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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9239 OF 2015

Shri Saibaba Sansthan,
Shirdi, Tq. Rahata,
Dist. Ahmednagar,
Through its Executive Officer,
Rajendra S/o Marutirao Jadhav,
Aged : 58 years, Occu : Service,
Shirdi, Tq. Rahata,
Dist. Ahmednagar.
...Petitioner...

Versus

Devkumar S/o Shankar Salve,
Aged : 46 years, Occ : Nil,
R/o Ramabai Nagar, Manmad,
Tq. Nandgaon, Dist. Nasik.
...Respondent...

.....

Shri N. R. Bhavar, Advocate for petitioner.
Shri Parag V. Barde, Advocate For respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 08.02.2016

ORAL JUDGMENT :

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

2] While considering the submissions of the

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petitioner on 7.12.2015, I had recorded the said submissions in paragraph nos.2 to 6, which read as under:-

"2] The petitioner is aggrieved by the impugned judgment and award dated 21.1.2015 delivered by the Labour Court, Ahmednagar, by which Reference (IDA) No.41/2012 is answered partly in the affirmative and the respondent is granted reinstatement with continuity of service, but without back wages.

3] I have heard the learned Advocate for the petitioner.

4] The first two issues with regard to the fairness of the inquiry and the findings of the Inquiry Officer have been answered in the negative by virtue of which the inquiry conducted by the petitioner has been upheld and the findings are sustained. The Labour Court was, therefore, left only with the issue of deciding whether the punishment awarded to the respondent was commensurate to the gravity and seriousness of the misconduct proved against him or whether it amounted to a "shockingly disproportionate" punishment.

5] Prima facie, I find in paragraph no.17 of the impugned judgment that the Labour Court reopened the entire inquiry and concluded that there was no evidence before the Inquiry Officer. There should be evidence to support the charges.

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The Labour Court has concluded in paragraph no.21 that "On close scrutiny of the evidence adduced in the inquiry, it reveals that there is no cogent evidence to substantiate the above charges."

6] In my view, the Labour Court prima facie has exercised jurisdiction not vested in it by law. The part one judgment of the Labour Court dated 14.2.2014 answering the first two issues has not been challenged and hence the Labour Court was required only to consider whether the punishment awarded to the respondent was shockingly disproportionate or not."

3] I have heard the learned Advocates for the respective sides for quite some time.

4] Considering the order that I intend to pass, I am not required to advert to the entire submissions.

5] The record reveals that after part I award was delivered by the Labour Court, the fairness of the enquiry and the fairness of the findings of the Enquiry Officer were upheld. The said part I award dated 14.2.2014 was not called in question before any superior Court. The Labour Court was, therefore, left to consider whether the employee deserved the punishment of dismissal from service and as to whether the punishment awarded was

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shockingly disproportionate to the gravity and seriousness of the mis-conducts proved.

6] It is trite law that when a Court is required to look into the proportionality of the punishment, it is not expected to reopen the entire domestic enquiry and to scrutinize the evidence recorded in the enquiry as if the enquiry was open to judicial scrutiny. I find that the Labour Court in the impugned award has committed the said error.

7] In paragraph nos.17, 18 and 21 of the impugned award, the Labour Court concluded that it has gone through the enquiry and the statement of witnesses recorded in the enquiry and there is no cogent evidence on record to prove the charges against the employee. It further concluded that there was no evidence before the Enquiry Officer by which the charge of leaving the place of work could be proved against the employee. It was then observed that on the close scrutiny of the evidence adduced in the enquiry, it revealed that there is no cogent evidence to substantiate the charges against the respondent.

8] In my view, the Labour Court could not have come

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to the above conclusions in the light of the fact that the part I award was not set aside by any superior Court.

9] In the above circumstances, the Labour Court could have considered the scope and ambit of Section 11-A and could have considered whether the punishment awarded to the employee was commensurate or whether it was shockingly disproportionate. The Labour Court could have then exercised its jurisdiction u/s 11-A. Having not so done, the impugned judgment is, therefore, rendered perverse and unsustainable.

10] In the light of the above, this petition is partly allowed. The impugned judgment and award dated 21.1.2015 is quashed and set aside. Reference (IDA) No.41/2012 is remitted back to the Labour Court at Ahmednagar. The litigating sides shall appear before the Labour Court on 22.2.2016. Formal notices need not be issued.

11] It is made clear that the Labour Court shall permit both the litigating sides to lead oral and documentary evidence on the aspect of the proportionality of the punishment and with regard to the claim of the second party workman for back wages. The Labour Court

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shall also keep in mind that the past service record of an employee is not open to scrutiny before the Labour Court. The said past record is only to be considered by the Labour Court while considering the proportionality of the punishment. The observations of the Labour Court in paragraph no.23 are, therefore, set aside.

12] While considering the proportionality of the punishment, the Labour Court shall exercise its jurisdiction u/s 11-A of the Act of 1947 after hearing the litigating sides.

13] Rule is made partly absolute in the above terms.
No order as to costs.

(RAVINDRA V. GHUGE, J.)