

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10201 OF 2016

Superintending Engineer,
(Competent Authority)
Maharashtra State Electricity
Distribution Company Ltd.,
Circle Office, Dhule.

..Petitioner

Versus

Suresh Vishnu Mali
Age 58 years, Occ. Service
R/o Plot No.22, Vishnu Vihar,
Suyog nagar, Taluka and
District Dhule.

..Respondent

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Advocate for Petitioner : Shri Bajaj Anil S.
Advocate for Respondent : Shri Patil Shrikant S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment of the Industrial

Court dated 30.4.2016, by which, Complaint (ULP) No.9 of 2009, filed by the respondent / employee has been allowed.

5. I have heard the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

6. The petitioner has levelled the following charges against the respondent, vide the charge sheet dated 14.12.2005:-

“ (i) The respondent has not followed the seniority of the consumers, while supplying new connections. He has installed new connections for the premises of comparatively new applicants and kept the applications of old applicants pending. Thus, he has superseded the seniority of Shamshadbee Shaikh Nasir Pinjari and Shabbir Ahmed Akli Ali. (ii) He has not maintained F-1 register properly and has not entered the application of proposed consumer date wise. (iii) He failed to submit the particulars of F-1 register to the office of Sub Division Officer. (iv) The new connection were installed during the period from 21.7.2004 upto 28.7.2004 the information regarding NSCR was supplied after three months and has thus caused loss to the corporation.”

7. After considering his reply, an enquiry was conducted. Upon

finding the respondent guilty of the charges, the petitioner proposed the stoppage of one annual increment for four years with cumulative effect. After considering his reply, the proposed punishment was scaled down and he was awarded the punishment of stoppage of one annual increment for two years, without cumulative effect, vide order dated 27.9.2006. (The Industrial Court has wrongly mentioned as stoppage of two annual increments).

8. Being aggrieved by the above, the respondent preferred his ULP Complaint before the Industrial Court. By the judgment dated 11.12.2013, the Complaint was allowed. The petitioner preferred a Writ Petition before this Court which was partly allowed. The conclusion of the Industrial Court that the respondent is a workman was not disturbed. However, the ULP Complaint was remitted to the Industrial Court for framing the two issues with regard to the fairness of the enquiry and findings of the enquiry officer. Thereafter, by Part I order dated 27.10.2015, the enquiry was held to be vitiated and the petitioner conducted a *de novo* enquiry before the Industrial Court. Pursuant to the enquiry, the Industrial Court allowed the Complaint by the impugned judgment. The respondent has already superannuated on 31.5.2014.

9. By the impugned judgment, the Industrial Court has concluded that the evidence adduced by the petitioner is not sufficient to hold

that the charges levelled upon the respondent are proved.

10. In so far as the first charge of ignoring the applications of certain applicants, namely, Shamshadbee Shaikh Nazir and Shabbir Ahmed is concerned, the respondent was charged with having entertained subsequent applications of other applicants for installation of electricity connection. The evidence in this context is on record and which has been analyzed by the Industrial Court in paragraph No.7.

11. There is no dispute that the circular of the petitioner Exhibit U/41 permitted the installation of new connection out of turn, if any of the applicants / consumer had supplied various electrical articles like meter board, insulators etc., the claim of such consumer could be entertained out of turn. This was permitted in the face of a short fall of articles, meaning thereby that the establishment was not able to supply all the necessary articles that are required for the installation of the connection.

12. The respondent, therefore, may not be faulted for entertaining such claims of consumers which were filed subsequent to the applications filed by Shamshadbee Shaikh Nazir and Shabbir Ahmed. However, the Industrial Court has concluded that though the respondent was not in charge of the Vadjai Road Branch, with regard

to which, there were complaints, prior to 7.8.2004, he could not be charge sheeted for having entertained applications of consumers selectively during the period 24.5.2004 till 22.7.2004 as he was transferred to Vadjai Road Branch on 7.8.2004.

13. I find that the Industrial Court has lost sight of the fact that the respondent was earlier holding the charge of the Vadjai Road Branch and he was in charge of dealing with the applications of consumers. He had discharged his duties as an in-charge at the Vadjai Branch during the period 24.5.2004 till 22.7.2004. There is no dispute that applications of consumers filed after those filed by Shamshadbee Shaikh Nazir and Shabbir Ahmed were favoured by the respondent.

14. In Service Jurisprudence, a mis-conduct is not required to be proved beyond any doubt. Mis-conducts can be proved on the preponderance on the principles of probabilities. There is no contention of the respondent that he was on inimical terms with his superiors or that his superiors had developed animosity and antipathy towards him. In the absence of these aspects, it is evident that the misdemeanor of the respondent, while holding the charge at Vadjai Road Branch, before being given the regular charge on 7.8.2004, has been completely missed by the Industrial Court. On this count, though it appears to be a minor misconduct, the responsibility for not

entertaining the applications of the consumers as per their seniority can be fixed on the respondent.

15. With regard to the charge of not maintaining the F-1 register or A-1 register, the petitioner did not lead any evidence and the said charge was, therefore, not proved. Consequentially, the charge that he failed to submit the particulars of the F-1 register to the Sub-Divisional Officer also was not proved.

16. Similar is the case with Charge No.4 that the information regarding installation of new connections between 21.7.2004 and 28.7.2004 as regards NSCR were not supplied for three months, thereby causing loss to the Corporation, has also not been proved by the petitioner.

17. In the light of the above, since I find that the minor misconduct as regards entertaining the applications of the consumers by over looking those applications filed earlier, has been proved, I deem it proper to reduce the punishment as was awarded by the management from 'withholding of one increment for two years without cumulative effect' to 'withholding of one increment without cumulative effect for one year.'

18. Consequentially, the petitioner / management will be required

to refund the amount of one annual increment withheld for one year, to the respondent.

19. Shri Bajaj, learned Advocate for the petitioner has strenuously canvassed that the direction of the Industrial Court to pay 6% per annum interest on the amount to be refunded to the respondent and the direction to pay Rs.5000/- costs, is unsustainable and be set aside.

20. Normally, I could have entertained this request of the petitioner. However, the Industrial Court has observed in paragraph No.11 that though this Court had ordered the litigating sides in its judgment dated 20.7.2015, that they would be precluded from seeking adjournments on unreasonable or frivolous grounds, the petitioner had conducted the proceedings in a casual manner. Adjournments were sought and the Industrial Court had to pass adverse orders. After deciding the preliminary issues on 27.10.2015, the petitioner had taken 12 adjournments for conducting *de novo* enquiry. Summons were issued to witnesses at the request of the petitioner and then those witnesses were not examined by the petitioner, though the summons were served. On one occasion, the evidence of the petitioner was closed and the said order was recalled and then the petitioner examined its witness.

21. Considering the above, I find that the Industrial Court was justified in awarding 6% per annum interest and costs of Rs.5,000/-. As such, the said amount of interest would be restricted only to the stoppage of one annual increment for one year since I have reduced the punishment from two years to one year.

22. The petition is, therefore, partly allowed and the impugned judgment of the Industrial Court is set aside and is replaced by the above direction.

23. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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