

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5226 OF 2001

Larsen & Toubro Limited,
A-9/10, MIDC Area,
Ahmednagar through
Deputy General Manager.

..Petitioner

Versus

Arvind Salaram Rudrakshe,
R/o Durgesh Bungalow,
Near Pumping Station,
Bhutkarwadi, At & Post
Ahmednagar.

..Respondent

...
None present

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CORAM : RAVINDRA V. GHUGE, J.
Dated: May 12, 2017
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ORAL JUDGMENT :-

1. Despite service of court notice, none appears for the petitioner. No appearance is entered by the petitioner either through a representative or an Advocate after the court notice was served in the backdrop of the learned advocate for the petitioner being elevated as the Honourable Judge of this Court.

2. None appears even for the respondent.

3. Considering the above, I could have dismissed this petition in default. However, I am deciding the same on its merits.

4. I have gone through the petition paper book and the detailed Part I award, delivered by the II Labour Court, Ahmednagar dated 29.12.2000. The Labour Court was dealing with a preliminary issue as under:-

"Does the second party workman prove that the enquiry conducted against him by the first party is illegal, improper and against the principles of natural justice?"

5. The Labour Court concluded on the basis of the enquiry before it, as well as on the basis of the additional evidence adduced, that the respondent was not given an opportunity to submit an explanation to the charge sheet. No show cause notice was issued along with the charge sheet. It is settled law in the light of the judgment in the case of Om Prakash Yadav Vs. Union of India and others [2009 (121) FLR 151], that the employer cannot proceed to conduct an enquiry without giving a show cause notice on the charge sheet to a workman and without considering his reply. Paragraph No.7 of the said judgment reads as under:-

" 7. In view of the above admitted facts of the case in adjudicating the question of legality of the charge-sheet disclosing the name of the enquiry officer, I find that it is the settled principles of law that after issuing the charge-sheet the principles of natural justice is

required to be followed by giving an opportunity to the delinquent employee to submit a reply to the same. On receipt of such reply the disciplinary authority is to decide as to whether the enquiry proceeding is required to be conducted. In the event the decision is taken by the disciplinary authority to conduct enquiry proceeding without giving opportunity to the delinquent employee to give reply to the charge-sheet, the decision making process suffers from the violation of the principles of natural justice on the ground of biasness. In this regard the relevant portions of the decision State of Punjab v. V.K. Khanna (supra) are quoted below:

34. *The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias. What bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindse viz. the inquiry shall proceed irrespective of the reply. Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in the affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply*

to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the Respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record."

6. The respondent was charged under Standing Order 24(a), (b) and (l) of the Model Standing Orders for having committed willful insubordination, disobedience, going on an illegal strike or abetting, instigating or acting in furtherance thereof and having committed acts subversive of discipline and good behaviour on the premises of the establishment. He was held guilty of these charges. However, he was not given the copy of the enquiry officer's report for submitting his explanation as to why the management should discard the report and should not accept the findings of the enquiry officer. The case of the respondent was squarely covered by the judgment of the Honourable Apex Court in the matter of Union of India Vs. Mohammed Ramzan Khan [AIR 1991 SC 471] and in the matter of Managing Director, ECIL, Hyderabad etc. Vs B.Karunakar etc. [AIR

1994 SC 1074 = (1993) 4 SCC 727],

7. It is settled law that under the 15th amendment to the Constitution, a charge sheeted employee has two rights. Firstly, to show cause on the charge sheet and explain his conduct of not being guilty and secondly, to show cause on the quantum of punishment. By the 42nd Amendment to the Constitution, the first right was maintained and the second right of the worker was altered. His right to show cause on the quantum of punishment was taken away and instead he was given the right to show cause on the findings of the enquiry officer. The quantum of punishment was, therefore, left within the domain of the employer, only after considering the explanation of the charge sheeted employee on the findings of the enquiry officer and his past service record. In the instant case, the findings of the enquiry officer were not given to the respondent / workman and a second show cause notice was not issued.

8. In the light of the above, I do not find that the impugned Part I award, dated 29.12.2000, delivered by the Labour Court thereby vitiating the enquiry could be termed as being perverse or erroneous.

9. In the light of the above, this petition is devoid of merits and is, therefore, dismissed.

10. Rule is discharged.

11. I deem it proper to direct the Labour Court to issue notices to the litigating sides in Reference (IDA) No.69 of 1993 and proceed with the said Reference by keeping in view the law laid down by the Honourable Supreme Court (5 Judges' Bench) in the matter of Karnataka State Road Transport Corporation Vs. Laxmidevamma & another [2001 (II) CLR 640]. It is expected that the said Reference Case, which is 24 years' old, shall be decided as expeditiously as possible and on/or before 31.3.2018.

(RAVINDRA V. GHUGE, J.)

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akl/d