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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 335 OF 2015

Shri Bansilal Durjan Chaudhary	.. Petitioner
Vs.	
The Chairman	
Arnala Machhimar Vividh Karyakari	
Sahakari Sanstha Ltd.	.. Respondent

Mr.Ajit Kenjale, Advocate for the Petitioner.

CORAM : R.G.KETKAR, J.
DATE : 22nd JANUARY, 2015

P.C. :

. Heard Mr.Ajit J.Kenjale, learned Counsel for the petitioner at length.

2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 30/09/2013 passed by the learned Member, Industrial Court, Thane in Revision Application (ULP) No. 30 of 2006. By that order, the Industrial Court dismissed the revision application preferred by the petitioner under section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act'). The said revision was preferred by the petitioner challenging the judgment and Part – I Award dated 05/05/2000 as also the judgment and Part – II Award dated 08/12/2004 made by the learned Judge, Third Labour Court, Thane in Complaint (ULP) No.170

of 1995. By Part I Award dated 05/05/2000, the Labour Court declared that enquiry conducted against original complainant-petitioner is fair and proper and the findings of the Enquiry Officer are not perverse. By Part II Award dated 08/12/2004, the Labour Court dismissed the complaint.

3. In support of this petition, Mr.Kenjale submitted that on 24/12/1994, respondent issued charge-sheet alleging the commission of misconduct. He submitted that there was enmity between the petitioner and the Manager of the respondent. Though it is alleged that the petitioner has committed theft, no criminal case was filed. The charge-sheet is vague as it did not specify quantum of stolen fish. Apart from the charge-sheet issued to the petitioner, charge-sheet was issued to the cleaner of the vehicle. The cleaner resigned. The respondent, however, did not proceed against him departmentally. Even in the departmental proceedings against the petitioner, cleaner was not examined. In any case, punishment of dismissal is shockingly disproportionate. For all these reasons, he submitted that a fairly arguable case is made out which requires consideration.

4. I have considered the submissions advanced by Mr.Kenjale. I have also perused the material on record. As noted earlier, by Part I Award, the Labour Court declared that enquiry conducted against the petitioner was fair and proper and findings of the Enquiry Officer are not perverse. By Part II Award, the complaint

was dismissed. The learned Member has considered various contentions urged by the petitioner. In paragraph 11, it was observed that there was no whisper in the complaint about various contentions raised. In paragraph 12, it was also observed that findings recorded by the Enquiry Officer are based on the material available on record and are not perverse. It was further noted that respondent has examined 3 witnesses and they were cross examined by the petitioner during the enquiry. The evidence was neither controverted nor rebutted by the petitioner before the trial Court. It was also noted that the misconduct of theft is proved against the petitioner and that it is certainly grave misconduct in nature. If the employee commits theft of misappropriation while performing the duties, then he loses the confidence of the employer and in such circumstances, it is difficult for the employer to continue the employee in service by awarding lesser punishment for his proved misconduct of the theft. Thus, the Courts below after appreciating the material on record concurrently dismissed the complaint.

5. In view of the categorical findings, I do not find that the Courts below committed any error in dismissing the complaint. No case is made for invoking powers under Articles 226 & 227 of the Constitution of India. Hence, petition fails and the same is dismissed.

(R.G.KETKAR, J.)