

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2162 OF 1996

Jayawant Narayan Joshi,
Since deceased,
through his heirs and legal representatives

1. Pramila w/o Jayawant Joshi,
Age-71 years, Occu-Household,

2. Ajay S/o Jayawant Joshi,
Age-40 years, Occu-Service,

Both r/o Parijat, Plot No.121,
Sector-19, Koyana Nagar,
Chikhali Road, Chinchwad,
Pune - 411019

3. Manjusha w/o Prashant Garge,
Age-45 years, Occu-Household,
R/o Pendse Nagar, Galli No.6,
Dombiwali (East),

4. Sneha W/o Abhijeet Kulkarni,
Age-40 years, Occu-Household,
R/o Flat No.18, Anudeep Housing
Society, Kamathwada Road,
Nashik.

– PETITIONERS

VERSUS

1. Maharashtra State Road Transport
Corporation,
Through the Divisional Controller,
Dhule,

2. Judge,
Labour Court, Dhule,

3. Member, Industrial Court,
Maharashtra, at Nasik, Nasik.

– RESPONDENTS

Mr.L.V.Sangit h/f Mr.S.V.Dixit, Advocate for the petitioner.
Mr.D.S.Bagul, Advocate for respondent No.1.
Respondent Nos. 2 and 3 are deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/09/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and order dated 30/12/1993 by which Revision (ULP) No.12/1993 filed by the respondent/Corporation was allowed and the order of the Labour Court dated 08/12/1992, granting reinstatement with continuity of service and back wages was quashed and set aside.
2. Respondent Nos. 2 and 3 are the Labour Court and Industrial Court. Both stand deleted from this petition, being formal parties.
3. This petition was admitted on 14/03/1995 and interim relief was refused.
4. I have heard the learned Advocates for the respective sides at length.
5. Jaywant Narayan Joshi, the original petitioner has passed away

and his legal heirs have been brought on record.

6. The deceased petitioner suffered punishment of dismissal from service on account of a misconduct, which was proved in the enquiry by the respondent/Corporation under Clause 18 of Annexure-A comprising of the list of misconducts. The charge of committing an act amounting to moral turpitude was levelled upon him. He was charged with having outraged the modesty of a co-employee's wife. *(Names of the co-employee and his wife have been stated in the charge sheet and have not been reproduced in this judgment.)* The act alleged to have been committed by the deceased petitioner was mentioned in the charge sheet and after conducting a departmental enquiry, he was dismissed from service on 19/01/1991.

7. He preferred Complaint (ULP) No.22/1991 before the Labour Court invoking Item 1 of Schedule IV of the MRTU and PULP Act, 1979. The Labour Court framed 10 issues out of which issue No.4 was as regards “Does the complainant prove, in utter disregard of principles of natural justice, respondent conducted departmental enquiry against him ?”

8. It is undisputed that the Labour Court did not try the said

issue peremptorily despite the fact that the deceased petitioner had challenged the fairness of the enquiry as well as the findings of the Enquiry Officer. It is also not disputed that as the Labour Court concluded that the enquiry is vitiated, it granted reinstatement with continuity and full back wages to the deceased. Contention of Mr.Sangit, learned Advocate for the petitioner is that the Labour Court had rightly arrived at the said conclusion and had correctly granted reliefs to the deceased.

9. It is settled law in the light of the judgment of the Hon'ble Supreme Court in the matter of Workmen of Motipur Sugar Factory Private Ltd.,Vs. The Motipur Sugar Factory Private Limited, AIR 1965 SC 1803 that once the enquiry was challenged, the Labour Court or the Tribunal has to frame two issues with regard to the fairness of the enquiry and the fairness of the findings of the Enquiry Officer. In catena of judgments delivered by the Hon'ble Supreme Court following Motipur Sugar Factory (supra), these two issues are required to be decided peremptorily.

10. This Court has held in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(3) Mh.L.J. 339 = 2014(1) CLR 878

and Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nijam, 2014(4) Mh.L.J. 687 = 2014 (3) CLR 547 that unless these two issues are decided by way of a part-I judgment, the Labour Court or the Tribunal cannot proceed with the rest of the issues. In the light of the above, the judgment of the Labour Court apparently is rendered unsustainable and deserves to be set aside.

11. However, Mr.Sangit rightly submits that since the employee has passed away, even if a *de-novo* enquiry is to be conducted, no purpose would be served as the charges will have to be proved by the respondent/Corporation against the employee. His demise would handicap the legal heirs from contesting the enquiry. He, therefore, has prayed that the matter need not be remanded back. He further submits that the widow of the employee is 76 years old today and his son is 45 years old.

12. Mr.Sangit, therefore, submits that the other issues raised by him need to be considered. He contends that the alleged misconduct is said to have been committed in the house of a co-employee. Same has not occurred on the premises of the Corporation. Neither the purported victim nor her husband have deposed in the enquiry. The enquiry was, therefore, rightly set aside. He, therefore, submits that

the only issue that needs consideration, in the above backdrop, is as to whether the act alleged to have been committed by the deceased could be covered by the Discipline and Appeal Rules /Procedure of the Corporation.

13. He has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of M/s Glaxo Laboratories India Ltd., Vs.Presiding Officer, Labour Court, Meerut and others, AIR 1984 SC 505. He draws my attention to paragraph Nos. 13 and 14 of the Glaxo Laboratories judgment (supra), which read as under :-

“13. After reading clause 10, Mr. Shanti Bhushan contended that the expression committed within the premises of the establishment or in the vicinity thereof can qualify only the expression ‘any act subversive of discipline and efficiency and any act involving moral turpitude’ but not the earlier portion of the clause. Numerous acts of misconduct have been collected in clause 10 such as drunkenness, fighting, indecent or disorderly behaviour, use of abusive language, wrongfully interfering with the work of other employees etc. Says Mr. Shanti Bhushan that these acts of misconduct are per se misconduct that each one of them cannot have any correlation to the time or place where it is committed and each one of it is an act of misconduct irrespective of the time and place where it is committed. Expanding the submission, it was urged that drunkenness is such a socially reprehensible action that if it is committed within the premises of

the establishment or in the vicinity thereof or anywhere else at any point of time it would none the less be an act of misconduct comprehended in clause 10 and punishable under standing order 23. If this construction were even to be accepted the employer will have more power than the almighty State because State chooses to punish drunkenness in public place. But on the construction canvassed for if a man consumes liquor in 240 his own house with the doors closed and gets drunk, the employer can still fire him. If a man uses abusive language towards his close relation in his own house with closed door, the employer would be entitled to fire him, and this approach overlooks the purpose of prescribing conditions of service by a statute. To enable an employer to peacefully carry on his industrial activity, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconduct when committed within the premises of the establishment. The employer has hardly any extra territorial jurisdiction. He is not the custodian of general law and order situation nor the Guru or mentor of his workmen for their well regulated cultural advancement. If the power to regulate the behaviour of the workmen outside the duty hours and at any place wherever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service. The employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment, or for

peacefully carrying the industrial activity in the vicinity of the establishment. When the broad purpose for conferring power on the employer to prescribe acts of misconduct that may be committed by his workmen is kept in view, it is not difficult to ascertain whether the expression 'committed' within the premises of the establishment or in the vicinity thereof would qualify each and every act of misconduct collocated in clause 10 or the last two only, namely, 'any act subversive of discipline and efficiency and any act involving moral turpitude'. To buttress this conclusion, one illustration would suffice. Drunkenness even from the point of view of prohibitionist can at best be said to be an act involving moral turpitude. If the misconduct alleging drunkenness as an act involving moral turpitude is charged, it would have to be shown that it was committed within the premises of the establishment or vicinity thereof but if the misconduct charged would be drunkenness the limitation of its being committed within the premises of the establishment can be disregarded. This makes no sense. And it may be remembered that the power to prescribe conditions of service is not unilateral but the workmen have right to object and to be heard and a statutory authority namely, Certifying Officer has to certify the same. Therefore, keeping in view the larger objective sought to be achieved by prescribing conditions of employment in certified 241 standing orders, the only construction one can put on clause 10 is that the various acts of misconduct therein set out would be misconduct for the purpose of S.O. 22 punishable S.O. 23, if committed within the premises of the establishment or in the vicinity thereof.

14. What constitutes establishment or its vicinity would depend upon the facts and circumstances of each case.”

14. I do not find that the ratio laid down in the said judgment would be of any assistance to the petitioner for the reason that the Hon'ble Apex Court has concluded that, “what constitutes establishment or its vicinity would depend upon the facts and circumstances of each case.” In the case in hand, the charge levelled upon the deceased was that he had left the work place during working hours and had reached the home of a co-worker in the neighbourhood. After getting drunk at his place, he had outraged the modesty of the wife of the co-worker. The husband of the said lady had lodged a written complaint to the Corporation. Said complaint was proved in the enquiry. The enquiry has been set aside by the Labour Court. In the event a *de-novo* enquiry is to be conducted, this document can be proved in accordance with Law. However, in the peculiar facts of the case, a *de-novo* enquiry is not possible. This Court, therefore, has to proceed on the available material.

15. It is settled law that hear-say evidence can be appreciated and the material before the employer can be considered on the preponderance on the principles of probabilities.

16. It is most improbable that a lady would sacrifice her respect and her modesty by making allegations of the nature, which are found in the instant case. It is equally improbable that the co-worker would sacrifice his wife's honour and modesty by inciting her to make such allegations against a co-worker. Based on the preponderance of the principles of probabilities, the Industrial Court rightly concluded that the misconduct is proved.

17. The Hon'ble Supreme Court in the matter of Mulchandani Electrical and Radio Industries Ltd., Vs Workmen, 1975 AIR (SC) 2125 has held that it is immaterial that the misconduct was committed outside the factory. The act, wherever may be committed, if has the effect of subverting discipline or good behaviour, and the effects of such act manifest in the discipline of the establishment, the model Standing Orders can be invoked for holding disciplinary proceedings.

18. In the instant case, clause 18 below Annexure-A, which is the list of misconducts defined under the Discipline and Appeal Rules of the Corporation, would indicate that the charge of committing an act which amounts to moral turpitude, could be subjected to a

departmental enquiry. This Court, in the matter of Automotive Manufacturers Ltd., Vs. Member, Industrial Court and another, [2009(5) Mh.L.J. 429] has concluded in similar circumstances that though the incident took place outside the factory premises, its consequences manifest in the discipline of the establishment.

19. Mr.Bagul has rightly contended that though the enquiry was set aside and on the available material, the Labour Court decided the complaint, it lost sight of the fact that the evidentiary value in service jurisprudence is distinct and different from criminal proceedings. When some material was available before the Labour Court, it could not have granted reinstatement with continuity and full back wages to the deceased petitioner by ignoring the settled principles under service jurisprudence. He further submits that no employee would remain silent or digest the act of a co-employee of outraging the modesty of his wife in a drunken condition.

20. It is informed that the Provident Fund Accumulations alongwith interest for an amount of Rs.1,90,352/- have been paid to the widow of the employee. Gratuity has been forfeited since an act amounting to moral turpitude has been proved.

21. In the light of the above, I do not find that the judgment of the Industrial Court could be termed as being perverse or erroneous or that the Industrial Court has exercised jurisdiction not vested in it by Law.

22. As such, this petition, being devoid of merits, is therefore dismissed. Rule is discharged.

23. Pending civil applications, if any, do not survive, hence stands disposed of.

(RAVINDRA V. GHUGE, J.)