

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4141 of 2001

Shri. Banvari Shivraj Yadav,
Bhandup, Mumbai

.... Petitioner

Vs.

The Indian Smelting & Refining
Co. Ltd. Bhandup, Mumbai & Anr.

.... Respondents

Mr. Suresh Kumar i/by Imteyaz Ibrahim Gave, Advocate for the
Petitioner.

Mr. R.S. Pai, Senior Counsel i/by M/s Nameet and Company, Advocate
for the Respondent.

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

Date : 18th April, 2015.

P.C.

1 This petition filed by the employee is directed against the
order dtd.13th June, 2000 passed by the Labour Court, Thane,
dismissing his Complaint (ULP) No.31 of 2000 and the order dtd. 2nd
April, 2001 passed by the Industrial Court, Thane, confirming the
order of the Labour Court and dismissing his Revision Application
(ULP) No.1 of 2001.

2 The petitioner joined services of respondent no.1-Company as a “Watchman” in the year 1967. On 2nd April, 1988, he was served with charge-sheet alleging misconduct of wilful disobedience of a lawful and reasonable order of the superior under Clause 24(a) and for commission of act subversive of discipline and good behaviour on the premises of respondent no.1 under Clause 24(l) of Model Standing Orders. After holding enquiry into the misconduct, respondent no.1 terminated his services on 7th December, 1991. The petitioner challenged his dismissal by filing Complaint (ULP) No. 31 of 1992. By the order dtd. 27th May, 1994, the Labour Court held that the enquiry conducted by respondent no.1 was fair and proper. The petitioner's challenge to that order before the Industrial Court failed. Then he carried the order further to this court by filing Writ Petition No.741 of 2000. That petition was disposed off with liberty to the petitioner to take up the contention of fairness of the enquiry in the final order on the complaint. Thereafter the Labour Court considered the appropriateness of the punishment awarded by respondent no.1 to the petitioner and dismissed his complaint by the order dtd.13th June, 2000. Being aggrieved by the order, the petitioner preferred Revision Application (ULP) No.1 of 2001, which was dismissed on 2nd April, 2001 holding that the order passed by the Labour Court was a proper order, supported by the material on record and did not require any interference.

3 The petitioner thereafter approached this court by way of the present petition. Although in the petition, there is no specific challenge, by way of a prayer, to Part-I of the award holding that the enquiry conducted by respondent no.1 was fair and proper, the petitioner has, at grounds “j” and “l” taken specific objection to Part-I award. Therefore, the writ petition is heard on the challenge to Part-I as well as Part-II of the award.

4 Mr. Suresh Kumar, the learned advocate for the petitioner submits that the petitioner was not given an opportunity to examine his defence witness by refusing an adjournment to him for that purpose. Mr. Suresh Kumar, however is unable to point out specific prejudice caused to the petitioner by denial of that opportunity. Though the witness proposed to be examined by the petitioner has been named in the record, it was necessary for the petitioner to point out the material or the facts that he proposed to bring on record through the witness. It is also to be noted that the petitioner himself in his evidence has made no reference whatsoever to the witness. The complaint of denial of an opportunity to defend by refusing an adjournment for examining the witness must be a complaint of substance. There must be specific prejudice caused to the defence of the delinquent by denial of opportunity. The exercise of domestic enquiry conducted by the employer cannot be set at naught for a frivolous and casual objection. In the absence of specific prejudice to

the petitioner, there is no substance in the allegation that the enquiry was not fair. Hence, the order of the courts below as regards fairness of the enquiry cannot be disturbed.

5 Mr. Suresh Kumar next argues that the punishment of dismissal awarded to the petitioner is disproportionate to the misconduct established against him. The utterances to the petitioner are neither abusive nor threatening. According to him, there could also be provocation to the petitioner. Mr. Suresh Kumar points out that the petitioner had infact been appreciated in the past by respondent no.1 for his work by giving him certificates of merit. Therefore, dismissal from service for a solitary incident leading to the enquiry would be oppressively disproportionate to the misconduct. He also points out that the enquiry officer had in fact in his report mentioned that there was no past record of misbehaviour in respect of the petitioner.

6 Mr. Suresh Kumar relies upon the following decisions of the Apex Court to submit that the utterances much more serious than those in the present case have been held by the Apex Court as not sufficient to warrant punishment of dismissal.

(I) Rama Kant Misra vs. State of Utter Pradesh & Ors., reported in (1982) 3 SCC, page 346.

(II) Ved Prakash Gupta vs. M/s Delton Cable India (P) Ltd., reported in (1984) 2 SCC, page 569,

- (III) Ram Kishan vs. Union of India & Ors, reported in (1995) 6 SCC, page 157,
- (IV) Dev Singh vs. Punjab Tourism Development Corporation Ltd. & Anr., reported in (2003) 8 SCC, page 9,
- (V) Collector Singh vs. L.M.L. Limited, Kanpur, reported in (2015) 2 SCC, page 410.

Mr. Pai on the other hand submits that it is well established position in law that the Court or the Tribunal will not ordinarily interfere with the discretion of the disciplinary authority in imposing penalty upon the delinquent employee. The court will not substitute it's own conclusion on the penalty. In this connection, he relies upon the following decisions:

- I) Thermax Limited, Pune, vs. Vishwanath N. Jadhav and Ors., reported in 2009 I CLR, page 870.
- II) Mukesh K. Tripathi vs. Senior Divisional Manager, LIC and Ors., reported in (2004) 8 SCC, page 387.
- III) H.R. Adyanthaya etc. etc. vs. Sandoz (India) Ltd. etc. etc., reported in 1994 II CLR, page 552.
- IV) Mahindra and Mahindra Ltd. vs. N.B. Narawade, reported in (2005) 3 SCC, page 134.

He further submits that in fact the past record of the petitioner has not been good and that he had been given minor punishments of warnings many times and this has in fact been discussed by the courts below.

7 Section 11A of the Industrial Disputes Act empowers the Labour Court and Tribunals to give appropriate relief in case of discharge or dismissal of the workman. This power is however, discretionary power to be exercised in exceptional circumstances where the penalty imposed is oppressively disproportionate to the misconduct proved. There are two incidents to be considered in the case on hand. First was when on 2nd July, 1988, Banwari Yadav, Jamadar went to the residence of the petitioner alongwith the document of undertaking to be signed by the petitioner in respect of the new residential accommodation allotted to the petitioner in the Company's premises. The petitioner had not only refused to sign it but had in an angry tone had asked Jamadar to go away. When the matter was reported to Security Officer, Subhash Singh, he had called the petitioner to his office. Even there the petitioner refused to sign the undertaking. He falsely claimed that nobody had visited his residence to obtain signature. The petitioner then demanded in anger to call the person, who had visited his residence. At that time, Shri. Shamsunder, Deputy Manager, Admn. Had come in the cabin of Subhash Singh on his usual round and enquired about the matter, at which the petitioner started shouting and raised his voice. When Subhash Singh asked him to lower down his voice, the petitioner said that he could do nothing as

his voice, is naturally loud and alleged that Subhash Singh and Sharma always pressurise him. He said that the discipline of the company was spoiled completely after the new management took over and demanded that they should stop dramatising things.

8 Admittedly, the petitioner did not sign the undertaking at any point of time. The question is whether this conduct on the part of the petitioner and utterances made by him invite penalty of dismissal. Mr. Pai, submits that the petitioner was working as a security person and such behaviour on his part cannot be pardoned. If the petitioner himself is indisciplined to this extent, he cannot be expected to have discipline maintained on the establishment, which is infact his duty. As has been discussed by the courts below, in the past the petitioner has been warned for mis-conduct of different types. One of them was to fabricate the Gate-Pass issued to his family members for visiting the premises of the establishments. The Gate-Pass had been issued for five persons. The number five thereon was changed by the petitioner to eight. There was also an incident in which he had wilfully disobeyed the orders passed by the superiors. Perusal of the orders of the courts below show that the two incidents have been discussed therein in detail. In these circumstances, in my opinion, there cannot be any interference with the imposition of punishment by respondent no.1 upon the petitioner. Hence, the Writ Petition is dismissed.

(Smt. R.P. SondurBaldota, J.)