

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4792 OF 1999

Mr. Dinanath Rajnarayan Dubey

....Petitioner

V/s.

Shri N. N. Banerjee & Ors.

....Respondents.

Mr. Avinash Belge h/f Mr. S. S. Pakale, Advocate for the Petitioner.
Mr.R.S. Pai with Mr. Gawade i/b Sanjay Udeshi & Co., Advocate for the
Respondents No.1 and 2.

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

DATE : 24th July, 2015.

P.C.:

. The petitioner filed complaint (ULP) No.281 of 1991 alleging unfair labour practices under Item 1(a) (b) (d) (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, MRTU & PULP Act). He also sought direction to the respondents for his reinstatement with continuity of service and full back wages. By judgment and order dated 25th January, 1995, the Labour Court dismissed the complaint. Being aggrieved by the order of dismissal the petitioner preferred Revision Application (ULP) No.81 of 1995 to the Industrial Tribunal. By the order dated 7th May, 1999 the Tribunal dismissed the Revision Application. The present petition is to challenge the two orders.

2. In the complaint proceedings the petitioner had filed an application for interim reliefs which was dismissed vide order dated 31st March, 1993 by the Labour Court and the petition preferred by him to this Court was also rejected vide order dated 17th March, 1994. In the order on the interim application the Labour Court had observed in terms that the complaint filed by the petitioner does not reveal any allegations which can be termed as unfair labour practice under Item 1(a) (b) (d) (f) and (g) of the Schedule IV of the MRTU and PULP Act. Despite the specific observation in the interim order, the complaint has remained defective for want of steps by the petitioner. The defective complaint went for trial and has finally resulted into the present petition.

3. The factual background of the complaint filed by the petitioner is that he was served with two chargesheets dated 9th July, 1991 and 3rd July, 1991 for the incidents dated 5th July 1991, 6th July 1991, 8th July 1991 and 31st August, 1991. The misconducts, alleged therein respectively read as follows:

24(a) "Willful insubordination or disobedience of any law and reasonable orders of a Superior."

24(k) "Disorderly or indecent behaviour on the premises of the establishment."

24(m) "Habitual neglect or work."

24(l) "Commission of any act subversive of discipline or good behaviour on the premises of the Establishment."

and

24(a) "Willful insubordination or disobedience whether or not in combination with another of any lawful and reasonable orders of a superior."

24(k) "Disorderly or indecent behaviour on the premises of the establishment."

24(l) "Commission of any act subversive of discipline or good behaviour on the premises of the Establishment."

4. After holding due enquiry into the charges the respondents terminated the services of the petitioner on 27th August, 1992 on acceptance of the reports and findings of the Enquiry Officer dated 15th July, 1992 and 16th August, 1992. Within a short time thereafter i.e. 29th September, 1992 the petitioner filed Complaint (ULP) No.281 of 1992.

5. The complaint alleges deliberate harassment and victimization of the petitioner because, i) he was vocal about misappropriation of the property of the establishment by one of managers of the respondent and ii) because he is an active member of Bhartiya Kamgar Sena. He alleges that he was chargesheeted by way of revenge and dismissed from service without conducting proper enquiry.

The other harassment meted out to him was when he met with an accident while on duty on 3rd January, 1989. The officers of the respondents had deliberately delayed sending him to the hospital. The respondents also indulged in favoritism by promoting his juniors. As regards the misconduct the petitioner denied the charges levelled against him. He alleged that the enquiry conducted was without following principles of natural justice. Also the report of enquiry was perverse.

6. The labour court by the impugned judgment and order held that the petitioner has failed to establish that the respondent is engaged in unfair labour practice as alleged in the complaint, in terminating his services. It also held that the petitioner is not entitled to reinstatement in service. The charge-sheet dated 7th July, 1991 and 3rd September, 1991 states details of the particulars about the incident and also names the persons present at the time of the incident. The respondents had examined some of the persons present at the relevant time. The petitioner had examined himself and some other workers, none of whom were present at the relevant time and place. Therefore the Enquiry Officer drew an inference of guilt against the petitioner. As regards the conduct of enquiry the petitioner had raised grievance

about the language in which the same was conducted. However later at the instance of the petitioner the enquiry had been conducted entirely in Hindi. The petitioner desired the proceedings of the enquiry to be tape recorded but his request was refused. Such refusal can hardly amount to breach of principles of natural justice. The other grievance raised by the petitioner is that he was not furnished with the report of the Enquiry Officer. The Labour Court however observed that the reports and findings of the Enquiry Officer were made available to the petitioner during the course of hearing of the complaint on 22nd October, 1992. But, thereafter the petitioner neither amended the complaint nor pointed out the prejudice caused to him by not getting the enquiry report earlier. Thus, as regards the conduct of the enquiry the Labour Court has correctly appreciated the facts on record and has held that there was no infirmity in the enquiry proceedings whatsoever. Mr. Avinash Belge, the learned advocate for the petitioner sought to argue that the inference of guilt arrived by the Enquiry Officer is not proper. According to him the Enquiry Officer has selectively appreciated the evidence of the witnesses examined in the enquiry proceeding. He has however not been able to support his argument by specifically pointed out the evidence that has been omitted. Therefore there could be no infirmity in the inference of guilt drawn by the Enquiry Officer.

7. The Labour Court then has considered each head of the unfair labour practice alleged against the respondents and held that the petitioner has not been able to establish any of them.

8. As regard the unfair labour practice under Item 1(a) which is discharge or dismissal by way of victimization, the Labour Court has correctly held that in view of finding of proved misconduct the charge of victimization fails. As regards Item 1(b) and (d) the Labour Court noted that the complaint does not contain a single sentence to attract these two items. It further notes that the services of the petitioner were terminated after issuing charge-sheet, holding enquiry, receiving findings of the Enquiry Officer and duly considering the same. Therefore it could not be said that the dismissal of the petitioner is colourable exercise of the respondent's right or that same is not in good faith. It held for the same reason that the charge of patently false reason for dismissal also do not survive. As regards Item 1(f) it had already been observed that the domestic enquiry was conducted with due regard to the principles of natural justice and there was no undue haste in conducting the same. Therefore there was no unfair labour practice established under Item 1(f). For unfair labour practice under 1(g) it had been rightly held by the Labour Court that there is no pleading whatsoever in the complaint to the effect that the punishment awarded

to the petitioner is shockingly disproportionate to the charges established against him. Thus, there is no infirmity whatsoever with the decision of the Labour Court which has been confirmed by the Industrial Court in its revisional jurisdiction. The petition is therefore dismissed.

(SMT. R. P. SONDURBALDOTA, J.)

CERTIFICATE

“ Certified to be true and correct copy of the original signed Judgment/Order.”