

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1125 OF 2015

Vilas Wayyappa Gawali

...Petitioner
(Org. Complainant)

v/s.

Pune Adventist Hospital

...Respondent
(Org. Opponent)

Mr. Sandeep M. Pathak for the petitioner.
None for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 2 MARCH 2016

PC.:

. The petitioner challenges the orders passed by the Labour Court and the Industrial Court dated 26 September 2011 & 4 February 2012 respectively, dismissing his complaint and revision against the order of termination effected by the respondent-hospital.

2. The petitioner was working as a sweeper in the respondent-hospital. A Charge-sheet was issued to the petitioner on 6 October 2006 wherein it was stated that the petitioner was stocking some of the properties of the hospital in ICU cupboard and also that he was trying to dispose of the same. It was also alleged that he possessed a dagger and an iron rod and when accosted, he quarreled with the security person and threatened him. An Inquiry was conducted, wherein the petitioner was represented by an

advocate. The inquiry was concluded and the petitioner was found guilty of theft, misconduct and possession of deadly weapons. Pursuant to the finding in the inquiry, the petitioner was terminated from service on 27 July 2007. The petitioner thereafter filed a Complaint (ULP) No.104/2007 praying for reinstatement with full back wages contending that while terminating the services of the petitioner, the respondent committed unfair labour practice and the termination was by way of victimisation. The Labour Court framed an issue as to whether inquiry conducted was fair and proper and in consonance with the principle of natural justice, and held that the inquiry was fair and proper. The Labour Court also held that the evidence before the Inquiry Officer was sufficient to prove the misconduct. The labour Court after declaration that the inquiry was fair and proper took up the matter for further consideration. The Labour Court, by order dated 26 September 2011 concluded that the punishment was not disproportionate and the order of termination was proper and the relief of reinstatement with full back wages cannot be granted. Revision Application No.111/2011 filed by the petitioner was rejected by the Industrial Court on 4 February 2012.

3. The learned counsel for the petitioner submitted that the Revisional Court has not applied his mind to the facts of the case. This submission cannot be accepted keeping in mind limited jurisdiction available to the Revisional Court. It is further submitted that for the charge of possessing deadly weapon, the petitioner was

given punishment on 8 August 2005 by way of suspension and therefore since the said charge was again invoked and the petition is dismissed, it amounts to double jeopardy. The petitioner has not raised this ground before the Labour Court and the Industrial Court and not even in this petition and it is made for the first time across the bar. The learned Counsel for the petitioner has shown the order of suspension dated 8 August 2005. The authenticity of this document is not known. However, even going by this document, it shows that the petitioner was put to notice that if similar misconduct were committed henceforth, the respondent would take serious view which may include dismissal from service. Even if this charge is kept aside, the finding of the Inquiry Officer as regards theft still remains which has been confirmed by both the Courts. The argument of the learned counsel that this factor would reflect proportionality of the punishment has no merit. The petitioner has approached this Court in its writ jurisdiction. Once there is a finding by the Inquiry Officer and both the Courts belowe that the petitioner was engaged in stealing of property of the hospital, which include medical equipment, which if it falls in the hands of any unauthorized person could lead to serious implications, it is not possible to hold that the punishment of dismissal was disproportionate.

4. Learned counsel for the petitioner relied upon a decision in the case of *Colour-Chem Ltd. v/s. A. L. Alaspurkar and Others, (1998) 3 SCC 192*, wherein the Apex Court

considered the decision as regard dis-proportionality of punishment and in the facts of case before it held that the punishment imposed is shockingly disproportionate to the charges of misconduct proved against the workman. The workman therein was found sleeping on duty. This is not the case in the present matter. The goods, which are tried to be stolen, are not ordinary goods, not that the theft of other goods is to be taken lightly. Whether the punishment is proportionate or otherwise depends on the facts of each case.

5. Considering the limited jurisdiction under Articles 226 and 227 of the Constitution of India to interfere with the findings of fact, it is not possible to grant any relief to the petitioner. Writ Petition is accordingly rejected.

(*N. M. JAMDAR, J.*)