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

WRIT PETITION NO. 8095 OF 2015

Tessitura Monti India Private Limited. ... Petitioner.

V/s.

Krishnat Ganpati Hawaldar. ... Respondent.

Mr. M.S. Topkar for the Petitioner.
Mr. Benett D'Costa for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 28 JANUARY, 2016.

ORAL ORDER **:-**

The Petitioner – employer challenges the orders passed by the Labour Court and the Industrial Court, Kolhapur holding that the findings of the Enquiry Officer in the enquiry instituted by the Petitioner against the Respondent are perverse.

2. The Respondent was served with a charge-sheet dated 7 December 2005. It was alleged that while he was operating a fork lift in the third shift, he rashly and negligently collided against galvanized pipes mounted to the wall in the new warping department because of which there was damage to the galvanized

pipes and the wall. A charge-sheet dated 4 March 2006 was also served on the Respondent wherein it was alleged that the Respondent put pressure on one Jyotiram Mali, who was the trainee fork lift operator to accept the guilt. An enquiry was held and the Respondent was found guilty of both the charges. After the conclusion of the enquiry, the Petitioner dismissed the services of the Respondent on 28 September 2006.

3. The Respondent filed a Complaint (ULP) No. 161 of 2006 in which preliminary issue was framed and by order dated 23 March 2011, the Labour Court, Kolhapur held that the enquiry was fair and proper but the findings of the Enquiry Officer in respect of both the charges were perverse. A Revision filed by the Petitioner was dismissed by the Industrial Court, Kolhapur by order dated 20 November 2014. These orders have been impugned in the present Petition.

4. I have heard Mr. Topkar, learned Counsel for the Petitioner and Mr. Benett D'costa, learned Counsel for the Respondent.

5. Mr. Topkar submitted that the Labour Court had existed its jurisdiction in sitting in appeal over the decision of the Enquiry Officer. He submitted that the Respondent did not examine himself and on the basis of the evidence available, the

Enquiry Officer drew a conclusion that the Respondent was guilty. Enquiry is not to be conducted like a criminal trial. He submitted that the Respondent was the sole fork lift operator at that time and the damage would only have been caused by the Respondent. He submitted that the Enquiry Officer has considered the evidence of the witnesses in proper perspective. Mr. Topkar submitted that as far as a second charge-sheet is concerned, there was no perversity at all in the finding that the Respondent pressurized Mr. Mali to give a statement. On the other hand, Mr. D'costa submitted that even though the witnesses were available, they were not examined. He also submitted that the Respondent never took a defence that the damage was caused by Mr. Mali and therefore, there is no question of him trying to pressurize him to own up the responsibility. He also submitted that the Enquiry Officer has not considered the entire line of defence of the Respondent and has found the Respondent guilty on mere conjectures.

6. No interference is warranted in Writ Jurisdiction for the following reason. The Respondent was operating the fork lift in the third shift. It was his defence that after he removed some crates, he found that there damage already caused to the wall and the pipes. He informed the same to the person on the next shift. The Enquiry Officer has proceeded on the basis that since the Respondent was admittedly the only fork lift operator during the third shift, he must have causes the damage. The Enquiry Officer has not considered that inspite of other workers admittedly

present in the third shift, none of them were examined. The Enquiry Officer has based its findings on circumstantial evidence when direct evidence of the witness was available. The Enquiry Officer has not even explored this angle of the matter.

7. Mr. D'costa is right in contending that if the damage of this magnitude was caused then there would have been noise, which would have drawn attention of the other workers. Both the Labour Court and the Industrial Court therefore rightly came to the conclusion that the finding of the Enquiry Officer based on circumstances is perverse. The Enquiry Officer did not consider that the Petitioner did not examine the workmen who were present in the third shift which would have thrown light on the controversy, and pleaded the case on the basis of surrounding circumstances. Even though it is correct that the Labour Court is not to sit in appeal only on the findings of the Enquiry Officer, but the Labour Court has jurisdiction to hold that the findings are perverse. Not finding anything erroneous in non-examination of available witnesses and then holding someone guilty on the basis of circumstances is clearly a perverse approach. The Labour Court and the Industrial Court looked into all these aspects to come to the conclusion that the findings were perverse.

8. As regard the second charge about pressurizing Mr. Mali, in the reply filed by the Respondent, the Respondent has never taken a stand that the fork lift was operated by Mr. Mali. In

fact the stand of the Respondent was that he was operating the fork lift when he noticed the damage. The Enquiry Officer has been swayed by the chapter case filed against the Respondent but considering the nature of chapter case, the finding of guilty cannot be only based on the same. The enquiry regarding the first charge-sheet, it was stated that the incident of pressurizing Mr. Mali in the village had nothing to do with the first charge, yet in the proceedings regarding the second charge, opposite stand was taken.

9. The jurisdiction to interfere with the concurrent findings of two Courts is limited. I do not find any error or perversity in the approach of both the Courts below. Even otherwise the Petitioner, in its written statement has prayed that if it is held that the findings are perverse then the Petitioner be allowed to lead evidence to justify the action of dismissal.

10. In the circumstances, there is no merit in this Petition. The Petition is rejected.

(N.M. JAMDAR, J.)