

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2104 OF 1998

The Chief officer,
Nagar Parishad, Savada,
Tq. Raver, Dist. Jalgaon.

..Petitioner

Versus

1. Lata Shankar Wagh,
Age years, Occ. Service,
R/o Residential Quarters of
Savada Nagar Palika
Hospital, Tq. Raver,
District Jalgaon.

2. The Secretary,
Urban Development Department,
Maharashtra State, Mantralaya,
Bombay 32.

3. Member, Industrial Court,
Nashik.

4. The State of Maharashtra.

..Respondents

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Advocate for Petitioner : Shri Suryawanshi N.B.
Advocate for Respondent 1 : Shri Patil Vinod Prakash
AGP for Respondent 2: Smt. Raut S.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 17, 2016

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ORAL JUDGMENT :-

1. This petition was admitted by this Court on 13.10.1998 and interim relief in terms of prayer clause (B) was granted. As a consequence of the interim relief granted, the impugned judgment of the Industrial Court dated 20.3.1998 had been stayed.

2. Shri Suryawanshi, learned Advocate for the petitioner / Municipal Council has strenuously criticized the impugned judgment. His submissions can be summarized as under:-

- (a) Respondent No.1 herein was appointed as an Auxiliary Midwife Nurse on 7.7.1979.
- (b) Her date of retirement is 31.12.2000.
- (c) She was subjected to disciplinary proceedings with regard to certain misdemeanors committed in 1990.
- (d) By an order dated 18.4.1991, she was placed under suspension pending disciplinary proceedings.
- (e) A charge sheet-cum-show cause notice dated 4.5.1991 was served upon her.
- (f) A second charge sheet dated 18.9.1992 was served upon on her.
- (g) After conducting a full-fledged domestic enquiry, the enquiry officer submitted his report dated 11.9.1992 holding the first respondent guilty of Charge Nos.1, 4 & 6. She was exonerated from Charge Nos.2, 3, 5 & 7.
- (h) A Resolution was passed by the Municipal Council proposing the punishment of removal from service to be imposed on the employee. The said Resolution was forwarded to the District Collector.
- (i) The District Collector informed the petitioner / council that

the employee need not be dismissed from service, instead, should be awarded a punishment under Section 79(1)(Clauses 1 to 7) so as to ensure that the employee does not come into contact with any person / the public at large and is retained in employment.

(j) The Municipal Council considered the communication of the Collector dated 8.2.1996 and resolved that since there is no such job profile available with the council on which the employee could be accommodated by keeping her away from the general public, the punishment prescribed under Clause (7) under Section 79(1) as suggested by the District Collector was acceptable to the council.

(k) Accordingly, the Municipal Council resolved to remove the employee from service without disqualifying her for future employment. This resolution was forwarded to the Collector.

(l) The Collector once again declined to accord his approval.

(m) The petitioner, therefore, moved a Revision under Sections 318 and 320 of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships Act, 1965 to the Director of Municipal Administration, Maharashtra. By the said Revision, permission was sought to impose punishment of removal from service upon the employee.

(n) The said Revision petition dated 7.9.1996 was not decided as on date on which the first respondent / employee preferred Complaint (ULP) No.721 of 1996.

(o) The Revision Petition was also not decided till the Industrial Court delivered the impugned judgment dated 20.3.1998.

(p) The employee moved the above said Complaint (ULP) before

the Industrial Court invoking items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act "), alleging that she has been kept suspended for a long time, should be reinstated in employment and should be granted subsistence allowance for the entire period of suspension.

(q) The employee had thus challenged the proposed punishment of dismissal under items 9 and 10 of Schedule IV before the Industrial Court.

(r) By the impugned judgment, the Industrial Court directed the petitioner not to award the punishment of dismissal from service and reinstate the employee. Direction to pay subsistence allowance was also issued. Directions were to be complied with within ten days of the impugned judgment.

3. Shri Patil, learned Advocate appearing on behalf of the respondent No.1 / employee has strenuously supported the impugned judgment. He does not dispute the facts as have been narrated by Shri Suryawanshi and submits that the employee has indeed challenged the proposed punishment along with the grievance that suspension allowance was not paid to her in accordance with the Rules applicable.

4. He submits that the issue in between the Municipal Council and the District Collector cannot make the employee suffer. The Collector as well as the petitioner were expected to act with promptitude and arrive at a decision. Under the guise of pending disciplinary proceedings, the employee cannot be tired out.

5. He further submits that departmental enquiry / proceedings are expected to be concluded within reasonable time. Merely because there was a dispute in between the petitioner and the Collector as regards the quantum of punishment, the employee was kept suspended. Subsistence allowance was not paid as per Rules. She was left with no option but to challenge the actions of the petitioner before the Industrial Court, which has rightly considered the complaint and has issued effective directions to undo the injustice caused to the employee.

6. Shri Patil, therefore, prays for the dismissal of this petition with costs and further prays that the interest may be awarded on the unpaid subsistence allowance.

7. I have considered the submissions of the learned Advocates.

8. It is settled law that the disciplinary proceedings are said to have concluded only after the final order of punishment is passed by the disciplinary authority. Until then, the disciplinary proceedings cannot be said to have been concluded merely because the enquiry officer has submitted his report.

9. It is also well settled that when an employer suspends an employee, pending disciplinary proceedings, the employer is obliged to pay suspension allowance (commonly called as “subsistence allowance”) on month to

month basis, in accordance with the Rules applicable. The employee, therefore, would be entitled for unpaid subsistence allowance and in the event of any delay, would also be entitled for simple interest on the said amount.

10. It is undisputed that the employee has retired on 31.12.2000. Nevertheless, the disciplinary proceedings can be taken to a logical end since the said proceedings have commenced in 1991, which is practically 9 years prior to the retirement of the employee. Even as on date, the revision petition filed by the petitioner / council pending before the Directorate of Municipal Administration will have to be decided and the Municipal Council will have to conclude the disciplinary proceedings by passing appropriate orders.

11. In so far as the remedy available to the employee to challenge the proposed punishment of dismissal at a penultimate stage is concerned, this issue fell for the consideration of the learned Single Judge and the learned Division Bench of this Court in the matter of Ashok Vishnu Kate And Ors. Vs M.R. Bhope And Anr. [(1992) 94 BOM L R 185 = (1993) III LLJ 304 Bom]. By its judgment, the learned Division Bench concluded that an employee can challenge the proposed punishment of dismissal before the Labour Court under item 1 of Schedule IV of the 1971 Act and in a rarest of rare case, if unfair labour practices are established, the Labour Court need not allow the employer to pass a final order of dismissal and perpetuate the ULP. It was, however, held that the Labour Court would have jurisdiction in such

matters and not the Industrial Court.

12. The issue was taken to the Honourable Supreme Court, which has delivered its judgment in the matter of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285 = 1995 (6) SCC 326]. Paragraphs 53 and 54 of the said judgment read as under:-

“53. Reference made in paragraph VI to the Bombay High Court's judgments also cannot be of any avail as they were based on the view which was accepted by the learned Single Judge of the High Court of Bombay at Nagpur which has rightly been overturned by the Division Bench of the Bombay High Court in the Judgment under appeal on a correct interpretation of the relevant provisions of the Act. Therefore, the earlier view taken by the learned single Judges of the Bombay High Court cannot be said to be well- sustained. For all these reasons, the appellant has made out no case for our interference in this appeal.

54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant Clauses 7 of item I of schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with

such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.”

13. In the light of the above, the direction of the Industrial Court in Clause 3 of the order in the impugned judgment that this petitioner / council shall not award the punishment of dismissal to the employee and shall award any other punishment than dismissal, is an unsustainable conclusion, since it had no jurisdiction to deal with the said cause of action in the light of the ratio laid down in the Hindustan Lever's judgment (supra).

14. The employee has also raised the issue of unpaid subsistence allowance, which has been rightly dealt with by the Industrial Court. There can be no dispute that suspension allowance has to be paid. The petitioner / council is, therefore, liable to pay unpaid suspension allowance to the employee as per Rules. As such, in the event the Municipal Council has failed to pay any portion of the suspension allowance to the employee, the same shall be paid within a period of eight weeks from today and the unpaid amount, if any, shall carry simple interest at the rate of 3% p.a.

after the date of retirement of respondent No.1 employee, which is 1.1.2001.

15. In the light of the above, this petition is partly allowed. The declaration of ULP under item 10 of Schedule IV is quashed and set aside as there is neither any pleading to that effect nor any evidence, much less, any conclusion by the Industrial Court. The directions set out in Clause 3 of the operative part of the impugned order shall also stand quashed and set aside and the matter is, therefore, left to the Municipal Council and the Directorate of Municipal Administration to be resolved expeditiously. The direction in clause (4) of the operative part is modified in the light of the observations set out in the foregoing paragraph No.14.

16. Rule is made partly absolute in the above terms.

17. Pending Civil Application does not survive and is disposed off.

18. At this juncture, Shri Patil submits that Writ Petition No.2912 of 2006 filed by the employee, seeking the benefit of the IV Pay and V Pay Commissions in the light of the employee having worked in the last two years prior to her retirement, is pending before the learned Division Bench. He further submits that since the employee is presently bed-ridden, the petitioner and respondent No.2 shall get the pending revision petition decided expeditiously.

19. In the light of the said request, respondent No.2 is directed to decide the pending revision petition, filed by the petitioner, dated 7.9.1996 as expeditiously as possible and preferably within a period of three months from today. In the event there is any necessity for reconstruction of the file and the revision, the petitioner shall do so within a period of three weeks from today. After respondent No.2 decides the revision petition of the petitioner, the petitioner shall proceed to conclude the disciplinary proceedings by passing an order as the Municipal Council may deem fit and proper within a period of three months from the date of decision by respondent No.2.

(RAVINDRA V. GHUGE, J.)

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