

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10619 OF 2014

Mr. Sharat Behra

.....Petitioner

: V/S :

M/s. .P.D. Hinduja Hospital
and Ors.

.....Respondents

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Mr. H. Kumar Vaidyanathan, Advocate for the petitioner.

Mr. K.M. Naik, Senior Counsel a/w. Mr. P.N. Salgaonkar i/by.
Salgaonkar & Co., Advocate for the respondents.

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

13th July, 2015.

P.C. :-

1). This petition is directed against the orders dated 17th January, 2012 and 5th October, 2012 being Part-I and Part-II of the Award passed by the Labour Court in Complaint (ULP) No. 8 of 2010 and the order dated 16th June, 2014 passed by the Industrial Tribunal on Revision Application (ULP) No. 8 of 2013.

2). The petitioner was working with the respondent as “hospital attendant”. He was served with chargesheet dated 1st January, 2009 for certain misconduct under the Model Standing Orders. The enquiry was duly conducted against him after which he was dismissed from service.

During pendency of the enquiry, by the order dated 15th January, 2009 he was suspended from service.

3). At the hearing of the complaint, the petitioner had restricted his challenge to the action against him to three grounds, (i) non-payment of full subsistence allowance during enquiry, (ii) non-supply of enquiry report and (iii) non-service of second show cause notice.

4). The Labour Court at para-10 of its Part-I Award observes on the first two grounds of challenge as follows :-

“10..... It is the fact that, the complainant has only pressed two grounds for vitiating the enquiry i.e. non-payment of subsistence allowance and non-supply of enquiry report. Nowhere it has been pointed out that, the Standing Order speaks of supplying the same and the complainant was prejudiced by not doing so. The enquiry officer is only empowered to submit his report to the management. Supply of enquiry report is the prerogative of the management and it cannot be said that the enquiry officer is at fault for not doing so, for the present case. From the above discussion, it appears that, the enquiry officer followed the proper procedure as per the principles of natural justice and has given the findings on the basis of the evidence adduced before him.”

5). The third ground alleged by the petitioner for Part-II of the Award is that, the petitioner was not served with the second show cause notice i.e. notice calling upon him to show cause as to why action of dismissal be not taken against him. The Labour Court, on appreciation of the entire material on record and taking the objections of the

petitioner into consideration has held that for the charges established against the petitioner, the punishment of dismissal is not disproportionate.

6). The Industrial Court has confirmed the orders of the Labour Court by further saying that there is total loss of faith and trust of the employer especially in respect of the act of moral turpitude (molesting the female employee on the premises of the hospital by the complainant) which requires no sympathy.

7). Mr. Vaidyanathan, the learned Advocate appearing for the petitioner submits that the Courts below ought to have considered the objections and held that non-payment of subsistence allowance and non-supply of the enquiry report would vitiate the enquiry.

8). Mr. Naik, the learned Senior Counsel appearing for the respondent submits that, the petitioner was only denied the subsistence allowance at higher rate but that action of the respondent is justified under Item-25(5)(iii) of the Model Standing Orders. He points out from the rojnama of the enquiry proceedings that the enquiry officer has noted in his order that, there was unnecessary delay in conducting the domestic enquiry and it was the petitioner who was fully responsible for the delay. In the noting dated 13th April, 2009 this conclusion has been drawn by the Enquiry Officer and leave granted to the respondent to take

action against the petitioner under Standing Order Clause 25(5), (iii) and take appropriate action against him. This order has neither been disputed nor challenged by the petitioner at any point of time. Thus there is complete justification on record, for not paying the subsistence allowance to the petitioner at the enhanced rate, which he would otherwise be entitled to.

9). Mr. Naik, in addition submits that, it is necessary for the petitioner to establish the prejudice caused to him, by non-payment of the enhanced subsistence allowance and non-furnishing of the enquiry report by the respondent. He relies upon the decision of the Apex Court in the case of **Oriental Insurance Co. Ltd v. S. Balakrishnan reported in 2001(II) CLR page 302** to submit that unless the petitioner establishes a specific prejudice caused to him on account of both the grounds, it cannot be held that the enquiry stands prejudiced. In the other decision cited of **M.D., ECIL, Hyderabad v. B. Karunakar, reported in 1994-I-LLJ page 162**, the Apex Court considers the effect of failure to furnish the report of the enquiry officer.

The same read as follows :-

“ The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service

and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice."

Undisputedly, the petitioner has not pleaded or established the prejudice caused to him.

10). As regards issuance of the second show cause notice, Mr. Naik relies upon the decision of the Apex Court in the case of **Associated Cement Companies Ltd v. T.C. Srivastava and another reported in 1984 (II) LRG page 105**, wherein the Apex Court observes as follows :

“ It is thus clear neither under the ordinary law of the land nor under industrial law a second opportunity to show

cause against the proposed punishment is necessary. This, of course, does not mean that a Standing order may not provide for it but unless the Standing order provides for it. either expressly or by necessary implication no inquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity.”

10). This would mean that, firstly there is no procedure for issuance of the second show cause notice and in any case, the petitioner has not established prejudice that is caused to him by not giving the second show cause notice.

11). There is no merit whatsoever in the technical objections taken by the petitioner to the order of his dismissal. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)