

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4492 OF 2015

Jalindar Ganpat Lawate,
Age : 47 years, Occupation : Nil,
R/o Chinchpur, Taluka Sangamner,
District Ahmednagar.

...PETITIONER

-VERSUS-

Pravara Medical Trust,
Loni, At Post Loni,
Taluka Rahata,
District Ahmednagar.
Through it's Trustee and Secretary.

...RESPONDENT

...
Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondent : Shri Hon Ashwin V.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner / Employee is aggrieved by the judgment of the Industrial Court dated 20.12.2014 by which Revision (ULP) NO.22/2014 filed by him has been dismissed.

3 The Petitioner is also aggrieved by the order dated
13.06.2012 delivered by the Labour Court by which his application Exhibit
U/27 has been rejected.

4 I have considered the strenuous submissions of Shri Barde,
learned Advocate for the Petitioner and Shri Hon, learned Advocate on
behalf of the Respondent/ Management.

5 It is not in dispute that the enquiry conducted by the
Respondent/ Employer against the Petitioner/ Workman was set aside by
the part-1 judgment of the Labour Court dated 27.06.2007. Primary
reason for setting aside the enquiry was that the charge sheet appears to
be vague and ambiguous.

6 The Respondent/ Management had preferred Revision (ULP)
No.61/2007 before the Industrial Court. By the judgment dated
07.10.2010, the Industrial Court allowed the revision petition and set
aside the part-1 judgment of the Labour Court. Consequentially, the
enquiry and the findings of the Enquiry Officer were sustained.

7 Being aggrieved by the judgment of the Industrial Court, the

Petitioner preferred Writ Petition No.341/2011 before this Court. By its order dated 09.02.2012, this Court allowed the petition and concluded that the charges levelled upon the Petitioner through the charge sheet at issue were vague and ambiguous. Owing to vagueness and ambiguity in the charges, this Court sustained the part-1 judgment of the Labour Court by allowing the petition and the impugned judgment of the Industrial Court dated 07.10.2010 was quashed and set aside.

8 Needless to state, before the Labour Court the case stood at a stage as if no enquiry was conducted since the enquiry was set aside.

9 The Respondent/ Management proceeded to lead oral evidence to justify the punishment of dismissal. The Petitioner preferred an application Exhibit U/27 dated 22.03.2012 contending that the charge sheet which was already held to be vague and ambiguous is the foundation of the case of the Respondent before the Labour Court and therefore, evidence cannot be permitted to be recorded pursuant to such vague and ambiguous charge sheet. After considering the contention of the Petitioner and the written say of the Respondent, the Labour Court concluded that the charge sheet cannot be branded as being vague and ambiguous at this stage, same would be considered subsequently while deciding the complaint. Exhibit U/27 was, therefore, rejected. For similar

reasons, the Industrial Court dismissed the revision petition filed by the Petitioner by the impugned judgment dated 20.12.2014.

10 The Petitioner has relied upon the following judgments:-

- (a) Edayar Ksheerolpadaka Sahakarana Sangham vs. Industrial Tribunal, (2007) 114 FLR 301 (Kerala High Court).
- (b) President, Mangalodayam Handloom Weavers' Cooperative Society vs. R.Sudha and others, (2015) 147 FLR 279 (Kerala High Court).
- (c) Delhi Transport Corporation vs. Sunil Kumar, (2010) 126 FLR 625 (Delhi High Court).
- (d) Mahinder Singh vs. M/s National Council of Educational Research and Training, (2013) 5 AD 277 : (2013) 2 LLJ 111 (Delhi High Court).
- (e) Gujarat State Cooperative Development Bank Ltd. vs. Niranjanaben A. Pothiwala, (2013) LLR 139 (Gujarat High Court).
- (f) Universal Glass (A Division of Jagatjit Industries) vs. Presiding Officer, Labour Court, (2014) 1 LLJ 751 (Allahabad High Court).
- (g) The Sennampatty Milk Producers Cooperative Society Ltd. vs. The Presiding Officer, Labour Court, (2006) 2 LLJ 817

(Madras High Court).

- (h) The Management of Life Insurance Corporation of India vs. M.Chandrashekhar, (2006) 1 KCCR 253 (Karnataka High Court).
- (i) Shashikant Rameshpant Kavishwar vs. Managing Director, Maharashtra State Cooperative Agriculture and Rural Development Bank Ltd., 2006 BCI 237 (Bombay High Court).
- (j) Arjun Shankar Wagh vs. Maharashtra State Road Transport Corporation, 2014 (5) Bom. C.R. 399 (Bombay High Court).
- (k) Ramesh Kumar Patel vs. Managing Director and others, (2012) ILR MP 710 (Madhya Pradesh High Court).
- (l) Rastriya Auto Sales vs. The Authority Appointed under the Rajasthan Shops and Commercial Establishments Act, 1958, Rajasthan High Court (Jaipur Bench) decided on 23.10.2007.
- (m) Divyash Pandit vs. Management, NCCBM, AIR 2006 SC 92.

11 The Respondent has relied upon the following judgments:-

- (a) The State Bank of India vs. R.K.Jain, AIR 1972 SC 136.
- (b) The Workmen of M/s Firestone Tyre & Rubber Co. of India P. Ltd. vs. The Management and others, AIR 1973 SC 1227.

12 Considering the application Exhibit U/27, I do not find any reason to advert to the entire submissions of the learned Advocates and the cited reports. The submissions of the learned Advocates are on the issue of whether, the Respondent/ Management has reserved a right to conduct a de-novo enquiry in accordance with the law laid down by the Honourable Supreme Court in the matter of *KSRTC vs. Smt.Lakshmiddevamma*, **AIR 2001 SC 2090 : (2001) 2 LLJ 199 : (2001) 90 FLR 35**. The reports cited by both the sides pertain to an opportunity to justify the order of dismissal by the Management and reserving of a right to conduct a de-novo enquiry in the Written Statement.

13 I have no hesitation in concluding that this issue is not the subject matter of this petition. This petition revolves around the application Exhibit U/27 in which the Petitioner contended that once the charge sheet was held to be vague and ambiguous right upto this Court, the Respondent/ Management could not proceed on the basis of the same charge sheet since leading evidence in support of such a vague and ambiguous charge sheet, would be an exercise in futility. It appears that the Labour Court has failed to note the observations of this Court in its order dated 09.02.2012 whereby, this Court agreed with the conclusion of the Labour Court that the charge sheet is vague and ambiguous. The Industrial Court also committed the same error in concluding that

whether, the charge sheet is vague or not, could not be decided at this stage.

14 In my view, once the charge sheet was branded as being vague and ambiguous by the order of this Court dated 09.02.2012 and as a consequence of which, the order of setting aside the enquiry passed by the Labour Court was sustained by this Court, the application Exhibit U/27 should have been allowed. In fact, the Respondent/ Management should have presented a fresh charge sheet before the Labour Court once the first charge sheet was held to be vague and ambiguous. It is within the knowledge of the Respondent as to why this step was not resorted to. Nevertheless, there would be no purpose in proceeding with the recording of evidence if the charge sheet already branded as vague and ambiguous by this Court is the basis of recording evidence.

15 In the light of the above, this Writ Petition is partly allowed. The application Exhibit U/27 is allowed only to the extent of restricting the Respondent/ Management from leading evidence on the basis of the charge sheet dated 08.11.2000.

16 However, it needs to be clarified that this Court is not expressing any view and is not making any observation as to whether, the

Respondent should conduct a de-novo enquiry by leading fresh evidence when the right to conduct a de-novo enquiry has not been reserved. Both the litigating sides are, therefore, at liberty to deal with the said issue as and when the occasion arises before the Labour Court. The judgment of the Industrial Court dated 20.12.2014 is, therefore, quashed and set aside.

17 In the event, the Respondent/ Management intends to file a fresh charge sheet and conduct a de-novo enquiry, the Labour Court may deal with the said issue in accordance with the law laid down by the Honourable Supreme Court in the above referred cases. The contentions of both sides on the said issue are kept open.

18 Rule is made partly absolute in the above terms.