

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7929 OF 2017

Smt. Ranjana Krishnath Patil	]	Petitioner
Vs.		
The Divisional Controller Officer	]	
Maharashtra State Road Transport	]	
Corporation, Kolhapur Division,	]	
Kolhapur.	]	Respondent

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Mr. Manoj A. Patil, for petitioner.

Mr. Y.P. Deshmukh, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 31st JULY, 2017.

P.C.

Heard Mr. Patil, learned Counsel for the petitioner and Mr. Deshmukh, learned Counsel for the respondent.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 20th June, 2017 passed by the learned Member Industrial Court No.2 at Kolhapur [for short 'Tribunal'] in Revision Application [U.L.P] No. 43 of 2017. By that order, the Tribunal allowed the Revision Application preferred by the respondent herein u/s 44 of Maharashtra Recognition of Trade Union and Prevention of Unfair

Labour Practices Act, 1971 [for short 'Act'] and set aside the order dated 6th April, 2017 passed by the learned Presiding Officer, Labour Court No.1, Kolhapur below Exhibit U-2 in Complaint [U.L.P] No. 9 of 2017. By that order, Labour Court allowed the application Exhibit U-2 and directed the respondent not to terminate services of the petitioner herein. As against this, the Tribunal dismissed the application made by the petitioner, hereinafter referred to as 'complainant' u/s 30 (2) of the Act.

3. Rule. Mr. Deshmukh waives service. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Patil submitted that complainant has instituted Complaint [U.L.P] No. 9 of 2017 u/s 28 r/w Items 1 (a), (b), (d), (f) and (g) of Schedule (Iv) of the Act., inter alia, challenging the final show cause notice dated 27th January, 2017 issued by the respondent. Respondent issued notice dated 27th January, 2017 to the complainant to show cause why she should not be dismissed from the service. Pending the complaint, complainant filed application Exhibit-U-2 u/s 30 (2) of the Act for directing the respondent not to take any action on the basis of charge-sheet, Inquiry Officer's report and final show cause notice. Direction was sought against the respondent not to terminate her services. She has also prayed for stay of final show cause notice.

5. Mr. Patil submitted that by order dated 6th April, 2017 the Labour Court allowed the application and directed the respondent not to terminate service of the complainant till final disposal of the complaint. He has taken me through the order of the Labour Court and in particular, paragraphs 18 and 20 thereof. He submitted that while allowing the Revision Application filed by the respondent, the Tribunal did not deal with findings recorded by the Labour Court in paragraphs 18 and 20.

6. On the other hand, Mr. Deshmukh supported the impugned order. He submitted that the finding recorded by the Labour Court in paragraph 18 to the effect;

“Further, it reveals that three witnesses were cross-examined by the enquiry officer on 12/01/2015 and that after recording evidence of the complainant, enquiry officer examined Management's another witness Shri V.B. Hawaldar on 13/01/2015”

is factually incorrect and contrary to the record”.

He submitted that Inquiry Officer merely asked some questions for clarification. He further submitted that findings of the Labour Court in paragraph 20 that Inquiry Officer had issued charge-sheet, recorded deposition of the Management's witness and, therefore, inquiry is vitiated is also not borne out from the record. He submitted that the Tribunal after perusing material on record held that the charge-sheet was drafted by one Authority and findings were given by another Authority. He submitted that basically the Tribunal held that the complainant had admitted misappropriation of Rs. 53,760/- and in fact, she had remitted that amount. He,

therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. A perusal of the Labour Court's order shows that firstly, Inquiry Report was served on the complainant after 22 months. Secondly, in paragraph 18, the Labour Court has observed that three witnesses were cross-examined by the Inquiry Officer and Inquiry Officer also recorded evidence of Management's witness, Shri V.B. Hawaldar. In paragraph 20, the Labour Court held that prima facie inquiry was not conducted in accordance with rules and provisions framed by respondent in Discipline and Appeal procedure.

8. A perusal of the order passed by the Tribunal does not indicate that the Tribunal has dealt with the findings recorded by the Labour Court in paragraphs 18 and 20. In other words, the Tribunal has not considered whether the inquiry conducted against the complainant was vitiated for non compliance of principles of natural justice. On this short count alone, impugned order requires to be set aside, thereby restoring Revision Application before the Tribunal for deciding it afresh and in accordance with law. The Tribunal will deal with the findings recorded by the Labour Court as regards whether the inquiry held against the complainant is vitiated for non compliance of the principles of natural justice. Hence, the following order.

: ORDER :

- [1] The impugned order dated 20th June, 2017 passed by the Tribunal is set aside. Revision Application [U.L.P] No. 43 of 2017 is restored to the file of the Tribunal for deciding it afresh.
- [2] The Tribunal will deal with the contentions of the parties recorded hereinabove as also deal with the findings recorded by the Tribunal in paragraphs 18 and 20.
- [3] Rule is made absolute accordingly with no order as to costs.

[R. G. KETKAR, J.]