

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4446 OF 2015

Tejkumar Lopez
: V/S :

.....Petitioner

M/s. Arihant Industrial Corporation Ltd.

.....Respondent

* * * * *

Mr. Prashant More, Advocate for the petitioner.

Coram :- Smt. R.P. SondurBaldota, J.

6th July, 2015.

P.C. :-

1). The petitioner was employed as an Administrative Assistant with respondent no.1, Company. His services were terminated by the notice dated 3rd January, 2014 on the allegations of misappropriation of money. Therefore, he filed complaint (ULP) No. 4 of 2014 in the Labour Court alleging that the termination of his services on the ground of misconduct without holding domestic enquiry was an unfair labour practice. The respondent contested the complaint on merit, as well as, on the ground of want of jurisdiction of the Labour Court to entertain the complaint. According to the respondent, the petitioner is not a “workman” within the meaning of Section 2(5) of the Industrial Disputes Act.

2). The petitioner had filed the application at Exhibit-U-2 for interim relief of direction to the respondent to allow him to resume his duties or pay to him wages @ 50% of the last drawn salary until disposal

of the complaint. The Labour Court, by its order dated 23rd April, 2014 allowed the application. Being aggrieved by the order, respondent no.1 preferred Revision Application (ULP) No. 34 of 2014 to the Industrial Court. By the order impugned herein, the Industrial Court has allowed the Revision and set aside the order of the Labour Court. Therefore, the petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

3). The details of the allegations of misconduct against the petitioner were that as the Administrative Assistant, he was entrusted with the task of issuing complimentary passes to certain guests who visited the water park run by respondent no.1. The petitioner, sold the complimentary passes for monetary consideration and personal gain causing loss to respondent no.1 of Rs.1,10,500/- There are also 550 passes missing of the total value of Rs.2,76,000/-.

4). The only reason forming basis of the order of the Labour Court was that, respondent no.1 had not held departmental enquiry against the petitioner before terminating his service. It observed that severe punishment of dismissal ought not to have been resorted to unless the charges are proved in a domestic enquiry and after a fair opportunity of hearing is given to the delinquent. But, the Labour Court, did not consider the question of jurisdiction raised by respondent no.1. It is the contention of respondent no.1 that the petitioner is not an employee

within the meaning of Section 2(s) of the Industrial Disputes Act (“I.D. Act” for short).

5). The Revision Court, noted that the respondent was in the employment of the Company as an Assistant in the Administrative Department and observed that there is strong *prima-facie* case in favour of the Company on the maintainability of the application. Besides considering the nature of misconduct, there was loss of confidence for respondent no.1 in the petitioner. In my opinion, there is no infirmity whatsoever in the order of the Industrial Court. Undoubtedly, on a *prima-facie* view of the matter, there is substance in the contention of respondent no.1 that the petitioner is not the employee within the meaning of Section 2(s) of the I.D. Act. Besides, considering the fact of misconduct there is loss of confidence in him by respondent no.1. Further, it is well established position in law that, “no enquiry” is no par with “unfair enquiry” and hence it is open for respondent no.1 to prove the misconduct in the Court. That being a legal right available to respondent no.1, there was no justification for directing respondent no.1 to reinstate the petitioner or pay him wages during the pendency of the complaint. Therefore, the interim order passed by the Labour Court was not justified. Hence, the petition is dismissed.