

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7363 OF 2002

Shri. Subhash Gopal Mohole

.....Petitioner

: V/S :

1). M/s. Alta Laboratories Pvt. Ltd
Khopoli, Dist-Raigad and anr.

.....Respondents

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Mr. Subhash Gopal Mohole petitioner present in person.

Mr. P.C. Pawaskar, Advocate for the respondent.

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

3rd July, 2015.

P.C. :-

1). The petitioner was an employee of respondent no.1 having joined the services in the year 1964. He was served with the chargesheet dated 2nd February, 1984 for misconduct under Rules 24(a), 24(k), 24(l) and 24(r) of Model Standing Orders applicable to the workers of respondent no.1. Departmental enquiry was duly held against him and he was found guilty of the charges. Respondent no.1, relying upon the inference of guilt in the departmental enquiry, as well as, the past record of the petitioner dismissed him from service.

2). Being aggrieved by the order of dismissal, the petitioner filed complaint with the Labour Commissioner which finally ended in

Reference (IDA) No. 26 of 1986. In his statement of claim, the petitioner claimed that, he was being victimised as he was a trade union activist and the charges leveled against him were not correct. As regards the incidents of insubordination, rude and indecent behaviour, the petitioner claimed that such incidents did not occur and he was being involved by respondent no.1 into a got-up dispute because the petitioner was instrumental in organising the workers under the leadership of R.J. Mehta of Kamgar Sabha.

3). By Part-I of the Award dated 20th October, 1998 the Labour Court held that the enquiry against the petitioner was fair and legal and that the findings of the enquiry were not perverse. On 22nd February, 2002 Part-II of the Award was passed holding that the punishment of dismissal given to the petitioner was not disproportionate to the charges established against him. Therefore, the petitioner was not entitled to the relief of reinstatement with continuity of service and full backwages. With this, the reference at the instance of the petitioner was answered in the negative. Being aggrieved by the rejection of reference, the petitioner filed the present petition.

4). The petitioner has since discharged his advocate and appeared in person. On 18th June, 2015 after making submissions for about half an hour, he tendered written submissions and requested that the petition be decided on the basis of the written submissions.

Thereafter, submissions of Mr. Pavaskar, the learned Advocate for respondent no.1 were heard.

5). Before the Labour Court, the petitioner examined himself and respondent no.1 examined the Enquiry Officer and one, Shankar M. Mohonkar, the Assistant Manager. The objections to the enquiry raised by the petitioner before the Labour Court, were (i) the wordings of the chargesheet were vague, (ii) the chargesheet was given with a biased mind, (iii) name of the enquiry officer was not disclosed in the chargesheet, (iv) he was not supplied with the list of witnesses and copy of the complaint in advance, and (v) the copies of the documents relied upon by respondent no.1 were not furnished to the petitioner before commencement of the enquiry. The Labour Court noted that the chargesheet was sufficiently descriptive and contained the details of the alleged acts by the petitioner with enumeration of the misconduct under Section 24 of the Model Standing Orders. The chargesheet further contained details of the place and time where the enquiry would be conducted. The petitioner was further informed that, he would be allowed to bring his defence witnesses and could defend himself by a workman or a person duly authorised by to represent in the departmental enquiry. The chargesheet was signed by the concerned Manager. Therefore, there was no substance in the allegation of the petitioner as regards the contents of the chargesheet. In any case, the

Labour Court noted that, the petitioner, in his reply to the chargesheet, had specifically stated that he had understood the charges against him. As regards non-disclosure of the name of the enquiry officer in the chargesheet, the Labour Court was of the opinion that, no prejudice thereby could be caused to the petitioner and that the petitioner was well aware of the name of the Enquiry Officer before commencement of the enquiry proceedings. Similarly, non-supply in advance of the list of witnesses and the documents relied upon by respondent no.1, had not caused any prejudice to the petitioner. Then, there was a specific demand made by the petitioner for copy of the complaint made against him. Respondent no.1 had opposed the demand by saying that, it was not going to produce the complaint in evidence and that the petitioner would be entitled to demand copies of only such documents as were to be produced by respondent no.1. In any case, the record shows that copy of the complaint was infact given to the petitioner later so as to ensure that the principles of natural justice are not violated. Thus, all the grievances of the petitioner about the enquiry were found meritless.

6). The petitioner had not attended enquiry proceedings on some dates on the pretext of being unwell. His claim of sickness had been disbelieved by the Enquiry Officer on the ground that he had visited his place of work for making the enquiries about dues payable to him. The petitioner complains that the Enquiry Officer could not have

disbelieved his statement as regards the health and submits that the enquiry ought to have been adjourned on such dates. The inference drawn by the Enquiry Officer cannot be said to be perverse. In any case, the petitioner was represented by an Advocate in the enquiry proceedings. Therefore, obviously there was no prejudice caused to him. One more grievance of the petitioner was that the enquiry was not conducted in marathi. According to the petitioner, though he has a workable knowledge of English, he is not so well versed with it as to participate in the enquiry proceedings. Admittedly, the petitioner has knowledge of English and he was also represented by an Advocate in the proceedings. Therefore, he cannot be allowed to complain for the enquiry proceedings being conducted in English. In the circumstances, I find no infirmity whatsoever in the view taken by the Labour Court that the enquiry conducted by the enquiry officer was fair and reasonable.

7). As regards the establishment of charges against the petitioner and propriety of imposition of punishment of dismissal, perusal of the record makes it clear that the findings of the Courts below are justified. The chargesheet against the petitioner alleged that, on 26th January, 1984 he had reported for his duties in the second shift at about 4.15 p.m. and then was seen in the Engineering Department, which is away from his place of work. In the Engineering Department, he had gathered about 10 to 12 workers and was found addressing them. When,

Mr. Kamath, the Maintenance Engineer was about to leave for the plant, the petitioner addressed him in a rude and inappropriate manner by saying "Kamath, one minute come here". The petitioner then approached Kamath with 10 to 12 workers and started arguing with him claiming that the workers from the Engineering Department had grievances. Mr. Kamath told him that the workers from his Department could approach him directly for the grievances and there was no need of the petitioner to take up their cause. The petitioner, however, insisted that he could speak on behalf of the engineering workers. When the petitioner started to argue, Mr. Kamath returned to his cabin to report the matter to his superior, Mr. Moholkar. At that time, the petitioner allegedly rushed into the cabin and started challenging Mr. Kamath in abusive language. On hearing his shouts, the workers from the Engineering Department including the witnesses examined by respondent no.1 collected at the scene of the incident. On these allegations, the petitioner was charged the following misconduct :

- "Section 23(a) - -Willful insubordination or disobedience whether or not in combination with another, of any lawful and reasonable order of a superior."
- Section 24(k) – "indecent behaviour on premises of establishment".
- Section 24(l) – "Commission of any act subversive of discipline or good behaviour on the premises of the establishment.

Section 24(r) – Holding meeting inside the premises of the establishment without the previous permission of manager or except in accordance with provisions of any law for the time being in force.”

8). During the course of enquiry, respondent no.1 examined Shri. S.M. Moholkar, Representative of the Management, Shri. G.K. Kamat, Maintenance Engineer, Shri. M.L. Hegde, Chief Superintendent, Quality Control, Shri. S.D. Tungare, Senior Store Keeper in Engineering Department, Shri. P.S. Khadilkar, Superintendent (effluent), Shri. M.K. Pawar, Stores Clerk, Engineering Stores, Shri. S.G. Asukar, Maintenance fitter. The petitioner examined himself and did not examine any witness. The Labour Court appreciated and accepted the evidence led during the enquiry as proper and sufficient to establish the charges against the petitioner. The Labour Court found that, the findings of the Enquiry Officer were justified by the material on record.

9). The main complaint of the petitioner is that, he had been victimised because of his union activities. There is no material on record to support any such allegations.

10). As regards Part-II of the Award, on propriety of the punishment awarded to the petitioner, the Labour Court has noted that the past record of the petitioner was extremely bad. On nine occasions, he had been issued memo for various kinds of misconducts which

included being absent, sleeping on duty, chit chatting while on duty, negligence in work etc. The record shows that on most of the occasions, the petitioner had admitted the guilt and on such admission had been pardoned. In the circumstances, in my opinion, it cannot also be said that punishment of dismissal was disproportionate to the charges proved against the petitioner. Respondent no.1 could have certainly taken into consideration the past record of the petitioner, while imposing punishment upon him. The Writ Petition is therefore dismissed.

(SMT. R.P. SONDURBALDOTA, J)