Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9595 OF 2016

Sharad Sahakari Sakhar Karkhana Ltd ...Petitioner

Versus

Sunil Anandrao Patil ...Respondent

Mr. Kiran Bapat, a/w Mr. Jayesh Desai, i/b M/s. Desai & Desai Asso., for the Petitioner.

None for the Respondent.

CORAM: P. B. VARALE, J

DATED: 13th September, 2017

PC:-

1. Heard Mr. Bapat, the learned Counsel for the Petitioner i.e. Managing Director, Sharad Sahakari Sakhar Karkahana Ltd., Narandi, Tal.Hatkanangale, Dist. Kolhapur. By way of present Petition Petitioner challenges the judgment and order passed by the learned Labour Court in Complaint ULP No.9 of 2013 dated 13th April, 2015 and the order passed by the learned Member of the Industrial Court in ULP No.47 of 2015. On perusal of the record show that on 19th September, 2016 notice was issued to the Respondent and ad-interim relief was granted. The record further show that this Court was of the opinion that considering the controversy involved in the Petition, matter can be decided and disposed of at the stage of

admission itself. The record further show that inspite of sufficient opportunities granted to the Respondent, namely affecting service through post as well as by private service. Respondent was offered an opportunity to participate in the proceedings personally or by engaging Counsel of his choice. On 10th April, 2017, this Court observed that though the Respondent was duly served, none appeared for the Respondent. Office was directed to place the matter on 12th April, 2017 for final hearing. It seems that on that date the Petition could not be heard due to paucity of time. Today the matter is came up before this Court. Today also none appears for the Respondent. Thus this Court of the opinion that the Respondent having sufficient opportunities, chose not to appear before this Court. As such, the Petition is decided on its merits and on hearing the learned Counsel for the Petitioner. Mr. Bapat, the learned Counsel for the Petitioner vehemently submitted that the orders under challenge in the Petition are clearly unsustainable on more than one cause. Mr. Bapat invited my attention to the documents placed on record. It was the statement of Mr. Bapat, the learned Counsel for the Petitioner that the finding arrived at by the learned Labour Court is not only self-contrary but it is on a clear misappreciation and misreading of the material. The learned Counsel Mr. Bapat then submitted that the Court below namely the Labour Court placed erroneous reliance on the judgment of the Apex Court in matter of ***Syed***

Zaher Hussain vs. Union of India & Ors, *reported in* ***1999 I CLR 1014.*** He then submitted that the learned Labour Court grossly erred in recording the finding in a casual manner whereas it was accepted by the Labour Court to record the finding on a grievance and assessment of the material as it is cautious by the Apex Court. The learned Counsel Mr. Bapat then submitted that the Revisionary Court also considered the same error and dismissed the revision. The facts in brief giving rise to the Petition is summarised as follows:

The Respondent had approached the learned Labour Court by filing complaint ULP No.9 of 2013 submitting before the Labour Court that he joined service of the Petitioner - Management in Engineering Department as helper in the year 2009. It was then submitted in the plaint that the service record of the Complainant – Respondent before this Court is clean and unblemished. Then it was submitted that the complainant who was instrumental for forming an Union to represent the causes of the workers and the Management was carrying a grudge against the Complainant – Respondent for his act of forming the Union. The Respondent – Complainant was subjected to an attack by some of the workers on 3rd January, 2011. He was hospitalised and on recovery approached the Petitioner - Management on 16th February, 2011 seeking permission to join him on duties. The Management declined to join his duties. The Complainant issued notice to the Management

through a Lawyer. The notice was replied by the Management claiming the fact of absenteeism against the complainant. Subsequently, the management issued a charge-sheet labelling the charges of absenteeism insubordination and causing an atmosphere of disturbance in the premises of the company. The Enquiry Officer recorded a positive finding in favour of the Management. Being aggrieved by the fact of the Management, the Complainant was before the Labour Court. The statement of Complainant was opposed by filing written statement at the instance of the Petitioner - Management. It was the submission before the learned Labour Court that the fact of the Petitioner of a long absenteeism was a serious misconduct. The charge-sheet was issued. The enquiry conducted against the Complainant by following the settled procedure and also by following the principle of natural justice. The learned Labour Court framed issues/points for consideration namely, whether the Petitioner Management was guilty of an act of unfair labour practice of Schedule-IV Item 1(a), 1(b) and 1(d). The learned Labour Court recorded positive finding. The learned Labour court then arrived at a conclusion that the punishment awarded to the Complainant was shockingly disproportionate and the Management may take an appropriate decision for awarding lessor punishment to the Complainant. As stated above that the revision was preferred, the Revisionary Court declined to interfere in the order of the Labour Court. With the assistance of the learned Counsel Mr. Bapat I have gone

through the material placed on record. It is interesting to note that in the first part of the order the preliminary issue framed for consideration was, whether the enquiry initiated against the complainant was just and proper. The finding recorded by the learned Labour Court was in favour of the Petitioner - Management. It would not be out of to refer certain observations of the learned Labour Court in the first part of the order. The learned Labour Court recorded a finding that the Complainant himself admitted that while conducting the enquiry there was an observance of the principle of natural justice. The learned Labour Court also recorded the finding that by issuing a notice to the complainant the charges were made known to the complainant and the basic charge of the principle charge against the complainant was of his long absenteeism. Though the explanation was offered to the notice, it was again in the domain of the administration or the management whether to accept the explanation or not to accept the same. The learned Labour Court then recorded the finding that it is not going into the charges in respect of the insubordination and causing disturbance in the company premises but only concentrate on the aspect of the charge of absenteeism.

2. The learned Labour Court found that the material placed on record in the form of the documents namely, Annexures-1 to 7 of Exhibit "C-6" clearly prove that the complainant was absent for a long period of 111 days

without seeking any prior leave. The learned Labour Court then found that the Enquiry Officer insofar as absenteeism is concerned on an appropriate appreciation of the material the Enquiry Officer recorded finding of proving the charge of absenteeism and the said finding was just and proper. The learned Labour Court in clear and unambiguous words observed the enquiry proceedings could not have been found faulted and the enquiry proceedings were conducted in a just and proper manner. In the second part of the judgment and order, the learned Labour Court observed that though the complainant could have cross-examined the witnesses at his own will and wish, he chose not to cross-examine the witness. The learned Labour Court also recorded finding that the allegation of the complainant against the Management of carrying grudge for being instrumental for forming Union is unsupported by any material. It is also finding of the Labour Court that the complainant even fail to submit before the Court whether he was a office bearer of the so called Union which was formed at his instance or whether what was the name of the said Union. The learned Labour Court recorded the finding that the Petitioner - Management is indulging the fact and unfair labour practice under Item 1(a), 1(b) and 1(d) of Schedule-IV.

3. On perusal of the material as well as the judgment and order under challenge of the learned Labour Court, I find considerable merit in the submission of Mr. Bapat that

the learned Labour Court recorded its finding without undertaking of exercise of assessing the material and scrutinize the material. Mr. Bapat was justified in relying on the judgments of the Apex Court namely ***Hindustan Lever Ltd vs. Ashok Vishnu Kate & Ors.*** reported in ***(1995) 6 Supreme Court Cases 326*** and ***M/s. Bharat Iron Works vs. Bhagubhai Balubhai Patel & Ors.*** reported in ***(1976) 1 Supreme Court Cases 518.*** Mr. Bapat, the learned Counsel for the Petitioner fairly submitted that they could not have been any dispute on the aspect that the learned Labour Court was exercising its jurisdiction to entertain the complaint in view of the judgment of Apex Court in the case of ***Syed Zaher Hussain vs. Union of India & Ors***. Mr. Bapat also submitted that the learned Labour Court though placed reliance for exercising the jurisdiction, failed to consider the other principle reflected in the judgment. It would be useful for our purposes to refer the observations of the Apex Court.

> "Before parting with this case, however, we must strike a note of caution, as has been done by the Division bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquires against their erring employees, But for doing so, the standing orders governing the field have to be followed by such employers. These standing

orders give sufficient protection to the employees concerned against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the employees concerned invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the complaints concerned. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing order would get frustrated."

4. On perusal of the material, I also find considerable merit in the submission of Mr. Bapat. Firstly that the

material placed before the Court was falling too short to arrive at a conclusion that the Petitioner Management was guilty of a act of unfair labour practice under Schedule-IV Item 1(a), 1(b) and 1(d) and secondly, if that was the opinion of the learned Labour Court, the Labour Court was duty bound to assign the reasons with the assessment of the material for arriving at that conclusion. It would be useful to refer this relevant provisions of Act namely Schedule-IV Item 1(a), 1(b) and 1(d):

> "**Schedule IV Item 1:** To discharge or dismiss employees-
>
> (a) by way of victimisation;
>
> (b) not in good faith, but in the colourable exercise of the employer's rights;
>
> (c) ……..
>
> (d) for patently false reasons."

5. Mr. Bapat, the learned Counsel was justified in submitting that insofar as the Item 1(a) is concerned the learned Labour Court appreciated the material in favour of the Petitioner namely the root cause as alleged by the complainant for victimising him for forming of an Union. When the Labour Court observed that the complainant ought to have placed on record the material in respect of his allegation utterly failed to place on record any such material in that event. The learned Labour Court clearly erred in recording a positive finding against the Petitioner.

Similarly, there was no material to show that the Petitioner is the employer and malafidely that is in colourable exercises. Mr. Bapat submitted that even on this count the learned Labour Court recorded the finding with the enquiry initiated by the Petitioner was by following due procedure and the principle of natural justice and in clear words the Labour Court recorded the finding was just and proper. Mr. Bapat also justified in submitting that even there was no material against the Petitioner to say that the action initiated was on patently false reasons that is Item 1(d). Mr. Bapat submitted that it was the admitted position that the complainant was absent for long period of 111 days. Enquiry was duly conducted. As such, it cannot be said to be a case which would filed under Schedule-IV Item 1(d). There is also considerable merit in the submission of Mr. Bapat that the learned Labour Court erred in placing reliance on the Apex Court judgment in the matter of ***Syed Zaheer Hussain's vs. Union of India***. The submission of Mr. Bapat was that in ***Syed Zaheer Hussain's*** case the absence of period of one week namely from 9th January, 1985 to 15th January, 1985 and considering the fact of the unauthorisedly absence for a short period of one week the Apex Court was of the opinion that the punishment of dismissal would be too harsh. Even the Management was agreeable for awarding lessor punishment and agreed that lessor punishment can be awarded by the Court itself. Mr. Bapat submitted that in the present matter since from the

beginning it was the case of the Petitioner Management that it was the case of proved misconduct of long period of 111 days. The misconduct of the complainant was a serious misconduct. The Petitioner by exercising its power supported with the provisions of law awarded the punishment and the punishment could not have been interfered with by the Labour Court without assigning any justifiable reason to do so. Mr. Bapat was also justified in submitting that the Revisionary Court though observed that the charge of the absenteeism is proved against the complainant and the misconduct of the complainant definitely means to violation of discipline and dismissed the revision without appreciating the grounds raised in its proper perspective. It was also the submission of Mr. Bapat that in the written statement filed before the learned Labour Court it was submitted that one representative Union by name Panchganga Kamgar Sangh is already operating and as such the allegation that the Petitioner was carrying a grudge against the Complainant/Company an instrumental for forming Union was false and far-fetch.

6. Considering all these aspects, I am of the opinion that, the orders impugned in the present petition passed by the learned Labour Court as well as passed by the Revisionary Court that is the Member of the Industrial Court are clearly unsustainable.

7. In the result, the Petition is allowed. The orders passed by the learned Labour Court and the Industrial Court impugned in the Petition are quashed and set aside.

[P. B. VARALE, J.]