

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 842 OF 2016**

Ramdas Shantaram Gade

..Petitioner

Vs.

Morarjee Goculas SPG & WVG

Co. Ltd. Unit No.2

..Respondent

Ms Gayatri Singh Senior Advocate i/b Kranti L.C. for the Petitioner

Mr. P. R. Singh for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 6th SEPTEMBER, 2016

P.C.

1 The Writ Jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order dated 31-1-2013 passed by the Learned President of Industrial Court, Maharashtra, by which order the Appeal filed by the Petitioner being Appeal (IC) No.24 of 2009, came to be dismissed and resultantly the order dated 5-2-2009 passed by the Learned Judge of the 3rd Labour Court, Mumbai dismissing the Application (BIR) No.11 of 2005, came to be confirmed.

2 The Petitioner herein was working with the Respondent mill as a process fitter in the maintenance department w.e.f. 22-5-1980. The Petitioner was issued a charge sheet of having committed misconduct under clauses 21(d) and 21(k) of the standing orders. Pursuant to the said charge sheet, a departmental inquiry was conducted. In the said inquiry two witnesses were

examined on behalf of the management in support of the charges. On the basis of the material on record the Inquiry Officer submitted his report and held that the charges were proved against the Petitioner. The management issued the dismissal order on 20-10-2014 based on the said inquiry report. The Petitioner thereafter sent an approach letter on 11-11-2004 requesting the management to reinstate the Petitioner with continuity of services and full back wages. Since the approach letter was not responded to, the Petitioner filed the Application (BIR) No.11 of 2005 invoking Sections 78 and 79 of the Bombay Industrial Relations Act, (BIR Act for short) now the Maharashtra Industrial Relations Act (MIR Act for short) and prayed for reinstatement with continuity of services and full back wages. The Learned Judge of the Labour Court framed two preliminary issues namely whether the inquiry was fair and proper and whether the findings were not perverse.

3 In so far as the said issues were concerned, it was sought to be contended on behalf of the Petitioner that out of the two witnesses of the management one witness was not allowed to be recalled and the second witness was not allowed to be cross-examined. In so far as the first witness is concerned, the Labour Court observed that the cross-examination of the said witness was conducted in the presence of the Petitioner / Applicant and merely because he has changed his defence representative, the said witness cannot be recalled. In so far as the second witness is concerned, the Learned Judge

observed that inspite of giving opportunity on 6 or 7 occasions, the Petitioner had not cross-examined the second witness. The issue was also raised as regards the payment of subsistence allowance to the Petitioner which fact according to the Petitioner would impinge upon the fairness of the inquiry. The Learned Judge of the Labour Court did not countenance the said submission and held that the judgment in **Fakirbhai Fulabhai Solanki Vs. The Presiding Officer & Anr.**¹ would not be applicable as the said judgment was rendered in the context of Section 33 of the Industrial Dispute Act. The Learned Judge of the Labour Court thereafter proceeded to adjudicate the second issue and held that the findings were not perverse. The said two issues were adjudicated by the first order dated 1-9-2008 passed by the Learned Judge of the Labour Court. The Learned Judge thereafter proceeded to adjudicate as regards the proportionality of the punishment. The Learned Judge observed that since the charges were held to be proved and since the management had lost confidence in the Petitioner, the punishment of dismissal from service, cannot be said to be disproportionate. The Learned Judge therefore by the second order dated 7-3-2009 dismissed the said application.

4 The Petitioner aggrieved by the two sets of orders passed by the Learned Judge of the Labour Court filed an Appeal before the Industrial Court under Section 84 of the MIR Act. The said Appeal was numbered as Appeal (IC No.24 of 2009, the issues which were raised before the Labour Court were

¹ 1986 I CLR 440

reurged before the Appellate Court. The Appellate Court on the basis of the material on record as also having regard to the findings recorded by the Learned Judge of the Labour Court did not deem it appropriate to interfere with the impugned orders passed by the Labour Court and accordingly dismissed the Appeal by the impugned judgment and order dated 31-1-2013.

5 The Petitioner has thereafter filed the instant Petition and in paragraph 1 has mentioned the reasons as to why there is a delay in filing the above Writ Petition which is filed on 1-3-2016. In my view having regard to the said reasons set out cause for entertaining the above Petition at this point of time is made out.

6 The Learned Senior Counsel appearing on behalf of the Petitioner Ms Singh would reiterate the case of the Petitioner before the courts below and would question the orders passed by the Labour Court as regards the fairness of the inquiry as also the findings on the ground that no proper opportunity was given to the Petitioner in the inquiry proceedings. The Learned Senior Counsel would contend that the second witness was not cross-examined as the mother of the defence representative was unwell therefore adjournments were sought on the said ground. The Learned Senior Counsel would also contend that the subsistence allowance having not been paid the inquiry is vitiated on the said ground.

7 Per contra Mr. P. R. Singh the Learned Counsel appearing for the Respondents would support the impugned order. The Learned Counsel would seek to draw this courts attention to the material on record in respect of the opportunity granted to the Petitioner in the inquiry proceedings as also the evidence of the Petitioner in respect of the payment of subsistence allowance wherein it has come in the evidence of the Petitioner that the management was not punctual and for few months mentioned therein the subsistence allowance was not paid.

7 Having heard the Learned Counsel for the parties I have considered the rival contentions. The courts below have on the basis of the material on record have recorded findings of fact in respect of the opportunity granted to the Petitioner. In so far as the first witness is concerned, as indicated above, the said witness was cross-examined in the presence of the Petitioner and his recall was only sought on the ground that the Petitioner has changed his defence representative, that obviously cannot be granted to recall the witness. In so far as the second witness is concerned, the Labour Court has observed that inspite of 6 or 7 opportunities being given the said witness was not cross-examined and hence the blame would lay only at the doors of the Petitioner for the same. In so far as subsistence allowance is concerned, a reading of the evidence of the Petitioner discloses that he has stated that the

management was not punctual and for about two months in the year 2002 that there was a delay in payment of the subsistence allowance. Hence even assuming that Fakirbhai Solanki's Judgment (supra) is to be made applicable, there is no substance in the said grievance of the Petitioner that he was not paid the subsistence allowance and therefore the inquiry was vitiated. In my view, having regard to the aforesaid reasons, the exercise of the Writ Jurisdiction of this Court under Article 226 of the Constitution of India is not warranted. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]