

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3014 OF 2013

- 1) The Executive Engineering
Maharashtra State Electricity
Distribution Company Ltd., Division Tuljapur
Dist. Osmanabad.
- 2) The Assistant Engineer
Maharashtra State Electricity
Distribution Company Ltd., Sub Division Tuljapur
Dist. Osmanabad.
- 3) The Superintending Engineer
Maharashtra State Electricity
Distribution Company Ltd.,
Osmanabad, Dist. Osmanabad.

VERSUS

Narayan Bhima Mali
Age : 55 years, Occu. Service,
R/o Shindhphal, Taluka Tuljapur,
Dist. Osmanabad

.. RESPONDENT.

Mr. Sanjay V. Mundhe, Advocate for the petitioner
Mr. N.L. Dhobale, Advocate h/f. Mr. Y.R. Marlapalle, Advocate for
respondent.

CORAM : K.K. SONAWANE,J.

DATE OF RESERVING JUDGMENT : 22nd SEPTEMBER, 2016.

DATE OF PRONOUNCEMENT OF JUDGMENT : 26TH OCTOBER, 2016.

JUDGMENT :-

- 1] Rule. Rule made returnable forthwith. Heard finally by consent
of parties.
- 2] Being aggrieved with the judgment and order dated 26.4.2012

passed by the learned Industrial Court, Latur in Complaint (ULP) No. 72 of 2010 filed under Section 28(1), Item Nos. 9 and 19 of Scheduled IV of the MRTU & PULP Act, the petitioners, resorting to remedy under Article 226 and 227 of the Constitution of India, preferred the present writ petition, to redress their grievances.

3] The present respondent is the employee, working as Assistant Technician in the office of present petitioners i.e. MSEDCL, Division Tuljapur, Dist. Osmanabad. The respondent is in service of the petitioners since last 22 years. However, on 30.12.2006, the petitioners - employer issued a charge sheet to the respondent with allegations of absenteeism and misconduct during the course of his service. The respondent - original complainant submitted his reply to the allegations mentioned in the charge sheet. The employer/management did not satisfy with the reply of the complainant/employee and proceeded to conduct the Disciplinary Enquiry to prove the charges against the respondent. The Enquiry Officer, after considering the evidence adduced on record, arrived at the conclusion that the respondent/employee is guilty of charges of misconduct and absenteeism. Pursuant to the findings of the Enquiry Officer in disciplinary proceedings, the employer imposed punishment of stoppage of two years increments permanently and recovery of 1/3rd of the wages for the month of June, 2007 and also fine.

4] The employee-present respondent approached to the Higher Authorities i.e. Executive Engineer and Superintending Engineer and

ventilated the grievances pertaining to the punishment imposed on him. But, all the efforts of the present respondent did not evoke result. Eventually, the original complainant by availing the remedy under Section 28(1) Item No. 9 and 10 of Schedule IV of the MRTU and PULP Act, rushed to the Industrial Court and filed a complaint. The complainant prayed for setting aside the order of punishment dated 30.5.2007 imposed on him with the declaration that the petitioner/employer indulged in the unfair labour practice. The petitioner i.e. employer/management, appeared in the proceeding and filed written statement on record to traverse the allegations nurtured on behalf of complainant. The learned Member of the Industrial Court evaluated the entire facts and concluded that the disciplinary enquiry conducted by the employer/management is perverse, and not within the ambit of law. There is a violation of principles of natural justice. Therefore, the learned Industrial Court declared that the employer/management i.e. present petitioner has committed unfair labour practice and consequently upset the punishment imposed on the original complainant. The learned Industrial Court passed the impugned order dated 26.4.2012 and allowed the complaint blaming the employer/management for their indulgence in the unfair labour practice. The learned Industrial Court, has also bade to refund the amount deducted from the wages to original complainant.

5] The petitioner-employer/management taking exception to the impugned order filed the present petition on the ground that the order of

the Industrial court is improper, imperfect and not as per the provisions of law. The Industrial court did not appreciate the facts and circumstances on record in its proper perspective. The learned Industrial Court has committed an error in setting aside the order of punishment imposed on the respondent/original complainant. The learned member of the Industrial Court ought to have held that the complainant is guilty of misconduct and remained absent frequently on duty without reasonable cause and prior permission. The findings expressed by the Enquiry Officer in the disciplinary proceeding appears just, proper and reasonable. He has followed the procedure meant for the departmental enquiry in proper manner. Reasonable opportunity of hearing was given to the complainant. There was no violation of principles of natural justice. The conclusions drawn by the learned Industrial Court are totally based on misconception of facts and circumstances and deserves to be quashed and set aside. Hence, the present petitioner employer/management agitated the validity and propriety of the impugned order of the Industrial Court in this petition.

6] Heard learned counsel for the petitioner and the respondent. I have also delved into the documents produced on record. During the course of arguments, learned counsel for the petitioner vehemently submitted that the complainant put in controversy the validity and propriety of the punishment order passed in the disciplinary proceeding. In such eventuality, the learned Industrial Court, ought to have framed the preliminary issue, as to whether the domestic Enquiry has violated the principles of natural

justice and in case the learned Industrial court proceeds to decide the preliminary issue against the employer/management, it has a right to lead evidence before the Industrial Court to prove the charges framed against the employee/worker. According to learned counsel, it is a settled principle of law that the right to conduct a de-novo enquiry or leading fresh evidence is born for the first time after the domestic enquiry is set aside. The learned counsel, in support of his contention kept reliance on the exposition in the case of ***MSEDCL Vs. Arun Shahadu Badgujar, reported in 2015(II) CLR page 19***. The learned counsel for petitioner further added that the Industrial Court has held that the disciplinary proceeding against the respondent employee is perverse and improper, on account of failure to comply with the principles of natural justice. In such circumstances, the industrial Court was under obligation to follow the procedure laid down under the law. Hence, he requested to remand back the matter to the learned Industrial Court with directions to frame the preliminary issue relating to validity of the disciplinary enquiry against the complainant. The directions be issued to afford an opportunity to the employer to lead evidence for proving the charges of absenteeism and misconduct against him.

7] Learned counsel for the respondent-original complainant vociferously opposed the contentions put forth on behalf of the petitioner and submitted that the learned trial court has appreciated the facts and circumstances on record in proper manner and there is no error or illegality

in the impugned order. The learned Industrial Court has taken every care and precaution while dealing with the proceeding. The conclusions drawn by the Industrial Court are just proper and reasonable. There is no necessity to cause interference in the impugned order. The learned counsel for the respondent upheld the impugned order of the Industrial Court and urged not to nod in favour of petitioner/employer.

9] There is no doubt that the employer/management has a right to avail remedy to adduce evidence to substantiate the charge or charges framed against the workman, during the pendency of the proceedings before the Labour Court or the Industrial Court. When the management is made aware of the contentions regarding defect in the domestic enquiry by filing a complaint before the Labour Court or Industrial Court, then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file a written statement making reference to that effect in it. But, if the employer or management does not choose to do so at that stage, it cannot be allowed to do it, at a latter stage of the proceeding by filing any application for the purpose which may result in delay, wrecking the morals of the workman and compel him to surrender which he may not otherwise do. (Emphasis is supplied on the exposition in the case of ***Shambhunath Goyal Vs. Bank of Baroda AIR 1984 SC 2891***)

10] Undisputedly, right of the employer/management to lead evidence before the Labour Court or Industrial Court, to justify its action has

been recognized under the law. In ***Delhi Cloth and General Mills Co. Vs. Ludhbudhsingh and others AIR 1972 SC 1031***, their Lordships of the Honourable Apex Court, in para. 60(4) has observed as under :-

”60 (4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal. If the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding of the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence also give a similar opportunity to the employee to lead evidence contra as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances will be that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied. On evidence adduced before it that he was or was not guilty of the alleged misconduct. “

11] Moreover, in the case of ***Cooper Engineering Ltd. Vs. Shri P.P. Munde, reported in AIR 1975 SC 1900***, the Honourable Apex Court delineated that when the Tribunal/Laour Court was called upon to decide the validity of the domestic enquiry, same has to be tried as a preliminary issue and thereafter, if necessary, the management was to be given an option to adduce further evidence. Albeit, in the case of ***Shambhunath Goyal vs. Bank of Baroda, AIR 1984 SC 289***, there was a deliberation on the issue of propriety of waiting till the preliminary issue is decided to give an opportunity to the management to adduce the evidence. While considering this vital issue, in a different perspective, it was held in para.16 as under :-

“16. We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workmen referred to in the above passage is the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under Section 33 of the Industrial Disputes Act. 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under Section 33 of the Act. Then if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in the reference under Section 10 of the Act after the workman had been punished pursuant to a

finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.

12] In view of the aforesaid judicial precedent, the learned Single Judge of this Court in the case of ***MSEDCL Vs. Arun Badgujar reported in 2015(II) CLR 19***, has appreciated the circumstances for the conclusion that the remedy to conduct the de-novo enquiry or lead fresh evidence would accrue for the first time after the domestic enquiry is set aside. The learned Single Judge, preferred to relegate the matter to trial court with the directions to frame the preliminary issue as prescribed in the case of “***MSEDCL Beed, Vs. Syed Saheblal Nizam***” reported in 2014(4) Mh.L.J.687 and to follow the law laid down in the case of ***Laxmi Ramanna Vs. KSRTC reported in AIR 2001 SCW 1981***.

13] It is evident that the employer/management has the right to adduce evidence before the labour court or industrial court in justification

of its decision taken in the Departmental Enquiry, which is subject matter of consideration before the Court. However, it is to be borne in mind that, it is not a statutory right but its a procedure laid down by the judicial precedents to avoid delay and multiplicity of litigation between the management and workman. The source of this procedure can be derived from the observation of their Lordships in the case of ***Workmen of the Motipur Sugar Factory Private Ltd. Vs. The Motipur Sugar Factor Private Ltd.,AIR 1965 SC 1803***. In para. 12 of the said judgment, it has been elicited as under :-

“12. If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial tribunal only on that ground, it would inevitably mean that employee will immediately, proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself. This view is consistent with the approach which Industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no

distinction can be made between cases where the enquiry has in fact been held. We must therefore reject the contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the Tribunal.”

14] In the light of the aforesaid legal guidelines it is crystal clear that the management/employer has a right to avail remedy to adduce evidence, before the labour court or the industrial court at appropriate stage in justification of the decision taken in the disciplinary proceeding against the workman. Such right is required to be exercised by the employer/management by proper request at the appropriate stage. Right to conduct denovo enquiry or leading additional evidence accrues in favour of the management/employer after the disciplinary enquiry is set aside.

15] Now turning to the spectrum of the matter in hand, both the parties are ad-idem to the factual aspect that the petitioner management conducted the disciplinary enquiry against the respondent/original complainant for the charges of misconduct and absenteeism. The Enquiry Officer after appreciating the facts and circumstances on record held the respondent/employee guilty of the charges pitted against him. Pursuant to the adverse findings in the disciplinary enquiry, the petitioner management imposed punishment by way of stoppage of increments and fine. Being dissatisfied with the result of the disciplinary enquiry, the original complainant resorting to remedy under Section 28(1) read with Item Nos. 9 and 10 of Schedule IV of the MRTU & PULP Act, and filed a complaint agitating the validity and genuineness of the disciplinary enquiry. After

receipt of notice of the complaint, the employer/management appeared in the proceedings before the Industrial Court and filed its written statement Exhibit C-4 and opposed the contentions put forth on behalf of complainant/respondent. The petitioner management denied about the violation of principles of natural justice and their indulgence in the unfair labour practice. Ultimately, the employer/management prayed to dismiss the complaint.

16] In order to establish the claim before the Industrial court against the allegations nurtured on behalf of employer/management, the respondent complainant examined himself on oath and he was cross examined by the petitioner/employer. There was no oral or documentary evidence adduced on behalf of the employer/management. The learned member of the Industrial Court applied his judicious mind and after considering the circumstances on record, proceeded to blame the employer/management for unfair labour practice. Learned Industrial court set aside the punishment imposed on the complainant and passed the impugned order which is the subject matter of the present petition.

17] As referred supra, in view of the guidelines laid down in the matter of *Shambhunath Goyal's* case, the management has a right to adduce evidence to fortify the findings of the domestic enquiry subject to condition that it has to reserve its right to do so in an application made by it, or in the objection that the management has to file to the complaint of

the respondent/employee under Section 28(1) of the Act. In short, the petitioner/management has to exercise its right of leading fresh evidence at the first available opportunity and not any time thereafter during the proceedings before the Industrial Court. It is also a settled rule of law to avail an opportunity as aforesaid, the employer should make prayer/request at the time when it files statement of claim or written statement, or makes an application seeking either permission to take certain action. But, if the management/employer does not choose to do so at that stage it should not be allowed to do it, at any point of time at a latter stage, by filing an application for this purpose.

18] In the matter in hand, the petitioner management has preferred to file its written statement, before the Industrial Court, at Exhibit C-4. There is no whisper about the exercise of its right to adduce fresh evidence or to conduct the denovo enquiry in case of setting aside the departmental enquiry conducted by the petitioner. Moreover, the petitioner remained silent even after the decision of the Industrial Court, holding the Departmental Enquiry against the respondent/workman as nullity and without following the principles of natural justice. In the present writ petition also, there are no averments on behalf of petitioner employer about any permission sought from the learned Industrial Court. It is manifest that in absence of such request made in the written statement, or at appropriate stage of the proceeding, there is no obligation under law for the Industrial court to give such opportunity to the employer/management to

conduct de-novo enquiry. Moreover, the proceedings cannot be vitiated in case of failure to give such opportunity to the employer/management in absence of any such proper request at proper stage on its behalf in the proceeding.

19] In the instant case, it is true that learned counsel for the petitioner has given much more emphasis on the aspect of framing preliminary issue in regard to validity and fairness of the disciplinary enquiry and right of the employer/management to lead evidence, or to conduct de-novo enquiry. But, it would be reiterated that the petitioner management did not take endeavour to avail the opportunity by making proper request at the time when it filed written statement or by filing application seeking permission to take action or seeking approval of the action taken by it. Therefore, as the petitioner management failed to comply with these requirements, it cannot be allowed to do so at any latter stage. In such circumstances, I do not find any substance in the argument advance on behalf of petitioner/management. There is no propriety to cause any interference in the impugned order. In contrast, the approach of the learned Industrial Court appears to be just, proper and reasonable one. There is no error in it. Therefore, I am not prepared to cause interference in the impugned order at the behest of the petitioner. Petitioner did not seek permission to conduct the denovo enquiry or to lead evidence before the learned Industrial Court. Therefore, there would not be any propriety to relegate the proceedings back to the learned Industrial Court, to give

opportunity to the petitioner employer to lead further evidence for substantial justice.

20] In the above premise, petition being devoid of merit, stands dismissed. Rule is discharged. No costs.

[K.K. SONAWANE]
JUDGE.

grt/-