

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 2338 OF 2015

Mr. Surendra Eknath Chavan.

... Petitioner.

V/s.

M/s. Sandu Brothers Pvt. Ltd.

... Respondent.

Mr. Haresh A. Shivdasani for the Petitioner.

Mr. T.R. Yadav for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 30 NOVEMBER, 2015.

P.C. :-

Heard learned Counsel for the parties. Rule. Rule made returnable forthwith. By order dated 24 November 2015, parties were put to notice that the Court will take up the matter for final disposal.

2. The Petitioner challenges the order passed by the Labour Court, Mumbai dated 5 January 2015 answering the Reference in negative. The Petitioner was working as a Typist and EDP Operator with the Respondent – Company. Show Cause Notices were issued to him from 8 September 2006 to 9 November 2006. Thereafter, a charge-sheet was issued attributing seven

misconducts and after the conclusion of the enquiry held against him, he was terminated by order dated 27 June 2009. Reference was made by the Deputy Commissioner of Labour to the Labour Court, Mumbai in respect of termination of the Petitioner. The Labour Court framed issues as to whether enquiry is in violation of principles of natural justice, whether the findings are perverse, whether the punishment is shockingly disproportionate and whether the Petitioner is entitled to reinstatement with continuity and full back wages.

3. The learned Counsel for the Petitioner upon instructions restricted his submissions as to the proportionality of the punishment. He submitted that the charges which are proved does not warrant dismissal from service. The learned Counsel for the Respondent supported the impugned order.

4. The Labour Court has framed a specific issue as to whether the punishment was shockingly disproportionate, keeping in mind the powers of the Court under Section 11A of the Industrial Disputes Act, 1947. The Labour Court inspite of framing the issues has not considered the aspect of proportionality of the punishment at all. It initially alludes to the aspect of proportionality, but the discussion thereafter proceeds on merits of the charges. Nowhere the Labour Court has considered that even if the charges are proved, whether the punishment of dismissal is warranted or not.

5. In the circumstances, since the original jurisdiction of deciding proportionality of punishment lies with the Labour Court, it will be appropriate that the proceedings will be remanded back to the Labour Court for consideration of the aspect of proportionality of the punishment.

6. The Petition is disposed off confirming the findings of the Labour Court as regard Issue Nos.1 and 2 and as far as the Issue Nos. 3 and 4 are concerned, the matter will be decided by the Labour Court afresh after giving opportunity to both the sides.

7. Rule made absolute in above terms. No cost.

(N.M. JAMDAR, J.)