

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

**WRIT PETITION NO. 1660 OF 2016**

Adinath Sahadu Tanapure and Others ..PETITIONERS

VERSUS

M/s Sai Tyres ..RESPONDENT

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Mr. P.V. Barde, Advocate for petitioners.

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**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 17<sup>th</sup> FEBRUARY, 2016**

**ORAL ORDER :**

1. The petitioners are aggrieved by the judgment and order dated 07.07.2015 delivered by the Industrial Court, Ahmednagar by which the Revision ULP No. 20/2014 preferred by the respondent-management is partly allowed and Revision ULP No. 30/2014 filed by the petitioners-employees has been dismissed.

2. Mr. Barde, learned Counsel for the petitioners has strenuously criticised the impugned judgment of the Industrial Court. He submits that the petitioners were orally charged with

having committed acts of misappropriation. Police complaints were also filed. The petitioners have been acquitted by the Court of criminal jurisdiction. No domestic enquiry was conducted by the respondent-management.

3. Mr. Barde further submits that the Labour Court, Ahmednagar has delivered a judgment dated 05.03.2014 in Complaint ULP No. 14/2007 which was filed by the petitioners for challenging their unlawful termination on the grounds of having committed acts of misappropriation.

4. He further submits that the Labour Court on the one hand, concluded that no enquiry was conducted by the respondent-management and on the other hand, considered the evidence placed on record and concluded that the complaint deserves to be allowed. The Labour Court has considered each and every aspect of the matter and has arrived at a conclusion that the petitioners deserve to be reinstated in service. Section 25(F) of the Industrial Disputes Act, 1947 has been violated. Stigmatic termination is not preceded with a proper enquiry.

5. He further submits that in the face of the findings of fact by the Labour Court, the Industrial Court should have dismissed the revision petition filed by the management.

6. Mr. Barde severely criticises the judgment of the Industrial Court on the ground that the facts before the Industrial Court did not warrant remanding of the matter to the Labour Court. No perversity was pointed out in the findings of the Labour Court. Only because the concerned authority of the respondent-management was in the hospital and/or was under going treatment on account of accident, cannot be a ground for remanding the matter so as to give the respondent-management an opportunity to prove the charges leveled upon the petitioner.

7. Mr. Barde has taken me through the impugned judgment of the Industrial Court as well as the judgment of the Labour Court. He has pointed out the portion from the judgment of the Industrial Court to support his contentions that the impugned judgment is unsustainable.

8. He further submits that the petitioners have been terminated by the respondent-management on 15.03.2007. For the past almost nine years, the petitioners are out of employment and are litigating. A remand of the matter cannot be at the cost of the petitioners. The Industrial Court should have imposed some costs upon the respondent-management in the event the matter was to be remanded.

9. I have considered the submissions of Mr. Barde.

10. It is undisputed that the petitioners have been terminated from service on charges of misappropriation. It is also undisputed that neither has the respondent conducted a domestic enquiry to prove the charges against the petitioners, nor can the termination be termed as being termination simplicitor. Section 25(F) of the Industrial Disputes Act, 1947 has also not been complied with.

11. Notwithstanding the above, the fact remains that the respondent-management has taken a definite stand before the

Labour Court that the petitioners have been terminated from service on account of misappropriation that they had committed. Mr. Barde has strenuously submitted that no right to conduct a denovo enquiry before the Labour Court was reserved by the respondent-management. In the absence of reserving such a right, the management cannot conduct a denovo enquiry.

12. I am unable to accept the submissions of Mr. Barde for the reason that in paragraph no.9 of the written statement dated 06.09.2007, the respondent-management has stated that they are willing to lead evidence with regard to all the contentions set out in the complaint and in its written statement

13. I quite see that paragraph no.9 of the written statement which is in marathi has not been very properly worded. Rather than considering the form, it is necessary to consider the meaning and contents of paragraph no.9.

14. The learned Apex Court in the case of *Karnataka State Road Transport Corporation Vs. Laxmidevamma, 2001 II CLR*

**640** (Five Judges Bench) has concluded that in the matters of enquiry being conducted or in the matters of there being no enquiry at all, if the management reserves the right in its written statement to conduct an enquiry before the Court, that would give the management a legal right to lead evidence and prove the charges levelled upon the employee.

15. The respondent-management has specifically set out in its written statement (called as Kaifiyat in marathi) that the petitioners have been terminated for misappropriation and the management desires to lead evidence to prove every contention set out in the written statement. In my view, the meaning emerging from paragraph no.9 in the written statement does indicate that the management desired to conduct an enquiry before the Labour Court.

16. It is apparent from the proceedings before the Labour Court that neither was an issue cast by the Labour Court with regard to *“whether the respondent-management has proved the*

*charges leveled upon the complainants by conducting an enquiry before the Court*”, nor has the respondent-management been given the opportunity to lead evidence and conduct an enquiry. A proper charge-sheet to that effect was also expected to be filed by the respondent.

17. I quite see from the impugned judgments of the Labour Court as well as the Industrial Court that the respondent-management has not been properly advised in following the procedure crystallised in law in conducting a domestic enquiry (*Delhi Cloth and General Mills Co. Ltd. Vs. Ludh Budh Singh, 1972 (1) SCC 595* and *Bharat Forge Co. Ltd. Vs. A.B. Zodge, AIR 1996 SC 1556*). It appears from the proceedings that the procedure laid down in law is not followed. The Labour Court was under an obligation to ensure that the said procedure is followed.

18. Though the reasons set out by the Industrial Court may not be as they were expected to be, I have no reason to disagree with the final conclusion of the Industrial Court in remanding the

matter, so as to enable the Labour Court to decide the complaint afresh.

19. In the light of the above, this petition being devoid of merit is therefore dismissed. However I find it necessary to clarify as under to ensure that the ends of justice are met:-

(A) The Labour Court is expected to frame an issue as noted above with regard to conducting an enquiry and proving the charges in Complaint ULP No. 14/2007.

(B) The Labour Court is also expected to ensure that the enquiry should be permitted to be conducted by the respondent-management after placing on record a proper charge-sheet against the petitioners so as to enable them to know the specific charges been leveled upon them.

(C) Considering the fact that the complaint has been pending from 2007 and the employees are out of employment for the past nine years, the Labour Court shall endeavor to decide Complaint ULP No. 14/2007 as expeditiously as possible and preferably on or before 31.12.2016.

(D) Considering the fact that the matter has been remanded by the Industrial Court at the behest of the respondent-management, the Labour Court will be at liberty to hear the litigating sides and consider the aspect of grant of interest with back wages from the date of their termination in the event the petitioners succeed in their complaint.

**( RAVINDRA V. GHUGE, J.)**