

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5479 OF 2016

Automotive Manufacturers Pvt. Ltd. .. Petitioner
C-25 & 26, Chikalhana, MIDC,
Aurangabad.

Versus

Shaikh Naseer Shaikh Kasim .. Respondent
Age. Major, Occ. Unknown,
R/o. House No.248-1298,
Shamshan Nagar, Near Kalimiya Masjid,
Shahanoorwadi, Aurangabad.

Mr. Y.R. Marlapalle, Advocate for the petitioner.
Mrs.A.N. Ansari, Advocate for sole respondent.

CORAM : S.B. SHUKRE, J.

DATED : 23.02.2017

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent.

2. This petition questions the legality and correctness of the impugned judgments and orders dated 16.02.2013 and 20.08.2015 passed by the Labour Judge, Aurangabad and the Member of the Industrial Court, Aurangabad, thereby holding that the domestic enquiry conducted against the respondent - workman as defined

under section 2(s) of the Industrial Disputes Act, in the employment of the petitioner company was illegal, improper and void.

3. It so happened that in the year 2008, the respondent was working as an Assistant Mechanic with the petitioner company. When he was present on duty on 2nd September, 2008, some differences arose between him and one Senior Service Manager, which culminated into physical assault being made by the respondent upon the Senior Service Manager of the company. The Manager sustained injuries and was required to be admitted to hospital for treatment of the injuries. In this assault, there were some other workmen as well, who had joined the hands of the respondent. The charge of misconduct was levelled against the respondent and enquiry was made. The Enquiry Officer found that the misconduct was proved. Therefore, a show cause notice was issued to the respondent to which he responded by submitting an explanation. However, it was not accepted and a dismissal order on 24.04.2009 was passed. The respondent felt that the dismissal order was invalid in law and amounted to unfair labour practice and therefore he filed a complaint being ULP No.55 of 2009 before the Labour Court, Aurangabad. The learned Judge of the Labour Court held that the enquiry conducted against the respondent

was illegal and void and accordingly passed an order dated 16.02.2013 setting aside the dismissal order and giving an opportunity to the petitioner to prove misconduct against the respondent in accordance with the law. This order was carried in revision being Revision ULP No.39 of 2013 but without any success, as the Revision Application came to be dismissed by the learned Judge of the Industrial Court by order passed on 20.08.2015. It is these orders which give rise to the present writ petition.

4. Mr. Marlapalle, learned Counsel for the petitioner submits that impugned orders are based on the sole ground of not recording of evidence in accordance with the procedure prescribed by the law, which ground, however, is not sustainable in law. Mrs. Ansari, learned Counsel for the respondent, however, disputes the contention. She submits that a bare perusal of the relevant provisions of the Standing Orders would be enough to convince one about the correctness of the impugned judgments and orders.

5. On going through the impugned judgment and order dated 16.02.2013 passed by the learned Labour Judge, Aurangabad in Complaint (ULP) No.55 of 2009 as well as the impugned judgment and order dated 20.08.2015, passed

in Revision Application ULP No. 39 of 2013 by the Industrial Court, Aurangabad, it appears that the learned Counsel for the petitioner is right in his submission that both these orders rest on sole ground that the enquiry conducted by the Enquiry Officer of the respondent was vitiated on account of not actually recording of evidence of the witness of the petitioner and that Standing Order 25(4) of The Model Standing Orders under Schedule I to the Industrial Employment (Standing Orders) Act, 1946, does not permit leading of evidence in the form of a written statement. However, upon going through the provisions of the Standing Order 25(4) of The Model Standing Orders under Schedule I to the Industrial Employment (Standing Orders) Act, 1946, I find that the concurrent findings recorded by the authorities below are the result of misinterpretation of provisions of the law. This provision of the law requires the Enquiry officer to record summary of the evidence led by either side. It also requires Enquiry Officer to record workman's plea. The term "evidence" has not been defined in the Act of 1946. It is settled law that the Enquiry Officer is neither a Court nor a person who is authorized by law to conduct judicial proceedings. It is also a well settled law that strict rules of evidence are not applicable to the domestic enquiry conducted into allegations of misconduct against

a delinquent employee. Therefore, the term 'evidence' would have to be understood in its plain and ordinary sense, meaning thereby something stated or shown by a witness that anything or state of thing or relation of things or any mental condition exists. Considering such meaning of the term "evidence" contemplated under 25(4) I find that even a written statement duly signed by a witness, filed in support of charge levelled against the delinquent employee, would be capable of being falling within the meaning of term 'evidence' used in Order 25(4) of Schedule I to the Industrial Employment (Standing Orders) Act, 1946. Once such a statement is filed, the Enquiry officer would be under a duty to record concise summary of such evidence, but if he does not do so, it is interesting to find, the model standing order does not provide for any consequence of such failure. It would have to be then said that the written statement filed as evidence by the employer or the delinquent employee can be understood by the Enquiry Officer as equivalent to the summary of the evidence led before him, depending on facts and circumstances of each case.

6. In the instant case, the written statement was filed and the Enquiry Officer thereafter did not summarize what was stated in the written statement and considering the fact that the Enquiry Officer as well as

the delinquent employee i.e. the respondent herein chose to proceed further in the matter, it would have to be inferred that this written statement of the petitioner's witness was considered by the Enquiry Officer as complying with the requirement of Order 25(4) of Schedule I to the Industrial Employment (Standing Orders) Act, 1946. I, therefore, do not see any illegality or any perversity in Inquiry Officer treating the written statement as evidence contemplated under the said order.

7. Then, the question of prejudice would also arise. The Courts below have found that as the summary of the evidence was not actually recorded by the Enquiry Officer, prejudice to the defence of the delinquent employee was caused. In-fact, the question of prejudice is required to be determined only on the basis of the material placed before the authority which would show or demonstrate that the prejudice in a particular manner has been caused. This is a case wherein the respondent did not place any material before the Inquiry Officer and even did not plead any case of prejudice having occurred to him, so as to enable the Inquiry Officer to address the issue. Therefore, the findings recorded by the Courts below that no proper procedure was followed in recording the evidence and that it has resulted in causing of prejudice to the respondent are perverse.

8. In the case of Siddheshwar Urban Co-operative Bank Ltd. Vs. Ganesh s/o. Tejrao Bangale, 2016 (4) Bom.C.R.653, learned Single Judge of this Court has held that depending upon the facts and circumstances, leading of evidence by filing written statement is permissible in the law. I have already found in the instant case that bare perusal of the provisions of Order 25(4) of Schedule I to the Industrial Employment (Standing Orders) Act, 1946, shows that these provisions do not make it mandatory that the evidence of witnesses must be actually recorded. This provision also does not prohibit a party from leading evidence by filing written statement. All that it requires is recording of concise summary of the evidence led by the parties. In a given case, the written statement can also be considered by the Enquiry Officer as equivalent to the concise summary of evidence, which is to be recorded by him and this is what has happened in the instant case. Besides, no prejudice has been demonstrated by the respondent.

9. The learned Counsel for the respondent has submitted that the respondent was not permitted to cross-examine the sole witness of the petitioner and therefore it has caused prejudice to the respondent. The impugned order dated 16.02.2013 passed by the learned Labour

Judge, however, depicts a different picture, for which there is no explanation coming forth from the respondent.

10. Several dates are noted in paragraph 16 of this order which shows that ample opportunity was given to the respondent to cross-examine the witness of the management. It is also seen from this paragraph that not only the petitioner but the respondent also jointly made a request to Enquiry Officer to conclude the enquiry and submit his report. It is further seen that the Enquiry Officer accepted the request and closed the enquiry on 19.12.2008. There is no dispute about the facts noted in paragraph 16 of the said order. Therefore, it cannot be said that no opportunity was given to the respondent to cross-examine the sole witness of the petitioner. Against this factual scenario, it is surprising that the learned Labour Judge in the subsequent paragraph i.e. paragraph No.17 has proceeded to observe that the record does not show that the delinquent employee declined to cross-examine the sole witness of the petitioner. I do not understand what more is required to show the unwillingness of the respondent to cross-examine the sole witness of the petitioner when the respondent himself is pleading for closure of the inquiry. I, therefore, find no force in the submission made in this regard by the respondent.

11. In the result, I am of the view that the impugned judgments and orders are passed upon perverse findings that the enquiry conducted by the Enquiry Officer was vitiated for not following due procedural requirement of Order 25(4) of Schedule I to the Industrial Employment (Standing Orders) Act, 1946 and therefore both the judgments and orders deserve to be quashed and set aside and the matter deserves to be remanded back to the learned Labour Judge for consideration of issue No.2 - "Whether the findings of the Enquiry Officer are perverse?" in accordance with law.

12. The writ petition is allowed. The impugned judgments and orders are quashed and set aside. The complaint is remitted back to the Labour Court, Aurangabad, for consideration of issue No.2, in accordance with law.

13. Rule made absolute accordingly. No costs.

[S.B. SHUKRE, J.]