

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

WRIT PETITION NO. 475 OF 2014

Pralhad Rajaram Murhekar
Age: 45 years, Occu.: Nil,
R/o Dhamodi, Tq. Raver,
Dist. Jalgaon.

..PETITIONER

VERSUS

Dhamodi Vividh Karyakari Seva Society Ltd.
Dhamodi, Tq. Raver, Dist. Jalgaon.
Through Chairman/Secretary

..RESPONDENT

....

Mr. A.S. Gandhi, Advocate for petitioner.
Mr. D.B. Shinde along with Mr. M.R. Bhokarikar, Advocates for
respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 4th FEBRUARY, 2016**

ORAL JUDGMENT :

1. Rule.

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

3. The petitioner is aggrieved by the impugned judgment and order delivered by the Labour Court dated 06.04.2011 by which his Complaint ULP No. 16/2008 has been dismissed. He is also aggrieved by the judgment and order dated 23.08.2013 delivered by the Industrial Court, Jalgaon by which his Revision (ULP) No. 15/2011 has been dismissed.

4. The contention of the petitioner is that without conducting any enquiry, much less issuing any charge-sheet cum show cause notice, services of the petitioner have been dismissed for having allegedly committed misconducts. He further submits that the respondent employer has concluded that the petitioner had orally admitted the charges leveled upon him and hence no enquiry is required to be conducted. The petitioner further submits that after he preferred the Complaint ULP No. 16/2008 before the Labour Court, Jalgaon, the respondent has filed its written statement wherein right to conduct a denovo enquiry has not been reserved.

5. Mr. Gandhi, learned Counsel for the petitioner further submits that the conclusions of the Labour Court especially in paragraph no.22 of the impugned judgment are wholly perverse and erroneous since it has erroneously concluded that the petitioner had admitted the charges leveled upon him in the cross examination conducted by the respondent before the Labour Court. He further makes a grievance that when a right to conduct a denovo enquiry was not reserved by the respondent, neither was a denovo enquiry conducted, nor has the Labour Court framed any issues as to whether the respondent proved the charges against the petitioner by conducting a denovo enquiry in the Court. He therefore prays that this petition was allowed and the impugned judgments of the Industrial Court and the Labour Court be quashed and set aside.

6. Mr. Shinde and Mr. Bhokarikar, learned Counsel appearing for the respondent-management have strenuously supported the impugned judgments. Their contention is that the petitioner has admitted all the charges leveled upon him. Once the

charges are admitted, no different conclusion could be arrived at by conducting an enquiry. The enquiry was therefore dispensed with. A resolution was passed in the presence of the petitioner in a general body meeting thereby resolving to dismiss him from service.

7. It is further submitted that the charges leveled upon the petitioner are grave and serious in nature. Having committed such misconducts, the petitioner cannot be continued in employment. Grave and serious charges do not warrant the continuation of the petitioner in service. A criminal case has also been registered against him and he has therefore been dismissed from service.

8. It is further submitted, by placing reliance on the cross examination of the petitioner, that he has admitted the charges leveled upon him. While admitting the show cause notice served upon him and by admitting that he has replied to the said show cause notice, the charges stand proved against the petitioner.

9. Learned Counsel for the respondent have gone through the entire written statement filed before the Labour Court and are

unable to state whether they have reserved the right to conduct a denovo enquiry before the Labour Court in light of the judgment of the Apex Court in the case of *Karnataka State Road Transport Corporation Vs. Laxmidevamma* reported in *2001 II CLR 640*. It is then submitted that by considering the totality of the evidence recorded before the Labour Court, the impugned judgments are neither perverse nor erroneous. This petition be dismissed with heavy costs.

10. I have considered the submissions of the the learned Counsel and have also gone through the affidavit in reply filed by the respondent-management.

11. It is trite law that if an employer does not conduct a domestic enquiry before imposing the punishment of dismissal from service for having committed misconducts, the employer can conduct an enquiry for the first time before the Labour Court. It is also settled law that if the enquiry conducted is set aside by the Labour Court either on the ground of non-observance of the

principles of natural justice or on account of the finding of the enquiry officer being perverse, a denovo enquiry can be conducted. The law on the right to conduct a denovo enquiry has also been settled by the Apex Court in the case of Laxmidevamma (supra).

12. In the case of Laxmidevamma (supra), the issue before the five Judges Bench of the Supreme Court was whether the right to conduct a denovo enquiry should be reserved and at what stage such a right can be reserved. The Apex Court also dealt with the issue as to whether an application for conducting a denovo enquiry can be made for the first time before the Labour Court after the enquiry has been set aside.

13. Considering the above issues, the Apex Court concluded that when a complainant in a complaint or a second party employee in a reference raises a challenge to the fairness of the enquiry and the findings of the enquiry officer, the employer is made aware of the area of challenge. It was therefore noted in the light of the judgment of the Apex Court in the case of *Motipur Sugar Factory*

(P) Ltd. Vs. Motipur Sugar Factory reported in ***AIR 1965 SC 1803***

that once an enquiry is challenged, the issues with regard to the fairness of the enquiry and the findings of the enquiry officer need to be cast.

14. Taking into account the law, the Apex Court in the case of Laxmidevamma (supra) ruled that when the respondent employer is aware of the challenge to the enquiry, the right to conduct a denovo enquiry should be reserved at the first available opportunity which is the written statement of the respondent. In the instant case, the respondent has not reserved any right to conduct a denovo enquiry or even an enquiry for the first time despite being aware that the petitioner has raised a specific challenge that he has been dismissed from service by way of punishment for having committed a grave and serious misconduct, without an enquiry. As such, in my view, the respondent could not have conducted a domestic enquiry before the Labour Court.

15. Notwithstanding the above, the Labour Court in fact has neither permitted the respondent to conduct an enquiry in the

Court, nor was an issue cast as to whether the respondent-employer desires to prove the charges leveled upon the petitioner in the Labour Court. In the absence of such permission and in the absence of framing a requisite issue, no enquiry could have been conducted before the Labour Court.

16. In spite of the above facts, considering the strenuous submissions of the learned Counsel for the respondent, I have gone through the evidence recorded before the Labour Court with the assistance of the learned Counsel for the respondent. The learned Counsel have taken me through the examination in chief of the petitioner, his cross examination, deposition of the management witnesses and their cross examination.

17. I have scrutinised the said evidence in the light of the specific observations of the Labour Court in paragraph no.22 that the petitioner-workman has admitted all the charges leveled upon him in the enquiry. I did not find a single sentence either in the examination in chief of the petitioner or his cross examination that

he has made any statement, much less a specific statement that he admits the charges leveled upon him and/or he admits the guilt.

18. In this back drop, I am astonished in reading the conclusion of the Labour Court in paragraph no.22 that the petitioner-complainant has admitted the charges leveled upon him. To say the least, such a conclusion has been arrived at by the learned Presiding Officer of the Labour Court in the most casual manner. I disapprove the same. The entire case of the petitioner has been demolished on account of the conclusion of the Labour Court that he has admitted the charges leveled upon him, without there being any such statement either in the examination in chief or in the cross examination.

19. Considering the above, it is apparent that neither any charge was admitted by the petitioner, nor did the employer conduct an enquiry before the Labour Court. For these reasons, the finding of the Labour Court in the impugned judgment dated 16.04.2011 are perverse and erroneous. The Industrial Court judgment suffers from the same perversity since it has dismissed the

revision petition of the petitioner based on the conclusion that the petitioner had admitted the charges in the cross examination before the Labour Court. For the said reasons, the impugned judgment of the Industrial Court dated 23.08.2013 deserves to be quashed and set aside.

20. The learned Counsel for the petitioner submits that he had deposed before the Labour Court that he is not gainfully employed and he has no other source of income. He further prays for 100% back wages from the date of his termination. Per contra, the learned Counsel for the respondents have opposed the said submission on the ground that the principle of 'no work no wages' is applicable and hence the petitioner deserves to be deprived of back wages.

21. The Apex Court in the case of *Nicolas Piramal India Ltd. Vs. Hari Singh* reported in **2015 (2) CLR 468** has concluded that where the termination of an employee is held to be unsustainable and bad in law, his hardships suffered and the rigours of litigation that he has under gone, deserve to be reduced. The Apex Court

therefore granted 50% back wages to the concerned employee in the said case.

22. In the light of the above, this petition is allowed. The impugned judgment of the Labour Court dated 06.04.2011 and the judgment of the Industrial Court dated 23.08.2013 are quashed and set aside. Complaint ULP No. 16/2008 is partly allowed by directing the respondents to reinstate the petitioner in service with continuity and 50% back wages till the date of reinstatement.

23. If this order is not complied with within six weeks from today, the back wages shall carry a simple interest of 6% p.a. from the date of the judgment of the Labour Court till the date of reinstatement.

24. Revision ULP No. 15/2011 therefore stands dismissed.

25. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)