

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9133 OF 2015

M/s Siddheshwar Urban Co-op.Bank Ltd., PETITIONER
Sillod, Tq.Sillod, Dist.Aurangabad

VERSUS

Ganesh S/o Tejrao Bangale,
Age-35 years, Occu-Service/Nil,
R/o At Post Dongargaon, Tq.Sillod,
Dist.Aurangabad RESPONDENT

WITH
WRIT PETITION NO.9140 OF 2015

M/s Siddheshwar Urban Co-op.Bank Ltd., PETITIONER
Sillod, Tq.Sillod, Dist.Aurangabad

VERSUS

Prakash Charandas Arake,
Age-35 years, Occu-Service/Nil,
R/o Snehnagar, Tq.Sillod,
Dist. Aurangabad RESPONDENT

Mr.V.N.Upadhye, Advocate for the petitioner.
Mr.A.A.Shelke h/f Mr.P.D.Suryawanshi, Advocate for the
respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 24/02/2016

ORAL JUDGMENT :

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

2. Since a common issue is involved in both these matters, I have considered these petitions together.

3. The petitioner has raised an unusual, but a vital issue in the light of the Part I order of the Labour Court concluding that the findings of the Enquiry Officer are perverse. Whether the evidence statement of a witness in written form before the Enquiry Officer in a domestic enquiry, should necessarily be sworn on oath before a Notary or before a competent authority which has the power to administer an oath, is the issue.

4. In both these cases, the respondents / employees have preferred complaints before the Labour Court Aurangabad u/s 28 of the MRTU and PULP Act, 1971. In both these cases, the fairness of the enquiry has been conceded. However, in both these cases, the findings of the Enquiry Officer has been assailed.

5. The Labour Court permitted the litigating sides to lead evidence in support of the following two issues :-

A. Whether the complainant proved that the enquiry conducted against him is not fair and proper and against the rules of natural justice ?

B. Whether the complainant proved that the findings of the enquiry of the Enquiry Officer are perverse ?

6. Since the first issue was not contested, it was answered in the negative. In so far as the second issue is concerned, the Labour Court has come to a conclusion that as the testimony of the Management witness before the Enquiry Officer was in a written form, it should have been an affidavit sworn on oath before a Notary or before a competent authority which has the power to administer the oath or affirmation and hence the findings are perverse.

7. The learned Advocate for the petitioner/Management has relied upon the Standing Orders which permit recording of oral evidence by the Enquiry Officer in a concise form. Reliance is also placed upon Standing Order 25(4) of The Model Standing Orders under Schedule I to the Industrial Employment (Standing Orders) Act, 1946. Contention, therefore, is that when the Management witness files a written examination in chief or in any other written form, it is in fact advantageous for the employee since he has a copy of such statement, which he can study, scrutinize and then cross examine the Management witness. An oral evidence can also be recorded in the form of a concise summary of the evidence.

8. The petitioner further submits that it was not the case of the respondent before the Labour Court that the written statement of the Management's witness was not by way of an affidavit duly sworn before a competent Authority or before a Notary and hence it deserves to be discarded.

9. Mr.Upadhye submits that the Labour Court has, by itself, concluded that the statement of the Management witness was not in the form of an affidavit and hence there was no evidence before the Enquiry Officer and therefore the enquiry is vitiated as his findings are perverse. He submits that such conclusions are alien to the procedure of conducting a domestic enquiry.

10. Mr.Suryawanshi, learned Advocate appearing on behalf of both the respondents/employees has strenuously supported the impugned orders. He submits that the Labour Court has rightly concluded that the examination-in-chief of the Management witness was prepared on a computer and it appears to be in the form of an affidavit and therefore it needs to be sworn before a competent officer or Notary or the Court.

11. Mr.Suryawanshi relies on the following 2 judgments, which the

Labour Court had considered while concluding that the findings of the Enquiry Officer are perverse :-

(a) V.R.Kamat Vs. Divisional Controller, AIR 1995 Karnataka 275.

(b) A.K.K.Nambiyar Vs. Union Of India, AIR 1970, 652.

12. He, therefore, submits that neither the Labour Court nor the Industrial Court has committed any error in delivering the impugned orders. He prays for the dismissal of this petition with heavy costs.

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

14. By the impugned Part I order delivered by the Labour Court dated 19/09/2013, the enquiry has been vitiated solely on the ground that the written evidence of the Management witness was prepared on a Computer and was not an affidavit. The Industrial Court, by the impugned judgment dated 29/04/2015, has dismissed Revision (ULP) No.92/2013 filed by the petitioner on the same count.

15. The learned Apex Court in the A.K.K.Nambiyar case (supra) was dealing with an issue of an affidavit in lieu of examination in

chief having been filed in a Court which was not verified or proved on oath. The Apex Court, therefore, concluded that the importance of verification is to test the genuineness and the authenticity of the allegations and also to make the deponent responsible for the allegations. In a sense, the verification is required to enable the Court to find out as to whether it would be safe to act upon such an affidavit in lieu of evidence which is duly sworn.

16. In the V.R.Kamat case (supra) , the Karnataka High Court dealt with a similar situation with regard to an affidavit being filed in the Court without affirmation or without swearing it on oath. Both these judgments are of no assistance to the respondent.

17. I am in respectful agreement with the view taken by the learned Apex Court and the Karnataka High court. However, the case in hand stands on a completely different footing. It is trite law that strict rules of the Indian Evidence Act and the Code of Civil Procedure are not applicable to domestic enquiries. Such enquiries are to be conducted in accordance with the standing orders applicable and by adhering to the principles of natural justice.

18. The Hon'ble Apex Court (3 Judges Bench) in the matter of State

of Haryana and another Vs. Rattan Singh, [AIR 1977 SC 1512(1)] = 1977 Lab.I.C. 845 has concluded that strict rules of evidence under the Evidence Act are not applicable to the domestic enquiries. It would be apposite to reproduce paragraph Nos. 3, 4 and 5 of the said judgment as under :-

“3. The principal ground on which the courts below have declared the termination bad is that none of the 11 passengers have been examined at the domestic enquiry. Secondly, it has been mentioned that there is a departmental instruction that checking inspectors should record the statements of passengers, which was not done in this case. The explanation of the State, as done out by the record, is that the inspector of the flying squad who had said that they had paid the fares but they declined to give such written statement. The third round which weighted with the courts was, perhaps, that the co-conductor in the bus had supported with this evidence, the guiltlessness of the respondent.

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the [Indian Evidence Act](#) may not apply. Ail materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the [Indian Evidence Act](#). For this proposition it is not necessary to

cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halbsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal in conclusion, we do not think the courts below were right in over-turning the finding of the domestic tribunal."

19. The Division Bench of this Court in the matter of Manik S.Mali Vs. Union of India and another, [2009 (II) CLR 709] concluded that the principles of appreciation of evidence adduced in a criminal case are not strictly applicable to departmental proceedings. Strict proof is not required to punish the delinquent in departmental proceedings. It would be apposite to reproduce the observations of the learned Division Bench in paragraph Nos. 3, 6 and 8 as under :-

"3. A copy of the FIR translated in Hindi was supplied to the petitioner. The petitioner was immediately suspended. Departmental enquiry was initiated against the petitioner. The Enquiry Officer recorded the statements of witnesses and

opportunity of hearing was given to the petitioner. Based on the report submitted by the Enquiry Officer, Senior Divisional Security Commissioner imposed the penalty of removal from service on the petitioner. The petitioner carried an appeal to the Senior Chief Security Commissioner. By an order dated 9/4/2007, the appeal came to be dismissed. The petitioner carried a revision to the Director General/RPF Railway Board. By order dated 13/11/2007, the Director General/RPF Railway Board dismissed the revision petition. Being aggrieved by this order, the petitioner has approached this court.

6. The petitioner has admitted that translated copy of the FIR was given to him. He has not disputed that Sherina Khatun's FIR was supplied to him. The petitioner was immediately suspended. Departmental enquiry was initiated against him. The Enquiry Officer recorded statements of witnesses. It is true that statement of Sherina Khatun was not recorded. Mr. Kasar has stated that the Enquiry Officer tried his level best to record her statement but she was not available. Absence of Sherina Khatun's statement, however, in our opinion, does not absolve the petitioner of the charge. The Enquiry Officer has recorded statements of members of the escort party who confirmed that the petitioner isolated himself from the escort party. Statement of Jagbirsingh, Assistant Sub-Inspector indicates that after the incident when the passengers raised hue and cry, the petitioner went to him and told him that some incident had taken place in the compartment and requested him to tell the people that his name is Prakash Patil and not Manik Mali. Mr. L. P. Thakur, T. T. E. has stated that the passengers told him that the petitioner

misbehaved with a lady passenger and when the lady passenger was asked about it, she stated that the man in uniform came, sat next to her and after 2 to 5 minutes went away.

8. Mr.Karnik, learned counsel for the petitioner submitted that the criminal court has acquitted the petitioner and, therefore, the impugned orders must be set aside. This submission must be rejected. It is well settled that the principles underlying appreciation of evidence adduced in a criminal case are not strictly applicable to departmental proceedings. Strict proof is not necessary to punish the delinquent in departmental proceedings. We have perused the judgment of the criminal court. The petitioner was acquitted because the witnesses turned hostile. The respondents could still proceed against the petitioner departmentally and remove him from service to secure that only people with utmost moral rectitude are allowed to work in RPF.”

20. Standing Order 25(4) reads as under :-

“A workman against whom an inquiry is proposed to be held shall be given a charge sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office-bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the

inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rest. A concise summary of the evidence led on either side and the workman's plea shall be recorded.]

All proceedings of the inquiry shall be conducted in English, Hindi or Marathi according to the choice of the workman concerned and the person defending him.

The inquiry shall be completed within a period of three months : Provided that the period of three months may, for reasons to be recorded in writing, be extended to such further period as may be deemed necessary by the enquiry officer."

21. It is apparent and cannot be disputed that the Enquiry Officer is not a Court. Evidence to be adduced by the parties before the Enquiry Officer in oral form is to be recorded in a concise form or a summary pattern. Either it could be recorded word to word or even by way of a summary. The witnesses of the respective sides are at liberty to file a written statement in lieu of oral evidence.

22. In fact, the experience is that such written statements are more preferred by the employees as well as the Management since it ensures that all the aspects of the case are put forth, no point is lost or is missed, in as much as, the other side gets an opportunity to study such statement and prepare itself to cross examine the said

witness. In my view, it is not an anathema to lead oral evidence in the form of a written statement before an Enquiry Officer in a domestic enquiry.

23. So also, the cross-examination of a witness in a domestic enquiry can be recorded by the Enquiry Officer in a question and answer form so as to avoid any dispute with regard to any question posed and/or answer offered by the witness. If the parties to the enquiry agree, the Enquiry Officer can also record the cross-examination in a summary / concise form. It is, therefore, for the parties to prefer the manner of recording the cross-examination.

24. In the above backdrop and the Standing Orders applicable, coupled with the fact that the Enquiry Officer is neither a Judge nor could the domestic enquiry be said to be a judicial proceeding, the statement in written form put forth by any witness need not necessarily be by way of an affidavit or a notarized document.

25. In the light of the above, the Labour Court as well as the Industrial Court have erroneously concluded that an affidavit alone can be relied upon by the Enquiry Officer. The impugned order and the judgment are, therefore, perverse.

26. As such, both these petitions are partly allowed. The impugned orders of the Labour Court dated 19/09/2013 and the impugned judgment of the Industrial Court dated 29/04/2015 are quashed and set aside. Since the enquiry was held to be perverse on a solitary ground of the evidence of the Management witness not being in the form of an affidavit and since no other aspect has been looked into, I am remitting the second issue to the Labour Court for a fresh hearing only to find out whether the findings of the Enquiry Officer are perverse or not. It is made clear that the Labour Court shall consider whether the reasons assigned by the Enquiry Officer in support of the conclusions drawn are based on material / evidence recorded in the enquiry.

27. Needless to state, the Labour Court shall decide the second issue afresh keeping in view the law laid down in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(3) Mh.L.J. 339 = 2014(1) CLR 878.

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

29. No order as to costs.

(RAVINDRA V. GHUGE, J.)