

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

WRIT PETITION NO. 10959 OF 2016

Custom Capsules Pvt. Ltd.	... Petitioner
V/s.	
Sanjay Sadashiv Nikam	... Respondent

Mr. Ravindra Paranjpe for the Petitioner.
Mr. A. K. Jalisatgi i/b Ratnesh R. Mishra for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 22/02/2017**

P.C.:

1. Heard learned Counsel for the Parties.
2. By this petition under Article 227 of the Constitution of India, the Petitioner is challenging the direction No.4 of the operative part of the Judgment dated 07.07.2016 in Revision Application (ULP) No. 28 of 2015 passed by the Industrial Court which reads thus:

“The revision applicant company is directed not to act on their notice dated 01.10.2014 regarding punishment, if any, till disposal of the main complaint on merit.”

3. The learned Counsel for the Petitioner submits that after issuing show cause notice, they by Charge sheet dated 16.10.2013 charge sheeted Respondent for following misconducts:

“a) Willful insubordination or disobedience, whether or

not in combination with another, of any lawful and reasonable order of a superior.

- b) Going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof.*
- c) Disorderly or indecent behavior on the premises of the establishment.*
- d) Commission of an act subversive of discipline or good behavior on the premises of the establishment.”*

4. After conducting inquiry, the petitioner by the letter dated 01.10.2014 furnished the copy of findings of enquiry to the Respondent to file his reply/written representation, if any. The relevant portion of the letter dated 01.10.2014 reads thus:

“Please find enclosed herewith the copy of the findings of enquiry submitted by Enquiry Officer along with free Marathi translation. The copy of proceedings of enquiry is furnished to you simultaneously with the progress of he enquiry.

You are at liberty to make any written representation in respect of the above if you so desire within 3 days from the receipt of this letter.”

5. The learned Counsel for the petitioner submits that instead of filing the reply, the Respondent filed complaint of Unfair Labour Practice under Item 1a, 1b, 1d and 1f and 1g of Schedule IV of M.R.T.U. & P.U.L.P. Act, 1971 before the III Labour Court, Thane being Complaint (ULP) No. 113 of 2014 with following prayers.

- “a) To hold and declare that the Respondents have indulged have been indulging into unfair labour practice under Item 1a, 1b, 1d and 1f and 1g of Schedule IV of M.R.T.U. & P.U.L.P Act, 1971.*
- b) Direct the Respondents to cease and desist from indulging into unfair labour practices complained of.*
- c) Direct the Respondents not to dismiss or discharge the complainant pursuant to the charge sheet dated 16th October 2013.*
- d) Any other and further order/relief be granted in favour of the complainant as deems fit and proper in the circumstances.*
- e) For cost and compensation of the complaint.”*

6. The learned Counsel for the petitioner submits that in the said complaint, the Respondent preferred an application for interim relief restraining the petitioner to take action of discharge or dismissal against him pursuant to the show cause notice dated 01.10.2014. In that interim application the Respondent made following three prayers which are thus:

- “a) restrain the Respondents from indulging into unfair Labour Practices complained of;*
- b) direct the Respondents to temporarily not to take action of discharge or dismissal against the complainant pursuant to the show cause notice dated 1st October 2014.*
- c) for cost and compensation of the Application.”*

7. The learned Counsel for the petitioner submit that the Labour Court after hearing both the sides allowed Respondent's interim application below Exh. U-2 directing petitioner not to take action of dismissal or discharge against the Respondent

pursuant to the letter dated 01.10.2014 till the decision of the complaint.

8. The learned Counsel for the Petitioner submits that being aggrieved by the said order, they preferred Revision Application (ULP) No. 28 of 2015 before the Industrial Court at Thane. He submits that the Industrial Court observed in paragraph 16 of the impugned order that there was error apparent on the face of the order passed by the Labour Court, by directing petitioner not to take any action against the respondent pursuant to the notice dated 01.10.2014. Paragraph 16 of the said order reads thus:

“16. For the reasons stated above, I find that there is no strong prima facie case as held by the Hon'ble Supreme Court in the case of Hindustan Level Limited Vs. Ashok Vishnu Kate. There is error apparent on the fact of the order.”

9. The learned Counsel for the Petitioner submits that inspite of the observation made by the Industrial Court in paragraph 16 of the Judgment, erred in coming to the conclusion that the petitioner issued letter dated 01.10.2014 imposing punishment on respondent. He submits that by letter dated 01.10.2014, they called upon Respondent to submit his written representation, if any in respect of findings of enquiry report. He submits that this itself shows that a complaint filed by the Respondent was pre-matured. In support of this contention, he relies on the Judgment of this Court in the matter of **Sabiya Abdul Sattar Memon (Mrs.) V/s. United**

*Associates & Anr.*¹ and in the matter of *Nanded Waghala City Municipal Corporation, Through its Commissioner, Nanded V/s. Kerohi Sitaram Dasare, Nanded*². He submits that in both these matters, this Court after considering the Apex Court Judgment particularly in the matter of *Hindustan Liver Ltd. V/s. Ashok Vishnu Kate*³ held that Court should not stay action of employer to call explanation from the employees. Hence, the observation made by the Industrial Court and direction given to the petitioner not to take any action against the respondent pursuant to the notice dated 01.10.2014 is required to be set aside.

10. On the other hand, the learned Counsel for the Respondent vehemently opposed the present Writ Petition. He submits that Respondent in their complaint in paragraph 3m and 3n specifically pleaded that, indirectly the petitioner wants to remove Respondent from the service without giving any opportunity. Those paragraphs 3m and 3n read thus:

3m) The Complainant submits that the action of the Respondents of proposing the dismissal from services is by way of victimization. The Complainant has been made a victim by the Respondents as he is the union activist and is the secretary of the union Custom Capsule Kamgar Sanghatana. It is submitted that the Complainant is a union activist and has taken active role in signing a bilateral settlement with the company in regard to wage rise. The issue regarding gradation and other sundry demand is pending before the management and the complainant is actively

1 2013 II CLR 889

2 2016 III CLR 938

3 1995 II CLR 823

pursuing the said demands and this has caused heartburn to the company. Though the dismissal is manifest, the Respondents have purposely did not mention in the Show Cause Notice the punishment which they will be imposing upon the workman. The complainant wanted to bring to the notice of the respondents the glaring irregularities in the conduct of the department enquiries and also the falsehood of charge sheets but he was not allowed to do so.

3n) The action of proposed dismissal of the complainant is not in good faith but the same is with colourable exercise of employers rights. The action of proposed dismissal is in gross violation of principles of natural justice and fair play. Presuming without admitting that the misconduct is proved against the complainant, even then the punishment proposed upon the complainant is shockingly disproportionate to the alleged act of misconduct. There were no extenuating or aggravating circumstances to dismiss the complainant. There were no good and sufficient reasons to dismiss the complainant. The complainant is being dismissed without taking into account his long and meritorious service. The complainant therefore submits that the Respondents have indulged into and have been indulging into unfair labour practices under items 1a, 1b, 1d, if and 1g of schedule IV of the M.R.T.U & P.U.L.P Act, 1971.”

11. The learned Counsel for the Respondent submits that once the reply is given, the petitioner may remove the Respondent from service without giving any opportunity to move before the Court. He submits that the Industrial Court considering this fact, directed the Labour Court to decide the complaint as early as possible and restrained the petitioner from taking any coercive action against the Respondent pursuant to the Notice dated 01.10.2014. Hence, there is no substance in the

present Writ Petition. Same is required to be dismissed with costs.

12. I heard both the sides at length. It is to be noted that bare reading of letter dated 01.10.2014 shows that petitioner granted opportunity to Respondent to make any written representation in respect of findings of enquiry conducted by them within three days from the receipt of that letter. Whereas, the complaint filed by the Respondent being Complaint (ULP) No. 113 of 2014 shows that Respondent seeking directions against the Petitioner not to dismiss or discharge him in pursuant to the chargesheet dated 16.10.2013. Nowhere it is stated in letter dated 01.10.2014, the petitioner decided to discharge and/or remove the Respondent from service.
13. Even the Respondent by interim relief in the application Exh. U-2 prayed for temporary injunction against the Petitioner from acting on the basis of letter dated 01.10.2014. The said Letter shows that petitioner called upon the Respondent to submit his written representation, if any, in respect of finding of enquiry report. Therefore, there is no question of staying the operation and implementation of the said letter.
14. Bare reading of the Industrial Court's order shows that though Industrial Court held that the order passed by the labour Court dated 09.01.2015 is not maintainable in law, restrained the petitioner from taking any action against the Respondent,

which is not according to law.

15. At this stage, the learned Counsel for the Respondent submits that the petitioner may be restrained from taking any action of dismissal from the service to the Respondent.
16. It is to be noted that Petitioner by their letter dated 01.10.2014 called upon the Respondent to submit his written representation. Petitioner has not called upon the Respondent's explanation why they should not be terminated him from the service. Therefore, there is no question of restraining the Petitioner from taking any action against the Respondent.
17. Hence, I am of the opinion that petitioner has made out case for allowing this Writ Petition in terms of prayer clause (a).
18. Hence, following order is passed:
 - a) Writ Petition is allowed in terms of prayer clause (a) which reads thus:

“a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other directions calling for the records and proceedings in Revision Application (ULP) No. 28 of 2015 in Complaint (ULP) No. 113 of 2014 and after examining the legality and propriety of the impugned order dated 07.07.2016 (Exhibit 'I') to the extent of putting restrain on management from awarding punishment to Respondent on

the basis of letter dated 01.10.2014 quash and set aside the same.”

- b) Liberty granted to the Respondent to file his written explanation, if any, pursuant to the letter dated 01.10.2014 within two weeks.
- c) Writ Petition is allowed accordingly.
- d) No order as to costs.

(K.K.TATED, J.)