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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO.4742 OF 2016

Shri. Ravindra Ramchandra Bedagkar,
Age: Adult, Residing at Vraundavan,
Holaram Colony, Sadhu Vaswani Marg,
Opp. Maharashtra Jivan Pradhikaran Office,
Near Mico Circle,
Nashik

..PETITIONER

VERSUS

CEAT Limited,
82, MIDC Industries Estate,
Satpur, Nashik

..RESPONDENT

Mr Amit A. Gharte, Advocate for petitioner;
Mr Anilkumar K. P., Advocate for respondent

CORAM : PRASANNA B. VARALE, J

DATE : 7th September, 2017

ORAL ORDER:

Heard learned counsel appearing on behalf of the petitioner and learned Counsel appearing on behalf of the respondent.

2. By way of present writ petition, the petitioner challenges the award dated 17th November, 2015, passed by learned Presiding Officer, 2nd Labour Court, Nashik, in Reference (IDA) No.11 of 2011, whereby a reference submitted to learned Presiding Officer was answered in negative by the said award.

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3. It is the case of the petitioner that the petitioner was appointed in respondent-Company on 19th June, 1988 as a Maintenance Helper. The petitioner was drawing salary @ Rs.2,600/- p.m. at the time of joining the services and was drawing salary @ Rs.15,000/- p.m. after due deductions at the time of his dismissal. It is the further case of the petitioner that he was engaged in manufacturing process, relating to tyres and tubes by rubber moulding and as he had to face excess emission of carbon, same resulted in his ill-health. The petitioner was required to undergo medical treatment on several occasions resulting in his absence.

4. The petitioner was served with a charge sheet on 15th October, 2008 and vide order dated 21st July, 2009, he was placed under suspension for a period of two days i.e. from 5th August, 2009 to 6th August, 2009. The petitioner was then subjected to medical check-up on 21st July, 2009. It is the case of the petitioner that on an allegation of charges of absenteeism, he was subjected to an enquiry through Enquiry Officer Shri. S. S. Khairnar. The petitioner was served with charge sheet on 2nd October, 2009. On 24th November, 2009, the Enquiry Officer completed the enquiry and the enquiry report was submitted on 25th November, 2009, thereby holding the petitioner guilty of mis-conduct. On 27th November, 2009, the respondent served final show cause notice and on consideration of past record of the petitioner, it was alleged that the petitioner committed grave mis-conduct of serious nature and without giving any opportunity of hearing to the

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petitioner, he was subjected to by an order dated 14th December, 2009, whereby he was dismissed from service w.e.f. 14th December, 2009.

5. The petitioner, by submitting applications dated 22nd March, 2010, 20th June, 2010 and 30th June, 2010, made request to the Deputy Commissioner of Labour to cause interference in the dispute between him and the respondent. The petitioner submitted a Demand Notice dated 30th June, 2010, thereby requesting the respondent to reinstate him in service with full backwages and continuity of service. As the respondent declined the demand of the petitioner for his reinstatement with full backwages and continuity of service and as the parties could not arrive at any settlement and as there was also failure of conciliation before the Government Labour Officer, Nashik, ultimately the matter was referred to learned Labour Court, Nashik. By an order dated 17th November, 2015, learned Labour Court, Nashik was pleased to answer the reference in negative and as such, the petitioner is before this Court.

6. Learned Counsel appearing on behalf of the petitioner vehemently submitted that though the petitioner was served with the charge sheet for absenteeism for a period from August 2008 to December, 2008 and though there was no past record of any absenteeism to treat the same as a grave mis-conduct, on an erroneous appreciation of the material, he was charged with an allegation of continuous mis-conduct and without giving any

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opportunity of hearing to him, he was subjected to a severe punishment, which is disproportionate to the alleged mis-conduct and the order/award of learned Labour Court is unsustainable.

7. It is also the submission of learned Counsel appearing on behalf of the petitioner that the respondent appointed the Enquiry Officer at the time of issuance of notice, as such, the action of the respondent-Company is a pre-judicial action. It is also the submission of learned Counsel for the petitioner that when the charge sheet was referring to the absence of a particular period, the respondent-Company could not have expanded the scope of absenteeism, so as to treat the past record of the petitioner as a tool only to pass extreme order of dismissal. It is also his submission that for the earlier absenteeism, the petitioner had already faced punishment and as such, on the same basis, the petitioner could not have been subjected to the next punishment which is severe in nature. It is also the submission of learned Counsel for the petitioner that no fresh show cause notice was issued to the petitioner, as such, the entire action initiated against him was only a farce and is clearly unsustainable.

8. Learned Counsel appearing on behalf of the respondent-Company vehemently supported the order passed by learned Labour Court. He submitted that sufficient opportunities were granted to the petitioner. He further submitted that the petitioner has not placed on record the complete

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material and this material is sufficient enough to show that time and again, the petitioner was served with notice and due opportunities were given to him and the principles of natural justice are duly followed. The ground of no opportunity of hearing being given by the petitioner is only an afterthought attempt made by him. Learned Counsel for the respondent submitted that no error is committed by learned Labour Court.

9. Both learned Counsel appearing on behalf of the respective parties relied on certain judgments in support of their respective submissions.

10. With the assistance of learned Counsel for the respective parties, I have gone through the material placed on record. There is no serious dispute on the aspect that the relationship between the parties i.e. the petitioner and the respondent is of an employee and the employer, respectively. A copy of charge sheet cum notice of enquiry is placed on record along with the copy of translation of the said charge sheet cum notice. It is stated in the charge sheet cum notice that on perusal of muster roll of the petitioner, it reveals that the petitioner is in habit of remaining absent from the duty without seeking any prior leave or permission from the senior officers. The charge sheet cum notice then refers to the details of the absence and it refers to the period of four months i.e. from August 2008 to December 2008. In each calendar month from August to December, the absence was more than 20 days and in total, the petitioner was absent for

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123 days in this span of four months i.e. from August 2008 to December 2008. In the said charge sheet cum notice, it was informed to the petitioner that Shri. S. S. Khairnar is appointed as an Enquiry Officer. The petitioner was directed to remain present for an enquiry proceedings on 16th November, 2009. The charge sheet cum notice thus specifically states that by following the principles of natural justice, the petitioner is at liberty to seek assistance of representative. The documents placed on record further show that the hearing could not be completed on the scheduled date i.e. on 16th November, 2009, as such, same was continued on 21st November, 2009.

11. Perusal of the proceedings of enquiry dated 21st November, 2009 further shows that the petitioner had never submitted medical certificate for his absence. The petitioner then sought some time and accordingly, the hearing was postponed to 24th November, 2009. The petitioner submitted one page say under the caption of "final say" of the petitioner in the enquiry. The petitioner assigned the reason of illness. In this say/final statement, the petitioner submitted that as he is keeping ill health, he is unable to attend the duties and would make an attempt to attend the duties after getting recovered from illness and under the medical advise.

12. A copy of the enquiry report is also placed on record. The Enquiry Officer, in his report, referred to the material submitted before him during

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the course of enquiry, the counter submissions of the petitioner and the final defence statement of the petitioner and also had assigned the reasons for not accepting the defence statement. The Enquiry Officer arrived at a conclusion that the petitioner has committed mis-conduct and action be initiated against him for his mis-conduct in the nature of prolonged absence.

13. On the enquiry report, the final notice was issued to the petitioner on 27th November, 2009. To this final notice, the petitioner submitted his reply on 3rd December, 2009 denying all the charges. As stated above, the petitioner had approached the Deputy Commissioner of Labour seeking conciliation for redressal of the dispute. Accordingly, notice was issued by the Government Labour Officer, Nashik on 10th August, 2010. In response to the notice, the respondent submitted a detailed chart of unauthorized absenteeism of the petitioner ranging from the year 2005 to 2009. It was submitted that the unauthorized absence of the petitioner was of 593 days from 2005 to 2009 i.e. for five years and for such period, 165 days medical leave was sanctioned to the petitioner. It is stated in the reply to the notice that the continuous absence of the petitioner is a grave mis-conduct and when there is a cut-throat competition in the business, such continuous absence of the petitioner is adversely affected the interest of the respondent-Company.

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14. It would be interesting to note that the petitioner had raised the ground in the petition to state that his absence was due to polluted atmosphere in manufacturing unit i.e. maintenance department, wherein he was required to work. The petitioner, on this backdrop, the ground raised for absenteeism is of his illness and interestingly enough, he could not place any document in the form of medical certificate before the Enquiry Officer. Learned Presiding Officer of the Labour Court referred to this very fact, namely, failure of the petitioner to submit any medical certificate. Learned Presiding Officer also referred to the continuous communications between the petitioner and the respondent in the form of warning letter, stern warning letter and other directive letters and he was further pleased to observe in para 17 of his award thus :

"17. There is no document on record proved by the second party workman that during the period from August 2008 to December, 2008 why he was remained absent from his service. In the 5 months the second party workman remained absent about 123 days, if such type of fact and if the warning letter, stern warning letter and other directive letters, even though issued by the first party company, vide Exh.C-9 to C-11, the second party has not taken cognizance of those letters and remained absent from his service. Even though the second party workman was remained absent he has not made any efforts to produce the document in this case about absenteeism on the ground of illness. No medical certificate or prescription he was taken by the workman from the concerned medical officer is produced on record. Thus, the enquiry officers report liable to be up held."

15. The material placed on record clearly shows that in the enquiry, the principles of natural justice were duly followed. The petitioner was being represented through the union member. The Enquiry Officer, thus, proceeded with the enquiry by following all the procedural formalities by giving an appropriate opportunity of hearing to the petitioner.

16. Learned Counsel for the petitioner submitted a compilation of medical certificates before this Court. These certificates are issued through one Dr. A. P. Thigle, medical officer and the academic qualification of Dr. Thigle is M.D.(Ayurveda) and D.C.H. These certificates were admittedly never produced during the process of enquiry and never submitted by the petitioner in the said process. Perusal of these certificates further show that the petitioner was referred to as an outdoor patient and at no point of time, he was admitted in the hospital. These certificates further show that most of the time, the petitioner was suffering from cough and fever.

17. Learned Counsel for the petitioner though places reliance on the judgments of the Honourable the Apex Court, in the matter of **M. V. Bijlani Vs. Union of India & ors.** reported in (2006) 5 Supreme Court Cases 88, judgment of Nagpur Bench of this Court in the matter of **Durga Vs. Amraoti University**, reported in (2015) 5 Mh.L.J. 887 and the judgment of the Honourable the Apex Court in the matter of **Krushnakant B. Parmar**

Vs. Union of India & anr., reported in **(2012) 3 Supreme Court Cases 178**, in my opinion, considering the above referred fact situation, these judgments are of no help to the petitioner.

18. Per contra, learned Counsel appearing for the respondent-Company relied on the following judgments :

- i) M/s. Lintas Indian Limited Vs. Bhartiya Kamgar Sena & ors. (judgment of this Court in Appeal No.408 of 2000 in Writ Petition No.262 of 2000) and
- ii) Divisional controller, Maharashtra State Road Transport Corporation, Aurangabad Vs. Iftekhar Ahmed s/o Mohd. Isaque, Aurangabad (judgment of Aurangabad Bench of this Court in Writ Petition No.2025 of 1992).

19. As the petitioner has raised the ground that on account of absenteeism, the punishment of suspension was awarded to him initially in the year 2009 and the order of dismissal dated 14th December, 2009, is the second punishment for the same alleged cause of absenteeism is not sustainable.

20. Learned Counsel for the petitioner also relied on the following judgments in support of his submissions :-

- i) State of Punjab Vs. V. K. Khanna & ors. (judgment of the Honourable the Apex Court, reported in AIR 2001 Supreme Court 343)
- ii) Richardson and Cruddas (1972) Ltd. Vs. Association of Engineering Workers & anr., reported in 1996 (1) Mh.L.J. 1005.

21. Considering the above referred fact situation, I am of the opinion that learned Presiding Officer committed no error in the order/award dated 17th November, 2015. The present petition, thus, being meritless, deserves to be dismissed and same is dismissed accordingly.

(PRASANNA B. VARALE, J.)

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