IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6961 OF 2015

Arvind Subhash Gaikwad ..Petitioner

Vs.

Tyco Electronics Corporation
of India Pvt Ltd. & Ors ..Respondents

Mr. N. M. Ganguli for the Petitioner
Mr. Kiran Bapat i/b M/s Desai & Desai Associates for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 19th AUGUST, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 19-4-2014 passed by the Learned Presiding Officer, 3rd Labour Court, Pune, by which order the reference in question being Reference IDA No.750 of 2004 was answered in the negative.

2 The subject matter of the present proceeding was the industrial dispute relating to the termination of service of the Petitioner herein by letter dated 21-6-2004. The Petitioner was working as a machine operator from 22-5-1998. A charge sheet came to be issued to the Petitioner on 13-8-2003. In the said charge sheet two charges were leveled against the Petitioner which are as follows :

> 1. On 27.7.2003 the CSE was present in first shift at the factory, and that he was expected to clean his work place at the end of his shift timings, as a part of his duties, for which provision of down time is also made. However, the CSE did not clean his work-place on the him with a view to threaten him as to whether Mr. Elaya wanted to stay in Pune and left his work place cleaning the same. It was further noticed by Mr. Elaya that the CSE had falsely recorded down time of ten minutes for the cleaning work in his loading sheet for the said shift without doing any cleaning work. The said fact was brought to the notice of Mr. Naresh Kumar, shift Engineer and a remark to that effect was recorded on the loading sheet of the CSE for the said day.
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> 2. On 28-7-2003 while present in the First Shift at 6.00 a.m. the CSE banged Mr. Satish Elaya from behind at about 6.20 a.m. when Mr. Elaya was distributing work to the employees of the crimping section in the said shift and when asked by Mr. Elaya as to why the CSE banged him from behind, the CSE replied in a very filthy language and further threatened Mr. Elaya by asking him as to whether he wants to stay in Pune."

3 The Petitioner has filed his defence statement. Thereafter the enquiry commenced and in support of the said charges the Respondent No.1 had adduced evidence of its witnesses. The enquiry officer on the basis of the material on record held that the charges were proved and considering the seriousness of the said charges, the Petitioner was dismissed from service. This resulted in the Petitioner raising an industrial dispute which as indicated above was referred to the 3rd Labour Court for adjudication. The Labour Court framed a preliminary issue which reads thus :

> "Whether the enquiry conducted by the I[st] party against IInd party is legal, fair and proper ?"

4 The Labour Court thereafter framed other issues relating to whether the termination w.e.f. 21-6-2004 was legal, whether the Respondent No.1 proved the alleged misconduct by evidence before the enquiry officer or before the court and whether the Petitioner second party proved that the establishment of first party is taken over by the party No.2. In the context of the challenge raised in the Petition the issue as to whether the Respondent No.1 had proved the alleged misconduct by evidence before the enquiry officer or the court assumes importance. In so far as the said issue is concerned, the Learned Presiding Officer of the Labour Court has adverted to the evidence of one Naresh Kumar in respect of the incident which took place on 28-7-2003 relating to the charge of the Petitioner giving threats and giving a dash to one Satish Ilaya who was the group leader of the Petitioner. The Learned Presiding Officer held that having regard to the evidence of the said Naresh Kumar which has not been dented in the cross-examination and having regard to the fact that the standard of proof is preponderance of probabilities the second charge can be said to be proved against the Petitioner.

5 In so far as the first charge is concerned, the Learned Presiding Officer has held that having regard to the evidence recorded, the first charge has not been proved by the first party i.e. the Respondent No.1 herein. The

Learned Presiding Officer having regard to the seriousness of the second charge came to a conclusion that the termination of the Petitioner w.e.f 21-6-2004 cannot be said to be a punishment which was disproportionate to the charge which was proved. In so far as the second charge is concerned, the Learned Presiding Officer held that lack of details mentioned in the report submitted to the Respondent No.1 would not impinge upon the evidence in respect of the said second charge. The Learned Presiding Officer therefore held that the evidence before the enquiry officer is sufficient to prove the misconduct of the Petitioner and therefore the findings are not perverse. As indicated above the Learned Presiding Officer has accordingly answered the reference in the negative.

6 The Learned Counsel appearing on behalf of the Petitioner Mr. Ganguly, would contend that it was incumbent upon the Learned Presiding Officer to frame an issue relating to whether the findings are perverse or not alongwith the preliminary issue that was framed that having not been done so by the Learned Presiding Officer, it was not open for the Learned Presiding Officer thereafter to consider the evidence at the second stage when other issues were being adjudicated. This was the main plank of the challenge raised to the impugned order dated 19-4-2014.

7 In my view, it is not possible to accept the said contention of Mr.

Ganguli. As indicated above, the preliminary issue as regards whether the inquiry was fair and proper was framed by the Learned Presiding Officer and was answered in favour of the Respondent No.1. No doubt the issue as regards whether the findings are perverse or not is an issue which is usually framed with the preliminary issue. However, in the instant case, the said issue can be said to be comprised in issue No.3 which was framed by the Trial Court, which has already been adverted to hereinabove, albeit at the second stage. The said issue has been answered by the Learned Presiding Officer by considering the evidence on record and thereafter holding that the findings of the inquiry officer of the charge proved is not perverse. Hence the issue as to whether the findings are perverse or not has been framed and has also been answered though at the second stage, in my view merely because the issue was framed at the second stage the same would not vitiate the adjudication of the reference by the Labour Court. In so far as the second charge in the charge sheet is concerned, the said charge can be said to be a serious charge having regard to the fact that the Petitioner had threatened and also tried to physically assault the group leader, having regard to the said charge, as also having regard to the past conduct of the Petitioner i.e. the second party, the Learned Presiding Officer did not deem it appropriate to interfere with the punishment imposed by the Respondent No.1.

8 In my view, having regard to the findings recorded by the Learned

Presiding Officer, it cannot be said that the conclusions arrived at by the Learned Presiding Officer are such which could not be arrived at on the basis of the material on record. Hence no case for interference in the Writ Jurisdiction of this court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]