

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.549 OF 2016

Kansai Nerolac Paints Ltd.]
(Formerly known as Goodlas Nerolac]
Paints Ltd.)]
having its office at Nerolac House,]
Ganpatrao Kadam Marg, Lower Parel,]
Mumbai-400 013.]..Petitioner

Versus

1. Paints Employees Union]
C/o. T. K. Walawalkar, B-2/9, Jeevan]
Nagar, Mithaghar Road, Mulund (East),]
Mumbai-400 081.]

2. Mr. Vijay Salekar]
1/45, Sadguru Sadan, Anant Malvankar]
Marg, Lalbaug, Mumbai-400 012.]..Respondents

Mr. R. N. Shah a/w Mr. Sanjay Udeshi, Mr. Netaji Gawade i/by M/s.
Sanjay Udeshi & Co., for the Petitioner.
Mrs. Meena H. Doshi for the Respondent No.1.

ALONGWITH
WRIT PETITION NO.1637 OF 2016

1. Paints Employees Union]
C/o. T. K. Walawalkar, B-2/9, Jeevan]
Nagar, Mithaghar Road, Mulund (East),]
Mumbai-400 081.]

2. Mr. Vijay Salekar]
1/45, Sadguru Sadan, Anant Malvankar]
Marg, Lalbaug, Mumbai-400 012.].. Petitioners

Versus

1. M/s. Goodlass Nerolac Paints Ltd.]
Nerolac House, P. Box No.16322,]
Ganpatrao Kadam Marg,]
Lower Parel, Mumbai-400 013.]
2. Mr. H. M. Bharuka,]
Managing Director,]
Goodlass Nerolac Paints Ltd.]
Nerolac House, P. Box No.16322,]
Ganpatrao Kadam Marg,]
Lower Parel, Mumbai-400 013.]
3. Mr. V. Deshpande,]
Vice President,]
Goodlass Nerolac Paints Ltd.]
Nerolac House, P. Box No.16322,]
Ganpatrao Kadam Marg,]
Lower Parel, Mumbai-400 013.]
4. Mr. V. D. Patil,]
General Manager- HR]
Goodlass Nerolac Paints Ltd.]
Nerolac House, P. Box No.16322,]
Ganpatrao Kadam Marg,]
Lower Parel, Mumbai-400 013.].. Respondents

Mrs. Meena H. Doshi for the Petitioners.
Mr. R. N. Shah a/w Mr. Sanjay Udeshi, Mr. Netaji Gawade i/by M/s.
Sanjay Udeshi & Co., for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 20th SEPTEMBER, 2016

ORAL JUDGMENT

1 Rule in both the Petitions. With the consent of the Learned
Counsel for the parties made returnable forthwith and heard.

2 The above Writ Petitions filed by the employer and the union respectively take exception to the order dated 22.12.2015 passed by the Learned Member of the Industrial Court, Mumbai, by which order, the application being Revision Application (ULP) No.231 of 2010 of the employer i.e. the Petitioner in the first Petition came to be partly allowed and resultantly, the order passed by the Labour on the justness and fairness of the enquiry came to be partly set aside and a direction came to be issued to the parties that they would get an opportunity of hearing to adduce evidence on the alleged misconduct of the delinquent i.e. the Respondent No.2 in Writ Petition No.549 of 2016.

3 It is not necessary to burden this order with unnecessary details having regard to the nature of the final directions to be issued :-

 The Respondent No.2 herein was working with the Petitioner in Writ Petition No.549 of 2016. The Respondent No.3 was issued a charge-sheet alleging misconduct against him. Pursuant to the said charge-sheet, an enquiry was conducted. After following the gamut of the procedure of the holding an enquiry, the punishment of the termination of the services of the Respondent No.2 came to be imposed on the Respondent No.2. This resulted in the Respondent filing Complaint (ULP) No.580 of 2002 invoking Items 1(a), (b), (d),(f) and (g) of Schedule IV

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of the MRTU & PULP Act, 1971 (For short “the said Act”). In the said complaint, the Labour Court framed two preliminary issues, namely whether the enquiry was fair and proper and whether the findings recorded by the Enquiry Officer are perverse. For the reasons mentioned in its order dated 13.10.2010, the Learned Judge of the Second Labour Court, Mumbai, answered both the issues against the Petitioner employer. This resulted in the Petitioner employer invoking the jurisdiction of the Industrial Court under Section 44 of the said Act by filing a Revision which was numbered as Revision Application (ULP) No.231 of 2010. In so far as the Revision is concerned, the Learned Member of the Industrial Court tested the findings of the Labour Court on the said two issues and after going through the various aspects on which the findings were based, the Industrial Court reached a conclusion that the findings of the Labour Court are not at all sustainable for want of support of material on record. The Industrial Court also observed that the order of the Labour Court was bereft of any reasons as to how fairness of the enquiry was lost. As indicated herein above, the Industrial Court took into consideration the various aspects and recorded that the findings of the Labour Court were not justified on the said two issues. However after so recording, the Industrial Court as can be seen from the impugned order, especially in paragraph 19 thereof held that it is settled law that the employer would

get an opportunity to record the evidence on the misconduct of the employee and if the Labour Court would grant such opportunity to the employer and the Respondent would get an opportunity to question any such material. The Industrial Court therefore directed the Petitioner employer to lead evidence in Court to prove the misconduct.

4 The Petitioner employer is therefore aggrieved by the order of the Industrial Court to the extent that it directs the Petitioner employer to lead evidence to prove the misconduct in Court after it had recorded findings in its favour and against the findings recorded by the Labour Court. The union is aggrieved by the findings recorded by the Industrial Court, though not the operative part of the impugned order and has therefore filed its own Petition challenging the said findings.

5 Having regard to the said challenge, it is required to be noted that the Revision Application filed by the Petitioner employer was against the order passed by the Labour Court, wherein the two preliminary issues were answered against the Petitioner employer by holding that the enquiry was fair and proper, and that the findings of the Enquiry Officer were not perverse. The Industrial Court was therefore required to address the said Revision Application from the said angle. The Industrial Court was therefore required to either confirm the findings of

the Labour Court on the said two issues or set aside the findings and thereafter direct the course of action as contemplated in law of giving an opportunity to the employer to prove the misconduct in Court. However, significantly the Industrial Court has not recorded any such finding as regards the findings recorded by the Labour Court on the said two issues, but the directions in paragraph 19 to permit the Petitioner employer to lead evidence seem to be based more on practicality and desirability rather having any basis in law. It is well settled that only after a finding is recorded that the enquiry is not fair and proper and the findings are perverse that an opportunity can be given to the employer to lead evidence in Court.

6 In my view, therefore, the impugned order dated 22.12.2015 passed by the Learned Member of the Industrial Court is required to be quashed and set aside and is accordingly quashed and set aside and the Revision Application is required to be relegated back to the Industrial Court for a de-novo consideration of the same, in terms of the observations made hereinabove and in terms of the settled position of law as to when an opportunity to the employer to lead evidence in Court is to be afforded.

7 On remand, the Industrial Court to hear and decide the

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Revision Application latest by 30.11.2016. Needless to state that the contentions of the parties on merits are kept open for being urged before the Industrial Court. The Industrial Court to decide the Revision Application on its own merits and in accordance with law uninfluenced by the instant order or the impugned order. The Writ Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs of the Petitions.

[R.M.SAVANT, J]