

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4198 OF 2013

Nanasaheb Narayan Shelke,
Age-73 years, Occu-Nil,
R/o Yesgaon, Taluka Kopargaon,
Dist Ahmednagar

PETITIONER

VERSUS

Chief Executive Officer,
Zilla Dekh Rekh Sahakari Sanstha Maryadit,
1st floor, Market Yard,
Station Road, Ahmednagar

RESPONDENT

Mr.P.V.Barde, Advocate for the petitioner.
Mr.G.B.Rajale, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/10/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment and order dated 31/07/2012 delivered by the 2nd Labour Court, Ahmednagar, by which Ref.(IDA) No.17/2008 was answered in the negative.

3. The issue raised by the petitioner is whether a denovo enquiry is sustainable in the absence of a charge sheet before the Labour

Court or Tribunal, as the case may be.

4. The detailed submissions of the petitioner can be summarized in brief as follows :-

- a. The petitioner had joined employment of the respondent on 01/08/1972.
- b. By order dated 28/06/1984, he was placed under suspension on allegations of mis-appropriation.
- c. Departmental enquiry was initiated against the petitioner.
- d. On conclusion of the disciplinary proceedings, the petitioner was dismissed from service by order dated 18/03/1985.
- e. Respondent had moved the Co-operative Court for recovering the amount misappropriated, which was allowed by order dated 30/09/1998.
- f. The petitioner preferred Appeal No.160/1989, which was allowed by the Appellate Co-operative Court on 05/12/1998.
- g. By judgment dated 15/12/2003, the criminal proceedings RTC No.456/1990 led to the acquittal of the petitioner.
- h. In 1996, the petitioner attained the age of superannuation.
- i. An industrial dispute was raised by the petitioner, which was referred to the Labour Court and registered as Ref.(IDA) No.17/2008, 23 years post dismissal.
- j. By the Part I judgment, the domestic enquiry conducted by the respondent was held to be vitiated on account of the failure on the part of the respondent to produce the enquiry papers on the plea that the said papers have been destroyed in a fire that occurred in the Bank.
- k. A *denovo* enquiry was conducted before the Labour Court.

- l. Charge sheet was not placed before the Labour Court.
- m. It has been the contention of the petitioner that the charge sheet was not served upon him.
- n. No *denovo* enquiry could have been conducted by the respondent before the Labour Court without placing the charge sheet on record.
- o. The impugned judgment and award is an outcome of non-application of mind by the Labour Court.
- p. The impugned judgment is perverse and erroneous.
- q. The cross examination of the Management's witness was not properly referred to or appreciated by the Labour court.
- r. The petition deserves to be allowed and the impugned judgment deserves to be quashed and set aside.

5. Mr.Barde, learned Advocate for the petitioner has laid heavy stress on the aspect of there being no charge sheet placed on record before the Labour Court. He contends that the absence of a charge sheet is fatal to the *denovo* enquiry. He reiterates that the petitioner did not receive a copy of the charge sheet and since the entire enquiry papers were claimed to have been destroyed in a fire, no charges can be held to be proved against the petitioner.

6. He places reliance upon the judgment of this Court in the matter of Griffon Laboratories Pvt.Ltd., Vs. Maharashtra Shramik Sena and others, 2002(supp.) BCR 815 to support his contention that

the charge sheet, if is ambiguous or vague, would lead to a conclusion that there are no charges levelled against an employee.

7. Mr.Rajale, learned Advocate for the respondent has supported the impugned judgment and award. He submits that a charge sheet was indeed served upon the petitioner. He had participated in the enquiry. Unfortunately, for the Management, a fire that broke out in the Establishment, led to the destruction of several records and the domestic enquiry papers pertaining to the petitioner were destroyed.

8. He further submits that it was not in the interest of the Management to pretend that the domestic enquiry papers have got burnt since they were aware of its effects and which they have suffered through the Part I judgment of the Labour Court dated 29/11/2011, wherein the case of the respondent was virtually held to be a case without any enquiry. He contends that the petitioner had raised a dispute after 23 years post dismissal. This aspect leads to a conclusion that there was no industrial dispute existing.

9. He submits that despite the above, the Management led fresh evidence before the Labour Court and the action taken against the petitioner was justified. All the documents, voluminous in nature,

pertaining to the mis-deeds committed by the petitioner were placed on record, as has been noted by the Labour Court from paragraph No.16 to 19. These documents were properly appreciated by the Court which concluded that the charges were proved against the petitioner.

10. He further submits that acquittal in a criminal case or the conclusions of the Appellate Co-operative Court would neither bind the Labour Court, nor would it impact the outcome of the reference proceedings. He places reliance upon the judgment of this Court in the case of D.D.Shah and Co. Vs. Vajidali T. Kadri, 2007(I) CLR 913 to support his contention that in the absence of giving a charge sheet, conducting a *denovo* enquiry before the Labour Court, has been upheld by this Court. He, therefore, prays for the dismissal of this petition.

11. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

12. It is trite law that acquittal in criminal proceedings shall not *ipso facto* lead to the exoneration of the employee in disciplinary proceedings. The Apex Court has consistently held that the

disciplinary proceedings are conceptually distinct and different than the criminal proceedings wherein the probative value of evidence is required to be of a high degree. In disciplinary proceedings, even hear say evidence is acceptable as the evidence on record is to be scrutinized in the light of the preponderance on the principles of probabilities.

13. In the instant case, the entire enquiry papers are said to have being destroyed. The petitioner has come forward with a case of no charge sheet having been issued to him. By Part I judgment, the Labour Court has concluded that lack of enquiry papers would, therefore, render the case of dismissal without an enquiry.

14. The Apex Court in the case of Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh, AIR 1972 SC 1031 has held that if no domestic enquiry is conducted by the Management or in the event a Management declares that it does not desire to rely upon the enquiry proceedings and gives up the entire domestic enquiry, the Management is not precluded from conducting a *denovo* enquiry before the Labour Court by leading evidence.

15. In a similar situation, the Apex Court in the case of The

Workmen of Firestone Rubber and Tyre Company Vs. the Management and others [AIR (1973) SC 1227], has reiterated such conclusions by concluding that an enquiry set aside renders the case of the Management as being one without an enquiry. Evidence can therefore be lead before the Tribunal or the case may be for proving the mis conduct or for justifying the action initiated by the employee.

16. This Court, in the D.D. Shah Case (supra) has placed reliance upon several judgments of the Apex Court and has observed in paragraph Nos. 7, 8, 9, 10 and 12, which read as under :-

7. In *Delhi Cloth and General Mills Co. v. [Ludh Budh Singh](#)* reported in AIR 1972 SC 1031 , it was held that:

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

8. The law laid down on the point in issue by the Apex Court in *Punjab National Bank Employees case* (supra) has been reiterated in *The Workmen of M/s. Firestones case* (supra)

wherein the Apex Court after taking into consideration its earlier decisions, carved out certain principles which follow from those decisions in relation to the right of the employer to lead evidence before the Labour Court in a proceedings arising out of dismissal of the employee and two of the propositions which were carved out, read thus:

1. to 3.

4. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

5. The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

6. to 10.

9. It was further ruled in the Workmen of M/s. Firestone's case that:

If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognized by this Court in its various decision, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in Delhi Cloth and General Mills Co. Ltd. : 1972-1 L LJ 180 = (AIR 1972 SC 1031). No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management then there will be no

occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years.

10. It is, therefore, clear that irrespective of the fact whether there was inquiry held or not and not merely in case of illegality or invalidity of the inquiry held by the employer, that the employer is entitled to establish the charges against the employee by leading the necessary evidence in that regard before the Labour Court before which the proceedings are initiated consequent to the order of termination issued against the employee. Even in a case where no inquiry was held prior to dismissal of the employee, his right to justify the action by leading necessary evidence in support of such action for the first time before the Labour Court remains unaffected.

12. In the circumstances, the impugned order cannot be sustained and is liable to be set aside. The petition, therefore, succeeds and the impugned order is hereby set aside and the matter is remanded to the Industrial Court to deal with the revision application in accordance with the provisions of law bearing in mind the observations hereianbove. Rule is made absolute in above terms with no order as to costs."

17. The petitioner has relied upon the judgment of this Court in the case of Griffon Laboratories (supra). In fact, this Court has once again concluded that the formality of framing a charge sheet before the Labour Court is not required and failure to frame charges before the Labour Court would not vitiate the enquiry. It would be apposite to reproduce paragraph No. 17 of the said judgment, which reads as :-

“17. In the present case, with the assistance of the Learned Counsel, I have carefully considered the evidence which was adduced before the Labour Court and there can be no manner of doubt that the workmen concerned were clearly on notice of the nature of the misconduct which was alleged against them as also the imputation constituting the misconduct. Evidence was led with reference to a specific incident, which was alleged to have taken place on 9th June, 1992 when the complainant was having lunch in the Canteen. The four chargesheeted workmen were alleged to have assaulted the complainant in the premises. The allegation related to a rather straightforward case of assault, shorn of the attendant complexities which often accompany many other charges, such as of misappropriation. In the circumstances of the present case, therefore, though the formality of framing a fresh chargesheet before the Labour Court was not gone through, I am of the view that this would not vitiate the enquiry. (emphasis is mine)

18. This issue is, therefore, no longer *res-integra*. The issue, as is reflected in paragraph No.3 hereinabove stands answered.

19. The contentions of Mr.Barde can also be considered on the touchstone of prejudice. Considering the written statement and the documents on record, it could only be said that the petitioner feigns of not knowing the charges levelled upon him. The deposition of a Management's Witness below Exh.C-10 clearly establishes with minute details the mis-deeds alleged to have been committed by the petitioner.

20. Surprisingly, in the cross examination of the said witness, the petitioner has stressed only on the aspect of whether the charge sheet can be produced by the Management and was not produced by it, despite the fact that all the enquiry papers were claimed to have been destroyed in a fire. The material allegations in 3 paragraphs of the deposition of the Management's witness, were left untouched by the petitioner. There was no question asked in cross examination on these material aspects. Naturally, with the said evidence, the Labour Court concluded that the charges have been proved against the petitioner.

21. The Labour Court has considered the documentary evidence placed before it. It has looked into the aspect of the amounts involved in relation to which the petitioner has been held guilty of mis-appropriation. The fact that the petitioner's own account indicated deposits of Rs.40,965/-, which are beyond his known sources of income. The entries in the day book indicate that they are in the own handwriting of the petitioner. In these premises, the Labour Court rightly came to a conclusion that the petitioner has caused a breach of trust and has committed mis-appropriation.

22. In the light of the above, I do not find that the impugned judgment and award could be termed as perverse or erroneous. This petition, being devoid of merits, is therefore, dismissed.

23. Rule is discharged. No costs.

(RAVINDRA V. GHUGE, J.)