

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6886 OF 2017

Shri Rajaram Krushna Patil	]	Petitioner
Vs.		
Kolhapur Zilla Dudh Utpadak	]	
Sangh (Gokul) Ltd.	]	Respondent

.....
Mr. Tanaji Mhatugade, for petitioner.

CORAM : R.G. KETKAR, J.
DATE : 10TH JULY, 2017.

P.C.

Heard Mr. Mhatugade, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 12th May, 2016 passed by the learned Presiding Officer, Second Labour Court, Kolhapur [for short 'Labour Court'] in Reference [I.D.A] No. 165 of 2010. By that order, Labour Court answered the reference in the negative.

3. Respondent hereinafter referred to as 'first party' had proceeded Departmental Enquiry against the petitioner, hereinafter referred to as 'second party' alleging misconduct under Industrial Employment [Standing Orders] Act, 1946 viz:

- 24-A- Wilful disobedience, insubordination of lawful and reasonable orders of superiors.
- 24-F- Habitual absence without leave or absence without leave for more than 10 consecutive days.
- 24-L- Commission of any act subversive of discipline or good behaviour on the establishment of the Company premises.

Enquiry was conducted against the second respondent and the Enquiry Officer submitted report to the first party on 22nd June, 2009. By order dated 15th July, 2009, second party was dismissed from the service. Second party issued demand notice dated 8th February, 2010 to first party. There was no response from first party, so second party moved Assistant Commissioner of Labour by letter dated 23rd February, 2010 to act as a Conciliator in the dispute. Conciliation proceedings were conducted from 26.03.2010 to 08.06.2010. As the dispute could not be resolved, failure report was submitted by ACL Office to Additional Commissioner of Labour, who, in turn, referred the dispute to the Labour Court.

4. By the impugned order, Labour Court answered the reference in the negative on the ground that it was established that during January, 2005 to December, 2007, second party was absent without permission for total 447 days and the second party failed to explain his habitual absence. Second party did not put forth any relevant and sound reasons for his absence. The Labour Court also considered the decisions in the cases of:

[1] Pandurang Vithal Kenve Vs. Bharat Sanchar Nigam Ltd. [Telecom Factory] Mumbai & Anr, 2010 1 CLR 170.

[2] L & T Komastu Ltd. Vs. N. Udaykumar, 2008 1 CLR 978.

5. In support of this Petition, Mr. Mhatugade submitted that there was practice followed in the establishment of the first party to intimate absence telephonically. This practice is prevalent for long time. He submitted that if any of the employee of the first party is unable to attend duty, he can intimate such fact to the first party either through friends or by making phones to the superiors of the said employees. Because of his illness, illness of his mother or other household problems, second party could not attend duties. He, however, informed at the relevant time to his superiors either by sending message or by making phone calls to first party informing his absence on duty.

6. I do not find any merit in any of the submissions of Mr. Mhatugade. It has come on record that during January, 2005 to December, 2007 i.e in three years, second party was absent for total 447 days without permission. Enquiry was conducted against the second party on the ground of misconduct extracted hereinabove. Enquiry was held to be fair and proper as also findings recorded by the Enquiry Officer were held to be proper. Before the Labour Court, evidence was adduced by the parties. In support of first party's case, one Shri Dilip Babasaheb Patil was examined at Exhibit-C-34. He brought on record service record of

the second party. In para 11, Labour Court noted that deposition of the first party witness remained unchallenged for want of rebuttal evidence. In paragraph 12, Labour Court held that charges of wilful disobedience, insubordination of lawful and reasonable orders of superior and habitual absence without leave is proved against second party. It is proved that during January, 2005 to December, 2007, second party was absent without permission for total 447 days. Second party failed to explain his habitual absence likewise he failed to put forth relevant and sound reason behind his habitual absence. Labour Court found that habitual absence of 447 days is gross violation of discipline. It is serious misconduct and second party is not entitled to any relief. The Labour Court also observed in paragraph 15 that admission of complainant of 447 days absence without leave shows lack of interest. Such person is not devoted to duty or maintains integrity.

7. For the reasons recorded by the Labour Court in paragraphs 11 to 16, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

[R.G. KETKAR, J.]