister is unsustainable, the very institution of the appeal under Rule 104 was impermissible as has been rightly held by the concerned authority by its order dated 7.12.2012.

7. Shri Barlinge, learned Advocate for the first respondent has strenuously supported the order passed by the Honourable Minister on the ground that the acquittal of the first respondent was required to be taken cognizance of and which has rightly been done by the Honourable Minister.

8. He relies upon the judgment of the Apex Court in the case of G.M.Tank Vs. State of Gujarat [(2006) 5 SCC 446], to support his contention that acquittal from criminal proceedings, if is based on the same evidence, as is placed before the disciplinary authority or the Labour Court as in this case, it was an appropriate ground for the Honourable Minister to set aside the order of dismissal.

9. He frankly states that the Appeal under Rule 104 was instituted prior to the acquittal. However, on the date the concerned authority delivered its order dated 7.12.2012, the acquittal was a fact. Since the said authority did not consider the aspect of acquittal, the Honourable Minister has rightly

allowed the appeal. He hastens to add that the first respondent, who has suffered loss of employment was advised to resort to the procedure under Rule 104 and bonafide believing that it is a remedy available, he has opted for the same.

10. I have considered the submissions of the learned Advocates, learned AGP and have considered the record as it emerges from the petition paper book.

11. This is a case, which reflects upon the conduct of the litigant. His order of dismissal, dated 21.10.2008 was challenged before the Labour Court. A *de novo* enquiry conducted before the Labour Court led the Court to a conclusion that the charges are proved, are serious and the punishment of dismissal is justified. By judgment dated 23.3.2010, the complaint was dismissed.

12. He preferred Revision (ULP) before the Industrial Court under Section 44 of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"), which was also dismissed by judgment dated 27.10.2010. Writ Petition No.411 of 2011 was dismissed by this Court on 19.1.2011 and the Civil Application No. 49 of 2011 was also rejected on 21.3.2011.

13. It is trite law that unless the evidence recorded in the criminal case is identical to the evidence recorded in the departmental enquiry, acquittal

from criminal trial is of no consequence and would not impact the disciplinary proceedings in service jurisprudence. The probative value of evidence in criminal proceedings is of a high degree in comparison to the evidence recorded in departmental inquiries, which is appreciated, fundamentally, on the preponderance on the principles of probabilities. Even hear say evidence is permissible to prove the charges in a departmental enquiry.

14. It is not in dispute that the charges against the first respondent were proved before the Labour Court, which is a fact finding Court. At the time of the decision of the Labour Court, the criminal case against the first respondent was pending. The findings on facts were not interfered with by the Industrial Court in the light of its revisional jurisdiction under Section 44 and by this Court under Article 227.

15. When the proceedings before the authority under Rule 104 were preferred, the first respondent had not been acquitted by the criminal court. Shri Barlinge has strenuously attempted to canvass the theory of innocence on the part of the first respondent in resorting to the remedy under Section 104. His contention of innocence is belied by the fact that the same order of dismissal had been assailed under Rule 104, despite the final word of this Court in the Writ Petition and the Civil Application.

16. In my view, the conduct of the first respondent is deprecable. It is beyond comprehension that he had innocently approached the authority

under Rule 104. The proceedings under Rule 104 can only be said to be an attempt to gain benefit, despite exhausting legal remedies upto this Court.

17. From the impugned order of the Honourable Minister, I find that the issue canvassed by Shri Barlinge, regarding the quality of evidence recorded in the criminal trial and the evidence recorded before the Labour Court, was not even referred to. In my view, it could not have been considered since the acquittal came later and the Labour Court had dismissed the complaint much earlier. So also, the Honourable Minister has set aside the order of the authority, dated 7.12.2012 as well as the order of dismissal, dated 21.10.2008, without even assigning reasons. The Honourable Minister appears to have been over whelmed by the acquittal of the first respondent in the criminal trial.

18. In the light of the above, the impugned order of the Honourable Minister is unsustainable. The same is, therefore, quashed and set aside for being perverse and erroneous. The authority under Rule 104 has rightly dismissed the Appeal by order dated 7.12.2012, considering the fact that the first respondent had availed of a legal remedy and merely because Rule 104 provides for a remedy, it would not tantamount to permitting a litigant to take recourse to the said mode of challenge against the same order of dismissal, which had already been considered by the Courts as noted above. In the above backdrop, the order passed by the concerned authority , dated 7.12.2012 cannot be said to be perverse or erroneous.

19. In my view, the case of the first respondent is squarely covered by the judgment of the Apex Court in the case of Kishore Samrite Vs. State of U.P. [(2013) 2 SCC 398].

20. This petition is, therefore, allowed. The impugned order of the Honourable Minister dated 12.9.2014, delivered in Appeal No.52 of 2013 is quashed and set aside. Appeal No. 52 of 2013 stands dismissed.

21. Rule is made absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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