

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4346 OF 2014

Babasaheb Malu Ughade,
Age-54 years, Occu-Labour,
R/o at Kopare, Post Wagholi,
Taluka Pathardi, Dist.Ahmednagar

PETITIONER

VERSUS

Vruddheshwar Sahakari Sakhar Karkhana
Limited, Adinath Nagar,
Post Vruddheshwar Factory,
Taluka Pathardi, Dist.Ahmednagar

RESPONDENT

Mr.P.V.Barde, Advocate for the petitioner.
Mr.D.R.Adhav h/f Mr.G.B.Rajale, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/01/2016

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the judgment and order dated 30/08/2006 by which Complaint (ULP) No.273/1993 has been dismissed by the Labour Court, Ahmednagar. The petitioner is also aggrieved by the judgment of the Industrial Court dated 20/03/2012

by which his Revision (ULP) No.48/2006 has been dismissed.

3. Mr.Barde, learned Advocate has strenuously criticized the impugned judgments.

4. The petitioner is said to have joined employment with the respondent Sugar Factory as a Labourer in the Chemical Department on 26/11/1978. He was not granted permanency. After he put forth a claim, a compromise dated 11/11/1984 was arrived at between the parties before the Industrial Court and the petitioner was granted permanency.

5. In 1989, during the crushing season, the petitioner was not allotted any work. He, therefore, preferred a Criminal Complaint (ULP) No.25/1990 against the Managing Director of a Sugar Factory. He was allotted duties thereafter.

6. On 05/01/1993, when the petitioner was working in the crushing season, he was alleged to have slept while on duty near the boiler and after being woken up, he had abused the Chief Manager and assaulted him. A charge sheet dated 14/04/1993 was served upon him and a domestic enquiry was conducted in relation to the

said charges. After the conclusion of the enquiry, the petitioner was dismissed from service by way of punishment on 08/10/1993.

7. The petitioner preferred Complaint (ULP) No.273/1993 before the Labour Court and questioned the enquiry as well as the findings of the Enquiry Officer. By Part I judgment dated 22/11/2001, the enquiry was set aside for being vitiated. The respondent/ Management conducted a *de-novo* enquiry before the Labour Court. By the impugned judgment dated 30/08/2006, the Labour Court concluded that the charges were proved against the petitioner and the punishment awarded was commensurate to the gravity and the seriousness of the misconduct. The complaint was hence dismissed.

8. The petitioner preferred a revision petition before the Industrial Court. By the impugned judgment dated 20/03/2012, the Revision Petition was dismissed.

9. Grievance voiced by Mr.Barde is that though the alleged misconduct took place on 05/01/1993, the charge sheet was delayedly issued on 01/04/1993. This delay is fatal to the domestic enquiry conducted and hence the disciplinary action is rendered a nullity. He further submits that though the charge of using abusive language

was levelled upon the petitioner, the actual abusive language was neither reproduced in the charge sheet, nor was it indicated before the Labour Court so as to construe as to whether the language used could be termed as being abusive or not.

10. He further submits that it is common knowledge that during the crushing season, an employee cannot sleep near a boiler. Both the witnesses Mr.Kadam and Mr.Kharmate are interested witnesses and hence their deposition deserves to be ignored. He, therefore, submits that both the impugned judgments are rendered perverse and deserve to be set aside.

11. Learned Advocate for the respondent has supported the impugned judgment. It is stated that the Part I judgment dated 22/11/2001, by which the enquiry was set aside by the Labour Court, has not been challenged by the respondent before any Court. Issuance of charge sheet on 01/04/1993 cannot be said to have suffered from delay. Mr.Kadam, Chief Engineer, was the victim of the assault as well as abusive language. Though the actual language used is not reproduced before the Labour Court, the fact of assault has been proved.

12. On the issue of interested witnesses, it is submitted that since the mis-conduct has occurred inside the factory premises, those who are witnesses and are victims have deposed in the enquiry as well as before the Labour Court. The concept of “interested witnesses”, as is found in criminal jurisprudence, is not applicable in service jurisprudence.

13. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

14. A finding on facts has been arrived at by the Labour Court vide the impugned judgment. The Chief Engineer Mr.Kadam, who suffered assault at the hands of the petitioner has deposed before the Labour Court. He woke up the petitioner, who was fast asleep at about 10 p.m. while on duty in the shift from 8 p.m. to 4 p.m. on 05/01/1993. The petitioner abused him and tried to assault him. He rescued himself by rushing to the store room which was witnessed by another employee Mr.Kharmate, who has also deposed in the enquiry.

15. In service jurisprudence, an act can be said to be proved against an employee on preponderance on the principles of

probabilities. The victim of abusive behaviour of the petitioner has himself deposed before the Labour Court. The Clerk working in the store room has also deposed to substantiate the testimony of Mr.Kadam.

16. The Apex Court in the matter of Anant R.Kulkarni Vs. Y.P.Education Society and others, [2013 LLR 654] has held that delay in initiating disciplinary proceedings, cannot in all cases be held to be fatal. The disciplinary proceedings should not be interfered with only on account of delay. In the instant case, the charge sheet is issued after 3 months. In my view, this would not amount to such a delay which would warrant interference in the disciplinary proceedings.

17. The contention of the petitioner that an employee can not sleep near a boiler in the crushing season, is a view expressed by the petitioner. Witnesses have deposed before the Labour Court stating therein that the petitioner was found sleeping while on duty. The view of the petitioner cannot be pressed into service for nullifying the evidence adduced by two witnesses, one of whom is a victim of the mis-behaviour of the petitioner.

18. Since I do not find that the Labour Court has erred in delivering the impugned judgment, there is no reason to conclude that the judgment of the Industrial Court is perverse. A right conclusion is arrived at by the Labour Court and has been rightly upheld by the Industrial Court.

19. In the light of the above, this petition is devoid of merit and is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)