

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7502 OF 2016

M/S KIRLOSKAR OIL ENGINES LTD.
VERSUS
SATISH DATTATRAYA GOSAVI AND OTHERS

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Advocate for Petitioner : Shri Yenge Balaji B.
Advocate for Respondent 1 : Shri Barde P. V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 25, 2016

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PER COURT :-

1. Learned Advocates for the petitioner and the contesting respondent No. 1/ employee submit that they have no objection if this Court hears this matter and more so, on considering the fact that this Court had earlier heard Writ Petition Nos.2921 of 1994 and 3529 of 1994, which were decided by judgment dated 28.7.2015 between the same parties.

2. It is further fairly submitted by the learned Advocates, on instructions, that respondent No.2 Enquiry Officer is a formal party and so is respondent No.3, since respondent No.3 was not the employer of respondent No.1 at the relevant time in 1990.

3. I have heard the learned Advocates at length.

4. Shri Yenge has strenuously submitted that the Industrial Court, while setting aside the impugned judgment of the Labour Court, has not considered the law applicable.

5. He submits that the Labour Court, by its order dated 26.3.2016, had held that the Enquiry conducted against respondent No.1 employee is illegal, improper and against the principles of natural justice and the findings of the Enquiry Officer are perverse.

6. The petitioner filed Revision (ULP) No.11 of 2016. Though the revision was partly allowed, the Industrial Court has failed to consider that the Labour Court had missed two vital issues, which are as follows:-

(i) Whether the pleadings of the complainant / workman against the Enquiry Officer, on the touchstone of prejudice, could be sustained, in so far as the allegation that the Enquiry Officer was the Advocate for the then company and he was related to Shri R.S.Shukre, who is purportedly beaten up by the respondent / employee?

(ii) Whether the view taken by the Three Judges Bench of the Honourable Supreme Court in the matter of Mulchandani Electrical and Radio Industries Limited Vs. The Workmen [AIR. 1975 SC 2125], would apply to this case and as such the act committed by the workman would manifest in the discipline of the factory notwithstanding wherever the act may have been committed?

6. Shri Yenge further submits that the admissions of the workman in his cross-examination that he had not voiced any complaint against the Enquiry Officer, had not prayed that the Enquiry Officer be changed and had not contended that the mis-conduct is unconnected with the factory, though were scrutinized by the Industrial Court, have not been properly appreciated and therefore, instead of fully setting aside the judgment of the Labour Court, the Industrial Court has remanded the matter back to the Labour Court.

7. Shri Barde, learned Advocate appearing on behalf of the workman submits that the three Judges' judgment of the Honourable Supreme Court in the matter of M/s Glaxo Laboratories India Limited Vs. Presiding Officer, Labour Court [AIR 1984 SC 505], was rightly considered by the Labour Court. He, therefore, submits that in fact, the workman can be said to be aggrieved by the impugned judgment. Yet he has subjected himself to the said judgment only to ensure that there is an early disposal of the pending litigation considering the fact that the alleged mis-conduct is of January / February, 1990. He, therefore, submits that the respondent / workman is confident that he can establish the nexus between the petitioner / management and the Enquiry Officer and can, therefore, succeed in proving that there is a reasonable ground for presuming bias on the part of the Enquiry Officer in favour of the management.

8. Though the learned Advocates have canvassed a host of factors, I am refraining from dealing with each of them considering the fact that the Industrial Court has rightly remanded the matter to the Labour Court for reconsideration.

9. In my view, the Labour Court needs to consider the following issues, pursuant to the directions of the Industrial Court dated 22.4.2016;

(i) *Applicability of the judgment of the Honourable Supreme Court in the matter of Mulchandani Electricals (supra).*

(ii) *Effect of paragraph No.15 and the connected paragraphs of the Honourable Supreme Court's judgment in the matter of M/s Glaxo Laboratories (supra).*

(iii) *Whether there is any factual relationship between the Enquiry Officer and the alleged victim Shri R.S.Shukre ?*

(iv) *Whether the pleadings of the respondent / workman in paragraph 3 of his complaint can be scrutinized on the principle of "touchstone of prejudice" ?*

10. In my view the above issues have not been properly answered by the Labour Court and the Industrial Court has remitted the matter back to the Labour Court for a decision on the fairness of the enquiry and the findings of the Enquiry Officer.

11. In the light of the above, this petition is disposed off.

12. It is expected that the Labour Court will consider the above issues while re-appreciating the matter. Since the pending Complaint (ULP) No.71 of 1990, being a very old matter, the Labour Court, Ahmednagar, shall decide the said two issues as directed by the Industrial Court and taking into account the points formulated by this Court, as above, as expeditiously as possible and preferably on/or before 21.10.2016.

13. Needless to state, keeping aside the submissions of the learned Advocates as to which Labour Court has to deal with the matter afresh, the Labour Court considering the pending complaint before whom the complaint is being adjudicated upon, shall proceed to deal with the same.

(RAVINDRA V. GHUGE, J.)

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