

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8884 OF 2016

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
VERSUS
RAVINDRA AADHAR GOSAVI

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Advocate for Petitioner : Shri Jain P.N. h/f Shri Bagul D.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 16, 2017
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PER COURT :-

1. While issuing notice to the respondent on 30.8.2016, I had considered the submissions of the petitioner and the record available and had passed the following order:-

“1. The petitioner is aggrieved by the interim order dated 10.10.2016 passed by the Industrial Court, Dhule in Revision (ULP) No.1 of 2016.

2. The petitioner submits that the respondent, after being subjected to a full-fledged departmental enquiry, was issued with the second show cause notice dated 28.12.2015, calling upon him to explain as to why the findings of the enquiry officer should not be accepted. The respondent preferred Complaint (ULP) No.1 of 2016 before the Labour Court at Dhule. Application for interim relief - Exhibit U/2 was considered by the Labour Court and by a detailed order dated 13.1.2016, the application was rejected. The Labour Court kept in view the observations of the Honourable

Supreme Court in paragraph Nos.53 and 54 of it's judgment in the matter of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285 = 1995 (6) SCC 326].

3. The respondent approached the Industrial Court and by the order dated 10.2.2016, the Industrial Court stayed the show cause notice dated 28.12.2015 and further stayed the order of termination dated 20.1.2016 passed by the Corporation after the interim application of the respondent was rejected.

4. Learned Advocate for the petitioner submits that the respondent has been terminated and presently is not in employment.

5. Prima facie, I find that the Industrial Court has failed to consider the note of caution struck by the Honourable Apex Court in paragraph Nos.53 and 54 of it's judgment in the Hindustan Lever's case (supra). Moreover, the Industrial Court, prima facie, could not have interfered with the order of termination.

6. Issue notice to the respondent, returnable on 4.10.2016.

7. Till the next date of hearing in this matter, the impugned order dated 10.2.2016, passed by the Industrial Court, Dhule shall stand stayed, considering the fact that the respondent has already been terminated on 20.1.2016.

8. The petitioner shall supply a copy of the petition paper

book on/or before 2.9.2016 for issuance of notice, failing which, the ad-interim protection shall stand vacated.”

2. Despite service on the respondent and this matter being placed for admission on 21.10.2016, 21.11.2016, 28.11.2016, 14.12.2016 and 6.1.2017, no appearance has been entered by the respondent, either through an Advocate or in person.

3. The Honourable Apex Court in the case of Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285 = 1995 (6) SCC 326], has observed in paragraph Nos.53 and 54 as under:-

“53. Reference made in paragraph VI to the Bombay High Court's judgments also cannot be of any avail as they were based on the view which was accepted by the learned Single Judge of the High Court of Bombay at Nagpur which has rightly been overturned by the Division Bench of the Bombay High Court in the Judgment under appeal on a correct interpretation of the relevant provisions of the Act. Therefore, the earlier view taken by the learned single Judges of the Bombay High Court cannot be said to be well-sustained. For all these reasons, the appellant has made out no case for our interference in this appeal.

54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not

be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant Clauses 7 of item I of schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.”

4. So also, it is settled law that in matters of disciplinary proceedings, interim relief ought not to be of the final nature and

could be granted in rarest of rare cases. The Labour Court upon considering the law laid down in Hindustan Lever's case (supra), rejected the application for interim relief filed by the respondent / employee. By the impugned order passed by the Industrial Court below Exhibit U/2, it is observed, *"The respondent has intention to terminate the services of the complainant and an order has been passed to that effect by the respondent on 20.1.2016. If show cause notice was still under consideration, it was not proper to pass such order. Moreover, when the complainant had approached the Court before passing of the said order, the respondent should have refrained from passing of such order."*

5. I find that the above observation of the Industrial Court for granting interim relief, in the backdrop of disciplinary proceedings, can only be termed as being perverse and unsustainable. Moreover, after the order of punishment has been passed on 20.1.2016, the Industrial Court could not have exercised jurisdiction under Section 7 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, practically staying the order of termination without dealing with the said cause of action, which it could not have so done under Section 7 and Item 1 of Schedule IV.

6. This petition is, therefore, allowed. The impugned order dated

10.2.2016 passed by the Industrial Court is quashed and set aside and application Exhibit U/2 in Revision (ULP) No.1 of 2016 stands rejected.

(RAVINDRA V. GHUGE, J.)

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