

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1925 OF 2011**

Claudio Joseph Rego & Anr

..Petitioners

Vs.

Glaxo Smithkline Pharmaceutical Ltd

..Respondent

Ms Sneha Sanap i/b Mr. Ajinkya Jaibhave for the Petitioners

Mr. V. P. Vaidya i/b Salgaonkar & Co. for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 17th OCTOBER, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked under Articles 226 and 227 of the Constitution of India is invoked against the judgment and order dated 13-4-2010 passed by the Learned Member of the Industrial Court, Nashik by which the Revision Application being Revision ULP No.18 of 2009 filed by the Petitioner came to be dismissed and resultantly the judgment and order dated 24-3-2009 passed by the Learned Presiding Officer, Labour Court Nashik, came to be confirmed.

2 The Petitioner No.1 herein was working with the Respondent and the Petitioner No.2 is the recognised Union operating in the Respondent. The Petitioner No.1 was issued with a charge sheet dated 11-1-1993 comprising of three charges which were levelled against him in respect of incidents which had taken place on 27-8-1992 and 19-9-1992. The said charge sheet alleged

misconduct under Standing Order No.24(b) of the Model Standing Order read with the relevant Service Rules. The gravamen of the allegations of the charge sheet is as regards abetting and inciting illegal strike, instigating disorderly behaviour, use of abusive language against the officer of the company and commission of any subversive of discipline and being rude to the officer of the company. The Petitioner No.1 was thereafter issued with second charge sheet dated 4-2-1993 in which charge sheet charges were levelled against the Petitioner No.1 in respect of incidents which had taken place on 13-11-1992, 14-11-1992, 22-11-992 and 7-12-1992. The allegations comprised in the said charge sheet were also of misconduct under Standing Order 24(b) of the Model Standing Orders.

3 An inquiry was commenced into the said charge sheets which culminated in the Inquiry Officer submitting a report holding that the charges were proved against the Petitioner No.1.

4 Acting upon the said inquiry report, the management of the Respondent took a decision to dismiss the Petitioner No.1 from its services by order dated 30-6-1994. The said dismissal order resulted in the Petitioners herein filing Complaint ULP No.208 of 1994 under Item 1 of Scheme IV of the MRTU and PULP Act 1971. The dismissal of the Petitioner No.1 was in contention in the said complaint. The Learned Presiding Officer of the Labour

Court Nashik having regard to the fact that the services of the Petitioner No.1 were terminated pursuant to an inquiry held in respect of the said two charge sheets delved into the aspect as to whether the inquiry was fair and proper, as also whether the findings recorded in the inquiry were perverse. The Learned Presiding Officer in the order dated 24-3-2009 passed by him held that the Petitioner No.1 had fully participated in both the inquiries. He was supplied with copies of all the documents filed in the inquiry and that he was given a full opportunity to lead his own evidence as also cross-examine the witness of the management. The Learned Presiding Officer therefore concluded that the inquiries conducted were fully in accordance with principles of natural justice.

5 The Learned Presiding Officer thereafter ventured to consider whether the findings recorded were perverse. The Learned Presiding Officer considered the evidence which had come on record in respect of the first charge sheet and especially the incidents which had taken place on the two dates mentioned in the charge sheet. Having regard to the material on record, the Learned Presiding Officer held that the findings of the Inquiry Officer in respect of the charge sheet dated 11-1-1993 cannot be said to be perverse. The Learned Presiding Officer thereafter considered whether the charges levelled in the second charge sheet were proved. The Learned Presiding Officer adverted to the four charges which were levelled in the second charge sheet as also considered the evidence which had come on record in respect of the

incidents which had taken place on the dates mentioned in the said charge sheet which has resulted in the charge sheet being issued. On such consideration, the Learned Presiding Officer concluded that all the charges in the charge sheet dated 4-2-1993 were proved against the Petitioner No.1.

6 In so far as the proportionality of the punishment is concerned, the Learned Presiding Officer adverted to the past record of the Petitioner No.1 which was produced by the Respondent Company vide Exhibits C-21 to C-27 and having regard to the punishment imposed on the Petitioner No.1 in the past came to a conclusion that the punishment imposed upon the Petitioner No.1, on the basis that the charges levelled in both the charge sheets were proved, cannot be said to be disproportionate. The Learned Presiding Officer therefore concluded that the Petitioners had failed to prove that the Respondent had terminated the services of the Petitioner No.1 by committing unfair labour practice under Item 1 of Schedule IV of the MRTU and PULP Act 1971. As indicated above the said judgment and order of the Labour Court is dated 24-3-2009.

7 The Petitioners aggrieved by the said judgment and order dated 24-3-2009 passed by the Learned Presiding Officer of the Labour Court invoked the Revisionary Jurisdiction of the Industrial Court by filing Revision ULP No.18 of 2009. The Learned Member of the Industrial Court having

regard to the challenge raised in the Revision considered whether the findings recorded by the Labour Court in respect of the inquiry being fair and proper and whether the findings were perverse and on such consideration reiterated the findings of the Learned Presiding Officer of the Labour Court in respect of the charges levelled vide first charge sheet as also the charges levelled vide the second charge sheet. The Learned Member of the Industrial Court observed that the charges levelled against the Petitioner No.1 were serious and therefore warranted the punishment of dismissal. The Learned Member of the Industrial Court accordingly by the impugned judgment and order dated 13-4-2010 has dismissed the Revision.

8 The Learned Counsel appearing on behalf of the Petitioners Ms Sanap would seek to contend that though the allegations comprises also of the role played by another employee namely Ms A. T. Shaikh. Significantly no charge sheet was issued to the said Ms A. T. Shaikh and nor was the said Ms A. T. Shaikh examined in the inquiry. It was also the submission of Ms Sanap that in the absence of the said Ms. A. T. Shaikh being examined, the charges cannot be held to be proved against the Petitioner No.1.

9 In my view, it is not possible to accept the said contentions urged on behalf of the Petitioners by the Learned Counsel Ms Sanap, having regard to the concurrent findings recorded by both the courts below. Both the courts

below have considered the findings recorded by the Inquiry Officer. In so far as the Industrial Court is concerned, it has also also considered the findings recorded by the Learned Presiding Officer of the Labour Court. In my view, having regard to the said concurrent orders passed by the courts below, the interdiction of this Court under Articles 226 and 227 of the Constitution of India is not warranted. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]