

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4026/2017

Madhav Shivajirao Jadhav

... Petitioner

V/s.

The Kalyan Janata Sahakari Bank Ltd. & 2 others

... Respondents

Mr. C. T. Chandratre for the petitioner
Mr. Milind Joglekar for the Respondent.

CORAM: K.K. TATED, J.
DATED : MAY 3, 2017

PC. :

1. Heard the learned counsel for the parties. By this petition under Article 226 and 227 of the Constitution of India, the petitioner - complainant challenges judgment dated 23.02.2017 passed by the Industrial Court, Pune in Revision application (ULP) No.16/2017 setting aside the order passed by 4th Labour Court, Pune in complaint (ULP) No.58/2016 dated 23.12.2016 by which the Labour Court restrained the respondent from implementing the show cause notice dated 21.03.2016 against the petitioner / complainant and from terminating his services on the basis of findings recorded by the inquiry officer in respect of charge sheet dated 18.03.2016 till the final decision of the complaint.

2. In the present proceedings the petitioner was working as a Cashier in the respondent bank. The respondent was suspended from

service on 13.07.2014 in contemplation of departmental enquiry. Thereafter the respondent charge sheeted the petitioner on 18.09.2014 for misconduct like “(1) late attendance for more than two occasions within a month (2) breach of law applicable to the bank (3) doing any act prejudicial to the interest of the bank (4) commission of any act, subversive of discipline or good behaviour on the premises of the bank (5) Disorderly or indecent behaviour on the premises of the bank (6) not discharging duties as defined in the agreement or as assigned by the Management (7) Negligence and/or casual approach to the work (8) Neglect of duties or negligence likely to involve the Bank in serious loss (9) Failure to give proper service to the customer of the Bank (10) Incivility to the customers of the bank (11) willful slowing down in performance of work etc.”

3. After following due process of law, the respondent completed the inquiry. Thereafter the respondent issued show cause notice dated 21.03.2016 along with a report and findings of inquiry officer calling upon the petitioner's say within 7 days from the date of receipt of said letter. Instead of replying the said show cause notice, the petitioner filed complaint (ULP) No.58/2016 on 23.03.2016 before the Labour Court, Pune of unfair labour practice u/s.28(i) read with Item 1(a)(b) (d)(f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (said Act). In the said complaint, the petitioner made following prayers:

“10. The complainants pray that an inquiry may be made and respondents be directed not to engage in Unfair Labour Practices and the complainants may be given relief as follows:

(a) That the record and proceeding of inquiry be called and after examining record and proceedings of inquiry and verifying perversity of th Ruling of the Enquiry Officer, restrained the respondents from acting on the Report and findings of the Enquiry Officer. it is submitted that under this MRTU and PULP Act, 1971, the Hon'ble Court has authority and power to restrain the unfair labour practice within womb itself.

(b) That an inquiry be made into the Unfair Labour Practices committed by the respondents and it be declared that the respondents have engaged in and are continuing to engage in Unfair Labour Practices within the meaning of Item 1 (a),(b),(d),(f) & (g) of Schedule IV of the MRTU and PULP Act, 1971.

(c) The respondent be directed to cease and desist from engaging in the Unfair Labour practices complained of.

(d) Pending the hearing and final disposal of the main complaint this Hon'ble Court be pleased to restrain the respondents, their officers, servants, or agents from terminating the services of the complainant on the basis of proposed Finding Report of the Enquiry Office in respect of charge-sheet dated 18.09.2014 till final disposal of the main complaint on merit.

(e) This Hon'ble Court be held at the inquiry conducted by the Enquiry Officer is not fair and proper and proposed finding of the Enquiry Officer is not fair and proper and proposed finding of the enquiry officer are perverse and not based on evidence and same may be set aside.

(f) This Hon'ble Court be pleased held at the charges leveled against the complainant in the charte sheet dated 18.09.2014 are not proved and the complainant is not conducted any misconduct as allteged in the charge sheet dated 18.09.2014.

(g) This Hon'ble Court be pleased held at the proposed

punishment of dismissing the complainant from services is harsh and shockingly disproportionate.

(h) Direct the respondents to reinstate the complainant with continuity of service and full back wages with effect from 13.07.2014.

(i)

(j)”

4. In the said complaint, the petitioner made an application for interim relief u/s.13(2) of the said Act restraining the respondent from terminating the services of the petitioner on the basis of finding report of the Inquiry Officer in respect of the charge sheet dated 18.09.2014 till final disposal of the main complaint on merits. The said application was made by the petitioner on 21.03.2016. The petitioner also made an application for interim relief u/s.32 and 13(2) of the said Act. Both these applications below Exhibit U-2 and U-12 were decided by the trial court on 23.12.2016 restraining the respondent from implementing the show cause notice dated 21.03.2016 against the petitioner and from terminating his services on the basis of inquiry report and findings dated 18.03.2016 till final disposal of the his complaint.

5. Thereafter the petitioner replied the show cause notice by reply dated 12.04.2016.

6. Being aggrieved by the order dated 23.12.2016 passed by the Labour court below Exhibit-U2 and U12, the respondent made the revision application (ULP) No.16/2017 before the Industrial Court at Pune u/s. 44 of the said Act. The Industrial Court, considering the

pleadings on record and on the basis of the judgment of the Apex Court, in the matter of *Hindustal Liver Ltd. Vs. Ashok Vishnu Kate 1995 II CLR 823*, set aside the order passed by the 4th Labour Court, Pune in complaint (ULP) No.58/2016 dated 23.12.2016. Hence, the petitioner filed the present Writ Petition.

7. The learned counsel for the petitioner submits that the Industrial Court erred in coming to the conclusion that the petitioner failed to make out any case to uphold the order passed by the Labour Court on 23.12.2016. He submits that the Industrial Court erred in coming to the conclusion that the inquiry conducted by the respondent was according to law. He submits that though the petitioner placed on record several instances to show that the respondent conducted inquiry with bias, the Industrial Court passed the impugned order. He submits that bare reading of the respondent's show cause notice dated 21.03.2016 shows respondent's intention is to dismiss the petitioner on the basis of the inquiry report submitted by the Inquiry Officer. He submits that these facts were considered by the Labour Court at the time of passing the order dated 23.12.2016.

8. The learned counsel for the petitioner submits that if the impugned judgment dated 23.02.2017 passed by the Industrial Court is not stayed during pendency of the present Writ Petition, nothing will survive in the petitioner's complaint pending before the Labour Court at Pune. He submits that the respondent predetermined to dismiss the petitioner from service. Hence, it is necessary in the interest of justice to restrain the respondent from terminating the petitioner's service

without following due process of law.

9. The learned counsel for the petitioner challenges the judgment dated 23.02.2017 passed by the Industrial Court on following grounds as stated in the Writ Petition:

“(a) Petitioner states that, the Hon'ble Industrial Court only looked at some paragraphs and arrived at the conclusion that there are findings of the Hon'ble Labour Court that inquiry was conducted in legal and proper manner and therefore the Hon'ble Labour Court has exercised its jurisdiction wrongly. On the other hand there are positive findings of the Hon'ble Labour Court that, there is no direct evidence before the inquiry officer to hold the complainant responsible for misconduct. Therefore, the findings of the Hon'ble Industrial Court are perverse.

(b) Petitioner states that, the Hon'ble Industrial Court erred in holding that there is no case of unfair labour practice. Petitioner states that the very nature of the charges shows that there is attempt of victimization, issuance of the cahрге sheet in not good faith and under the colorable exercise of the employer rights, initiate the inquiry on the basis of concocted evidence, issuing the charge sheet for untrue and trumped allegations of absence and for the misconduct of minor character. Petitioner states that the initiation of the proceedings for discharging and dismissing is the starting point of the action and therefore it is the clear case of unfair labour practice.

*(c) Petitioner states that as per the standing order his prolonged suspension followed by the inquiry report clearly shows that there are only two punishment in such case i.e. dismissal from service and reduction in rank. Copy of the standing order is annexed hereto and marked as **Exh.H**.*

(d) Petitioner further states that the Hon'ble Industrial Court overlooked the reply filed by the respondent to the complaint and the Revision Application on the point that the respondents nowhere stated that they are not going to impose the punishment of dismissal. Therefore the apprehension, with certainty, of the

petitioner was real and the Hon'ble Labour Court rightly appreciated this apprehension. Thus the order passed by the Hon'ble Industrial Court is perverse and resulted into gross miscarriage of justice.

(e) Petitioner states that the Hon'ble Industrial Court exceeded its jurisdiction while interfering into the interim order passed by the Hon'ble Labour Court.

(f) Petitioner states that it is true that the inquiry has to be allowed to its logical conclusion. However this is applicable when the inquiry is conducted bona fide. When the charge sheet is itself concocted and issued with intention to victimize the labour then, his right of survival has to be given a precedent over the Rule of logical conclusion. Considering this fact the Hon'ble Labour Court has given a power even to interfere in the stage of inquiry when the case is made out. Petitioner states that he had made out his case before the Hon'ble Labour Court and the Revisional Court has exceeded the jurisdiction while setting aside the order passed by the Hon'ble Labour Court.”

10. On the basis of these submissions the learned counsel for the petitioner submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment dated 23.02.2017 and continue the interim protection granted by the learned labour court by order dated 23.12.2016 till hearing and final disposal of the Writ Petition.

11. On the other hand, the learned counsel for the respondent vehemently opposed the Writ Petition. He submits that the Industrial Court rightly considered the facts on record and judgment of the Apex Court in the matter of Hindustan Lever (supra) and set aside the order dated 23.12.2016 passed by the Labour Court. He submits that the respondent conducted the departmental enquiry after following due

process of law. He submits that the Labour Court failed to consider the fact that after 31 sittings on various dates, the Inquiry Officer submitted his report. He submits that in any case, it is well settled that in exercise of writ jurisdiction, the court should not act as an appellate court and reassess the evidence led in domestic inquiry. In support of this contention he relies on judgment of this court in the matter of ***Sabia Abdul Sattar Memon (Mrs.) Vs. United Associates & Anr. 2013 II CLR 889***. He further submits that bare reading of the complaint filed by the petitioner shows that same was filed on premature grounds. He submits that even if the petitioner is dismissed from service, he can challenge the same on its own merits. Therefore, there is no question of staying and/or setting aside the judgment dated 23.02.2016 passed by the Industrial Court. Hence, there is no substance in the Writ Petition. Same be rejected with costs.

12. Heard both sides at length. The issue involved in the Writ Petition is whether the High Court, under Article 227 of the Constitution of India can interfere with the finding of facts recorded by the courts below.

13. In the present proceedings, the respondent, after conducting full fledged inquiry issued show cause notice dated 21.03.2016 along with a copy of inquiry report to the petitioner calling upon him to submit his report explaining why an action should not be taken against him. Instead of replying immediately, the petitioner filed a complaint of unfair labour practice on 23.02.2016 and moved for ad-interim/interim relief. Thereafter the petitioner replied the show cause notice by his

letter dated 12.04.2016. This itself shows that without following due process of law the petitioner approached the Labour Court. The Industrial Court, relying on the evidence on record and particularly judgment in the matter of Hindustan Liver (supra) set aside the order passed by the Labour court. It is correct that if any order is passed by the respondent on the basis of inquiry report, that can be challenged by the petitioner on its own merits. The petitioner cannot restrain the respondent from passing an appropriate order on the basis of the inquiry report. These facts were considered by the Industrial Court at the time of passing the impugned judgment. Considering these facts, I am of the opinion that the petitioner has failed to make out any case to interfere with the judgment dated 23.02.2016 passed by the Industrial Court. Hence, the Writ Petition stands rejected.

14. Considering the facts and circumstances of the present case, no order as to costs.

(K.K. TATED, J.)