

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12338 OF 2015

1. Executive Engineer,
MSEDCL, Chalisgaon Division,
District Jalgaon.

2. Dy.Executive Engineer,
MSEDCL Rural Sub Divn. 1
Hanumanwadi, Chalisgaon,
District Jalgaon.

..Petitioners

Versus

Deepak Adhar More,
Age 37 years, Occ. Service
R/o Talegaon, Tq. Chalisgaon
District Jalgaon.

..Respondent

...

Advocate for Petitioner : Shri Gaikwad A.M.
Advocate for Respondent : Shri Patil U.S.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: October 15, 2016

...

ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the interim order dated 18.3.2015 passed by the Labour Court, by which, the Labour Court has directed the petitioners not to take a final decision in the disciplinary proceedings and not to act upon the second show cause notice dated 13.2.2015 until decision in the complaint. The petitioner is also aggrieved by the judgment of the Industrial Court dated 2.7.2015, by which, Revision (ULP) No.4 of 2015 filed by the petitioner has been dismissed.

5. I have heard the learned Advocates for the respective sides at length.

6. Normally, a challenge to an interlocutory order in the supervisory jurisdiction of this Court is not to be entertained. However, in the instant case, without framing the two issues with regard to the fairness of the enquiry and the findings of the enquiry officer, the Labour Court has granted interim relief in the nature of a final relief. The Industrial Court has also sustained the said order.

7. There is no dispute that the respondent was charge sheeted for having committed a grave misconduct of negligence, which has led to the death of a co-employee. On 9.3.2014, there was a breakdown in the supply of electricity at the Ganeshpur 11 KV Sub-Station. The respondent was engaged in the process of rectification of the

break down so as to restore the supply of electricity. The respondent was in charge of the Tambola AV Switch Point. The allegation is that the AV Switch Point, which was under the control of the respondent, was switched on when an employee Raju Baban Patil had already climbed upon the pole at Shamwadi as a part of the rectification process. He was electrocuted and he died.

8. A departmental enquiry was conducted against the respondent, which was concluded in one day. After the enquiry officer held the respondent guilty, a second show cause notice, proposing the punishment of dismissal dated 13.2.2015 was served on the respondent. Without offering a reply, which is mandated by law, the respondent rushed to the Labour Court by lodging Complaint (ULP) No.9 of 2015 and by the impugned order dated 18.3.2015, the Labour Court granted interim relief in the nature of final relief. The Industrial Court by the impugned judgment has sustained the order.

9. Despite the strenuous submissions of Shri Patil on behalf of the respondent / employee, I find that the Labour Court, inspite of referring to the judgment of the Honourable Supreme Court in the matter of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285 = 1995 (6) SCC 326], and Deoraj Vs. State of Maharashtra [2004 DLGS (Soft) 280], has protected the respondent until final disposal of the case. It is apparent that the law laid down by the Honourable

Supreme Court in these two judgments has been lost sight off by the Labour Court. Paragraph 54 of the Hindustan Lever Judgment (supra) reads as under:-

“54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant Clauses 7 of item I of schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.”

10. The Honourable Supreme Court while deciding the matter of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803], has concluded that if the fairness of the enquiry and the findings of the enquiry officer are challenged, the following two issues have to be cast, which in the instant case would be as under:-

(A) Whether the complainant proves that the enquiry is vitiated due to non-observance of the principles of natural justice?

(B) Whether the complainant proves that the findings of the enquiry officer are perverse and deserve to be set aside?

11. The law laid down in Motipur Sugar Factory (supra) has been consistently followed and still holds the field for the last more than 60 years. The Labour Court could not have sympathized with the petitioner while granting interim relief in the matters of disciplinary proceedings, which is most unusual.

12. Shri Patil has strenuously submitted that, since he has been protected, the protection be continued and the Labour Court be directed to decide the complaint within a time frame. This Court, in the matter of Mumbai Cricket Association Vs. Pramod G. Shinde [2011 (7) All M.R. 678], has concluded that even if the disciplinary enquiry

is set aside by the Labour Court or the Tribunal, there can be no interim relief and the employee would not have a right to claim subsistence allowance. The law laid down by the Honourable Supreme Court has been followed by this Court in the Mumbai Cricket Association's case (supra). In this backdrop, the impugned order granting interim relief is unsustainable.

13. Considering the above as well as the law laid down in the case of Neeta Kaplish Vs. Presiding Officer, Labour Court [AIR 1999 SC 698], this petition is allowed. The impugned order dated 18.3.2015, delivered by the Labour Court below interim relief application Exhibit U/2 is quashed and set aside. Application Exhibit U/2 stands rejected. The impugned judgment of the Industrial Court, dated 2.7.2015, therefore, stands quashed and set aside and Revision (ULP) No.4 of 2015 is allowed.

14. The respondent shall file a reply to the second show cause notice dated 13.2.2015 on/or before 21.10.2016. After considering the reply and all objections of the respondent, the petitioner shall scrutinize the said objections and shall pass a reasoned order with regard to whether any punishment deserves to be awarded to the respondent. Needless to state, the decision of the petitioner shall indicate proper application of mind and reasons in support of the conclusions that may be arrived at.

15. Rule is made absolute in above terms.

(RAVINDRA V. GHUGE, J.)

...

akl/d