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

WRIT PETITION NO. 10002 OF 2015

KALYAN TRYAMBAKRAO INDANI
VERSUS
THE DIVISIONAL CONTROLLER AND ANOTHER

...
Advocate for Petitioner : Shri Radikar Akshay S.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th October, 2015

Oral Order:

1 The Petitioner is aggrieved by the judgment and order dated 04.10.2013 delivered by the Labour Court in Complaint (ULP) No.7/2012 and the judgment of the Industrial Court dated 17.08.2015 delivered in Revision (ULP) No.17/2014.

2 The extensive submissions of Shri Radikar, learned Advocate for the Petitioner/ Employee, can be summarized as under:-

- (a) The Petitioner was appointed as a Traffic Controller with the Respondent/ MSRTC on 28.06.2002 on compassionate ground in place of his father.
- (b) In December, 2010, he suffered from Typhoid and sought

leave. He was granted three days' leave.

- (c) Since he did not recover from illness, he sought extension of leave, which was sanctioned to the extent of 29 days.
- (d) He, thereafter, started suffering from chest pain and hypertension.
- (e) Relevant doctors' certificates are placed on record to indicate that the Petitioner was suffering from chest pain and hypertension.
- (f) For the above reasons, he was unauthorizedly absent from 24.01.2011 upto 30.06.2011.
- (g) The Respondent/ MSRTC issued the charge sheet and entered into further correspondence with regard to the disciplinary proceedings on the Jalna address on which the Petitioner was not residing.
- (h) Some of the communications were not received by his wife, but in fact were received by his mother.
- (i) He was residing at Badnapur at the address mentioned in the cause title.
- (j) The Respondent/ MSRTC did not enter into any correspondence with the Petitioner with regard to the disciplinary proceedings at his Badnapur address.
- (k) The Petitioner was issued with the second show cause notice

proposing the punishment of dismissal dated 26.07.2011, which was not served upon him as it was sent on the Jalna address.

- (l) The order of dismissal dated 20.08.2011, by which the Petitioner's services were terminated by way of punishment for the proved misconduct w.e.f. 20.08.2011, was never served upon him.
- (m) The Petitioner preferred Complaint (ULP) No.7/2012 along with an application for condonation of delay, which was allowed.
- (n) By the part-1 judgment of the Labour Court dated 03.04.2013, the preliminary issues with regard to the fairness of the enquiry and the findings of the Enquiry Officer were decided and it was concluded that the enquiry was conducted in a fair and proper manner and the findings are proper and fair.
- (o) By the final judgment and order dated 04.10.2013, the complaint was dismissed by the Labour Court concluding that the punishment awarded to the Petitioner was not shockingly disproportionate to the gravity and seriousness of the proved misconduct.
- (p) The Petitioner preferred Revision (ULP) No.17/2014, which

has been dismissed by the impugned judgment dated 17.08.2015.

3 Shri Radikar, learned Advocate invokes the doctrine of “*audi alteram partem*” on the ground that no man should be condemned unheard. He, therefore, submits that the Respondent/ MSRTC has miserably failed to establish that the enquiry was conducted in adherence to the principles of natural justice. The Labour Court by its part-1 judgment has erroneously concluded that the enquiry was conducted in a fair and proper manner. For similar reasons, the Labour Court has erroneously concluded that the findings of the Enquiry Officer need not be branded as perverse.

4 He further submits that the principles of natural justice mandate a reasonable opportunity of hearing and a fair hearing. The Respondent/ MSRTC has failed in doing so. The Labour Court lost sight of this fact and therefore, erroneously delivered the part-1 judgment. The Petitioner had challenged the part-1 judgment dated 03.04.2013 as well as the final judgment dated 04.10.2013 before the Industrial Court. Even the Industrial Court failed to note the serious error committed by the Labour Court.

5 Insofar as the merits of the case are concerned, in relation to the charges of misconduct levelled upon the Petitioner, Shri Radikar submits that he was absent for a short duration of six months from 24.01.2011 till 30.06.2011. In his past record of about 08 years, this misconduct can be termed to be of a minor character. The punishment of dismissal from service is shockingly disproportionate to the seriousness and gravity of the misconduct.

6 Shri Radikar relies upon the following judgments in support of his submissions:-

- (a) AIR 2014 SCW 1611, Nisha Devi v/s State of H.P.,
- (b) 2012 (1) SCC 83, Ashvini S. Mehta v/s Union of India,
- (c) 2013(3) SCC 372, State of Uttar Pradesh v/s Ashok Kumar Nigam,
- (d) 2013(7) Bom. C.R. 692, Union of India v/s D.J.Pujar,
- (e) 2013(4) SCC 265, Mohd. Yousuf v/s Director General of Fire Services.

7 He submits that the first three judgments are on the point of adherence to the principles of natural justice, which the Respondent/MSRTC has failed in doing so. The fourth and fifth judgments cited are with regard to the proportionality of the punishment. He submits that

neither the Labour Court nor the Industrial Court, much less the Respondent/ MSRTC, has considered the misconduct committed and the quantum of punishment awarded. He, therefore, prays for allowing of this petition.

8 I have considered the submissions of Shri Radikar which are canvassed in extenso.

9 In normal circumstances and if the submissions of the Petitioner are taken at their face value, it would have been a foregone conclusion that the Respondent/ MSRTC failed in adhering to the principles of natural justice and the punishment awarded to the Petitioner could be termed as being shockingly disproportionate.

10 However, I am not able to accede to the submissions made by the Petitioner for several reasons. It has come on record that the Jalna address on which the Respondent/ MSRTC entered into correspondence, was the only address registered with the Respondent/ Employer for all purposes by the Petitioner. His parents were residing with him on the said address. The Petitioner has changed his address and has shifted his residence to another place which is not informed to the Respondent/ MSRTC.

11 It is conceded across the Bar that the change in address was never communicated either in writing or orally to the Respondent. It is trite law that an employee who changes his address, is under an obligation to ensure that the new address for correspondence is intimated to the Employer.

12 In the above backdrop, the Respondent/ MSRTC bonafide believed that the Petitioner was residing on his address registered in their records and hence, entered into correspondence on the said address. Some of the communications were accepted by the parents of the Petitioner and many of them were refused on the ground that he is out of station. Neither have the parents of the Petitioner conveyed the change of address to the Respondent, nor have they intimated anything to the Petitioner, if the version of the Petitioner is accepted. It is stated by the Petitioner that his parents did not let him know anything about the correspondence received or refused by them. I do not think that the Respondent/ MSRTC could be faulted on the ground that they have failed to adhere to the principles of natural justice.

13 The Petitioner has claimed to be ill and unable to report for duties during the period 24.01.2011 to 30.06.2011. In the cross-

examination before the Labour Court when the Petitioner was confronted with certain documents, he admitted that he had completed Diploma in Pharmacy. He approached the statutory authorities during this period of illness and obtained a licence to run a medical shop on 27.04.2011.

14 He, thereafter, got the shop registered and started running the business in the name “Kamla Medical and General Stores” at Badnapur, where he had secretly changed his residence. It is during the period of his purported illness that he was actually operating the said medical and general stores. Though this was not before the Enquiry Officer, what was established in the enquiry was that he was not available at the address which was registered with the Respondent/ MSRTC.

15 The above aspects have been considered by the Labour Court as well as the Industrial Court. Though the Petitioner has attempted to create a picture of innocence, I do not find that his conduct would entitle him to any leniency even on the issue of proportionality of punishment. The fact that he was running a business during the period of his purported illness, has seriously aggravated the misconduct proved against him. His dishonesty has been established.

16 The Apex Court, in the case of *Kishore Samrite v/s State of*

Uttar Pradesh reported in **(2013) 2 SCC 398**, has observed in strict words that a litigant should not be permitted to play mischief for seeking benefits from the Court. Relevant observations of the Apex Court read thus:-

“Abuse of the process of Court :

31. *Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.*

32. *The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:-*

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with ‘unclean hands’. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court

cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. (2010) 3 SCC 402].

33. *Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but*

decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:-

“15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic ‘human-right’ of a system which purports to guarantee legal rights.”

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition.”

- 34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.*
- 35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it*

has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. *The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula*

Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287)].

37. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiore, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*
38. *No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481]}.*
39. *Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the*

court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530).

40. *In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court.”*

17 In the light of the ratio laid down by the Apex Court in the case of Kishore Samrite (supra), it is apparent that the Petitioner has not come to the court with clean hands. Moreover, the unauthorized absence of about 06 months in the backdrop of a short service tenure of about 08 years, can be termed to be a serious misconduct.

18 With due circumspection and considering the above aspects, I am of the view that the Petitioner is disentitled to any reliefs.

19 Insofar as the judgments cited by the Petitioner as above are concerned, there can be no quarrel with the principle of “audi alteram partem”. It requires no debate that the principles of natural justice, reasonable opportunity of hearing and fair hearing, are fundamental issues and no delinquent could be punished in breach of such principles.

20 However, the conduct of the Petitioner has been exposed and it has been proved that he was pretending to be ill, suffering of chest pain and hypertension at the age of 31 years, when he was running a business in a different town despite being in employment. These facts are not found in any of the judgments cited by the Petitioner and hence, the ratio laid down therein would be of no assistance to the Petitioner.

21 In the light of the above, this Writ Petition is devoid of merit and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)