

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11317 OF 2017
Ahmednagar Forging Limited Through Its Authorised Signatory U G
Kulkarni.
VERSUS
Vijay Kundlik Thombare

WITH
WRIT PETITION NO.11318 OF 2017
Ahmednagar Forging Limited Through Its Authorised Signatory U G
Kulkarni
VERSUS
Shivaji Ananda Chaudhary

WITH
WRIT PETITION NO.11321 OF 2017
Ahmednagar Forging Limited Through Its Authorised Signatory U G
Kulkarni
VERSUS
Sachin Ashok Sonawane

WITH
WRIT PETITION NO.11322 OF 2017
Ahmednagar Forging Limited Through Its Authorised Signatory U G
Kulkarni
VERSUS
Ramchandra Abasaheb Adhav

WITH
WRIT PETITION NO.11336 OF 2017
Ahmednagar Forging Limited Through Its Authorised Signatory U G
Kulkarni
VERSUS
Samadhan Machindra Ghorpade

WITH
WRIT PETITION NO.11337 OF 2017
Ahmednagar Forging Limited Through Its Authorised Signatory U G
Kulkarni
VERSUS
Mahendra Laxman Shrikhande

WITH
 WRIT PETITION NO.11382 OF 2017
 Ahmednagar Forging Limited Through Its Authorised Signatory U G
 Kulkarni
 VERSUS
 Vishnu Ramesh Jaibhaye

WITH
 WRIT PETITION NO.11384 OF 2017
 Ahmednagar Forging Limited Through Its Authorised Signatory U G
 Kulkarni
 VERSUS
 Shyam Tulsiram Dhangare

WITH
 WRIT PETITION NO.11443 OF 2017
 Ahmednagar Forging Limited Through Its Authorised Signatory U G
 Kulkarni
 VERSUS
 Rajendra Bhimrao Ugale

WITH
 WRIT PETITION NO.11584 OF 2017
 Ahmednagar Forging Limited Through Its Authorised Signatory U G
 Kulkarni
 VERSUS
 Ganesh Dnyandeo Dongare

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 Advocate for the Petitioner : Mr.U.S.Malte.

CORAM : RAVINDRA V. GHUGE, J.
 DATE : 20.09.2017

PER COURT :

1. In all these petitions, the petitioner is the same industrial establishment, which is aggrieved by the identical order dated 16.06.2017 delivered by the Labour Court, Aurangabad, thereby rejecting the application filed by the petitioner for seeking leave to

adduce common evidence in all these matters and conduct a common enquiry.

2. I have considered the strenuous submissions of Shri. Malte, learned advocate for the petitioner establishment on 19.09.2017 and again on this date. He has drawn my attention to the fourteen grounds formulated by him in these petitions.

3. The gamut of the petitioner's submissions can be summarized as under :-

- a) The 10 respondents herein have been charge sheeted for having committed acts amounting to grave and serious misconducts, if proved.
- b) The petitioner desired to conduct a domestic enquiry as per the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946.
- c) Due to unavoidable circumstances and a volatile situation created by these respondents, a domestic enquiry as against each of these respondents was not possible and hence all of them were dismissed from service for having committed misconducts.
- d) The right to conduct an enquiry before the Labour Court to prove the charges and justify the punishment was reserved

by the petitioner.

- e) In the written statement filed by the petitioner establishment, it is specifically contended in paragraph no.23 that the petitioner would examine witnesses in support of their contentions and will prove the misconduct of the respondents.
- f) Pursuant to their dismissals, these respondents raised an industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947.
- g) Since the conciliation proceedings failed and the failure report was submitted, the appropriate government noticed that an industrial dispute did exist and referred the matters to the Labour Court which were registered as reference cases.
- h) The statements of claims and the written statement of the petitioner are on record and the pleadings have been completed.
- i) On 03.05.2017, the petitioner filed an application praying for clubbing all the matters together for the purposes of recording evidence with regard to the charges levelled upon the respondents.
- j) By an identical order impugned dated 16.06.2017, all the applications filed by the petitioner in each reference cases

have been rejected.

- k) Precious time of the court as well as energies of the litigating sides would be saved if a common recording of evidence is permitted.
- l) Since charges levelled upon each of these respondents are more or less similar and as the origin of the disciplinary proceeding is from a common act or acts, the recording of common evidence would be suitable.
- m) The possibility of multiple cross-examinations and repetitive cross-examination would be averted.
- n) No prejudice would be caused to any of the respondents, if the matters are clubbed.

4. After considering the submissions of the learned Advocate, I have gone through the record available. All the respondent workers have strongly objected to recording of common evidence in their enquiries before the Labour Court.

5. It is trite law that an employer has to pose reasons as regards why the employer could not conduct a departmental enquiry as per the Model Standing Orders or the Certified Standing Orders, as the case may be. After justifying the reasons for not being able to conduct a domestic enquiry within the factory, a reasoned order of dismissal on the

allegations of misconduct can be passed. If a workman approaches the court, the burden and the obligation would lie on the employer to prove the charges before the Labour Court. The only distinguishing factor in between a domestic enquiry and such an enquiry would be that the Labour Court or Tribunal, as the case may be, would be the Enquiry Officer / Judge in such enquiry.

6. It is equally trite that when multiple workers are involved in a common act amounting to misconduct, each workman charged with having committed such act, has to be subjected to a domestic enquiry. Each enquiry has to be conducted separately on account of the possibility that the Enquiry Officer may conclude in a given case that the charge sheeted workman is found guilty of the charges levelled upon him. In another given case, he may come to a conclusion that the charges are not proved and the workman would then stand exonerated in the enquiry. The analogy that if one workman is held guilty, hence, all the workmen shall be held guilty mechanically, is an anathema. In this backdrop, there is sanctity for conducting an enquiry against an individual workman and there is no prescription under the Model Standing Orders to conduct a common enquiry against multiple workers.

7. The reference cases before the Labour Court filed by the respondents/ Second Party Workmen are with regard to stigmatic

dismissals and with prayers for reinstatement, continuity, full back wages and/or compensation in lieu thereof. Since in such cases, the employer is under an obligation to prove the charges before the Labour Court, the employer will have to step into the witness box first under Order XVIII Rules 1 & 2 of the Code of Civil Procedure.

8. In the above backdrop, those domestic enquiries, which were to be individually conducted under the Model Standing Orders by an in-house mechanism, would now be substituted by conducting such an enquiry before the Labour Court / Tribunal, as the case may be. The Model Standing Orders, which apply to the domestic enquiry in an in-house enquiry, *pari materia*, would also apply to such enquiries which are being conducted in the court.

9. In catena of judgments delivered by the Hon'ble Apex Court as like *Delhi Cloth and General Mills Company Limited v/s Ludh Budh Singh*, 1972 (1) SCC 595, *Workmen of M/s Firestone Tyre & Rubber Company of India v/s Management*, AIR 1973 SC 1227 : 1973 SCR (3) 587 and *Bharat Forge Company Ltd. v/s A.B.Zodge*, 1996 (73) FLR 1754 : AIR 1996 SC 1556, it is concluded that after an enquiry is set aside, if earlier conducted, the case would be relegated to the position of no enquiry and then a de-novo enquiry will have to be conducted before the Court.

10. This settled position of law is distinct and different from the position under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “the MEPS Act”) read with the MEPS Rules, 1981, wherein, if an enquiry is vitiated on account of non-observance of Rules 36 & 37, the enquiry is relegated to the Enquiry Committee constituted by the Management for commencing the enquiry afresh from the stage at which it was vitiated. (See *Vidya Vikas Mandal and another vs. Education Officer and another*, 2007(3) Mh.L.J. 801 (SC)).

11. Taking an overall view of the above factors and the law and taking into consideration that not a single worker is agreeable for a joint enquiry, I am of the view that unless it is provided otherwise, an independent de-novo enquiry will have to be conducted by the petitioner establishment before the Labour Court. In such a situation, the issue as regards the substantive rights of the workers would be significant. While doing so, the Labour Court would have to record the evidence of the management witnesses as against a particular charge sheeted workman. The cross-examination will also have to be recorded in a similar fashion. An independent enquiry will have to be conducted as against each of the workmen.

12. Notwithstanding the above, the possibility cannot be ruled

out that where the workers have purportedly committed an act by coming together in a gathering or a mob, the evidence adduced by the Management in the first case of a worker, would be similar to be recorded in the other cases. In such a case, the Management may seek a formal permission from the Labour Court to place the certified copy of the examination-in-chief of the common witnesses recorded in the first case, on record in the other cases as being the identical evidence of the said witnesses. The workmen would then be at liberty to either adopt the cross-examination conducted in the first case of the witness and place a certified copy of the same on record in the other cases for adopting the cross-examination, is so desired.

13. In the event, any workman wants to conduct an additional cross-examination, even that could be permitted by the Labour Court. The only precaution that would be required to be taken in such circumstances, would be that when the examination and cross-examination of the witness in the first case is being conducted, rest of the witnesses as well as rest of the workers in the remaining cases will have to be evicted from the Court room.

14. No doubt, it could be a possibility as is canvassed by the learned advocate for the petitioner that after the first cross-examination is conducted in the first case, the remaining workers are likely to

become alert and they may conduct a fresh cross-examination in each case. This is possible even in a domestic enquiry and this possibility cannot be ruled out. Nevertheless, the Labour Court would be empowered to curtail an additional cross-examination if it is found that repetitive questions are being posed.

15. Considering the above, I do not find that the impugned orders passed by the Labour Court dated 16.06.2017 could be termed as being perverse or erroneous, as also, no view of the court to the contrary has been cited. All these Writ Petitions, therefore, stand disposed of with the above observations, which I have made in the interest of justice.

16. Since the above observations are in accordance with the provisions of law and would render assistance to the Labour Court as well as litigating sides, I have disposed of these petitions without issuing notice to the respondents.