

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9489 OF 2015

Sachin Tobacco,
Survey No.48/1, at Kasara Dumala,
Tq.Sangamner, District Ahmednagar.
Through it's Manager.

...PETITIONER

-VERSUS-

Navnath Laxman Malunjkar,
R/o At Post Dhamangaon Pat,
Tq.Akole, District Ahmednagar.

...RESPONDENT

...

Advocate for Petitioner : Shri Ashok Patil with Shri V.P.Golewar h/f Shri
Joshi Arvind Ramakant.

Advocate for Respondent : Shri Barde Parag Vijay.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th January, 2016

Oral Judgment:

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

2 The Petitioner is aggrieved by the judgment and order dated
08.07.2015 delivered by the Industrial Court by which Revision (ULP)
No.84/2012 filed by the Respondent Employee was partly allowed and

Revision (ULP) No.61/2013 filed by the Petitioner Employer was dismissed.

3 The Petitioner submits that the Respondent was dismissed from service by order dated 12.01.2006 by way of punishment after conducting a domestic enquiry. Complaint (ULP) No.11/2006 was filed by the Respondent before the Labour Court challenging the enquiry, findings of the Enquiry Officer and the order of punishment. The issues as to whether, the enquiry is vitiated and as to whether, the findings of the Enquiry Officer are perverse, were framed by the Labour Court. By the part-1 judgment dated 29.02.2012, the enquiry as well as the findings of the Enquiry Officer were upheld.

4 The Labour Court by it's final judgment dated 17.08.2012 partly allowed the complaint only to the extent of converting the dismissal into discharge.

5 The Petitioner preferred Revision (ULP) No.61/2013 and the Respondent also filed Revision (ULP) No.84/2012 before the Industrial Court.

6 The contention of the Respondent was that harsh punishment

has been imposed upon him. It is noteworthy that the part-1 judgment dated 29.02.2012 has not been challenged by the Respondent/ Employee before the Industrial Court. Consequentially, the issue that remained for adjudication was whether, the reduction of punishment was justified and whether, the punishment imposed by the Petitioner was commensurate to the gravity and seriousness of the misconduct at issue.

7 The charge proved against the Respondent was regarding assault. The Petitioner, therefore, submits that the charge was grave and serious and the order of the Labour Court was out of misplaced sympathy. Further grievance is that the Industrial Court went through the entire evidence and concluded that the Labour Court has not considered the evidence recorded in the enquiry meticulously and arrived at a wrong conclusion that the misconduct alleged against the employee was proved. It is further concluded that the charges against the Respondent fail. The Petitioner, therefore, submits that the Industrial Court has travelled beyond the scope of its revisional powers and has erroneously reopened the entire enquiry.

8 Shri Barde, learned Advocate for the Respondent/ Employee, has strenuously supported the impugned judgment. He submits that the Industrial Court realized that there was no evidence on record to prove

the charges against the Employee. The Industrial Court has, therefore, rightly concluded that the charges are not proved and the charges fail.

9 He further submits that the physical fight was in between the Respondent and another person purportedly on the ground that the wife of the said person was having relations with the Respondent. If the Respondent is said to have assaulted the other person, the same can be said about the other person because he also assaulted the Respondent. The Management has let the other person go scot free and has picked and chosen the Respondent for punishment.

10 He further submits that the Industrial Court on being convinced that the dismissal is illegal, has quashed and set aside the same. It has granted reinstatement with continuity of service to the Respondent, but deprived him of the back-wages. He, therefore, submits that no fault can be found with the impugned judgment.

11 I have considered the submissions of the learned Advocates as have been recorded herein above.

12 It is trite law that the Labour Court has to decide the issue of the fairness of the enquiry and the findings of the Enquiry Officer by it's

part-1 judgment. In the instant case, the enquiry has been upheld as well as the findings. The said part-1 judgment is not challenged by the Respondent Employee before the Industrial Court. As such, both the revision petitions could have been considered by the Industrial Court only with regard to the fact as to whether, the punishment awarded to the Employee is shockingly disproportionate or not. It is also settled law that merely because the punishment may appear to be disproportionate, would not warrant interference by the Courts. The said punishment has to appear to be shockingly disproportionate.

13 I find from the conclusions drawn by the Industrial Court in paragraph 10 on internal pages 12 and 13 that the Industrial Court has ventured into reopening the entire enquiry and has concluded that the charges are not established and are not proved against the Respondent-Employee in the enquiry. This was beyond the jurisdiction of the Industrial Court considering the challenge before it. On this count alone, the impugned judgment of the Industrial Court is rendered unsustainable.

14 In the light of the above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 08.07.2015 is quashed and set aside. Revision (ULP) No.84/2012 and Revision (ULP) No.61/2013 are remitted back to the Industrial Court for a decision afresh

considering the observations of this Court set out herein above.

15 The litigating sides shall appear before the Industrial Court on 01.02.2016. The Industrial Court shall not be influenced by its earlier observations set out in the impugned judgment which has been quashed and set aside.

16 Rule is made partly absolute in the above terms.

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(RAVINDRA V. GHUGE, J.)