

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

WRIT PETITION NO. 11681 OF 2016

DFS India Pvt.Ltd.

...Petitioner

vs.

Mr.Nandkumar G. Chavan

...Respondent

Mr.Sudhir Talsania, Senior Advocate with Ravindra V. Paranjape for
Petitioner.

Mr.A.K. Jalisatgi with Amol Desai I/b. Ratnesh R. Mistra for Respondent.

CORAM : PRASANNA B. VARALE, J.

DATE : 25 SEPTEMBER 2017

P.C. :

Heard learned Counsel appearing for the respective parties. By consent of the parties, the petition is taken up for hearing.

2 The facts giving rise to the present petition can be summarised as follows :

The Petitioner is a company engaged in the business of operating and running duty free shop, which is exclusively located at the International Airport. Respondent, Nandkumar Chavan, was appointed as a Warehouse Assistant and was working with the Petitioner company since 28 May 2008. On an allegation that the Respondent along with other colleague, one Mr.Sawant, attempted to commit theft of 12 bottles of JW Black Label from 2C Departure to 2C Arrival warehouse. This incident was brought to the notice of the On-Duty Security Guard, Mrs.Jayashree Save, by Ms.Neha Patil, Sales Associate. The alleged misdeed of the Respondent was inquired into by a committee constituted at the instance of the Petitioner. The

committee interrogated various employees. The committee arrived at a finding that one Mr.Sunil Raisinghani, Senior Product Sales Manager, One Mr.Prasanna Pai, Loss Prevention & Custom Manager, Mr.Nandkumar Chavan and Mr.Sameer Sawant were involved in the misappropriation of the stock of liquor and they were indulged in an act of theft of liquor from various locations. These employees were suspended with immediate effect. The senior members in the management opined that the legal advice be sought for and thereafter the services of the Respondent and the other erring employing be terminated. An union, namely, Bhartiya Kamgar Sena, intervened in the matter and a request was made not to initiate any criminal proceedings. The Petitioner refused the request. Subsequently, the services of the Respondent were terminated by termination order dated 15 May 2009 with notice pay and compensation. Being aggrieved by the termination order, the Respondent raised disputes before the Regional Labour Commissioner, Central Mumbai. In opposing to the dispute, the Petitioner lodged an objection raising ground of jurisdiction and denied the relationship between the parties, namely, the employer and the Respondent workman. It may not be necessary to refer to the other events of the proceedings. Suffice it to say the reference was decided by the learned Presiding Officer, CGIT-2, Mumbai by order dated 25 May 2016. The learned Presiding Officer allowed the reference partly. The dismissal of the Respondent was declared as illegal and the same was set aside. The Petitioner, i.e. the first Party, was directed to reinstate the Respondent, i.e. the Second Party workman, in service with 60% backwages, continuity in service and the other consequential benefits.

3 Learned Counsel for the Petitioner vehemently submitted that the learned Presiding Officer failed to appreciate the material on record and

arrived at an erroneous conclusion. It was submitted by learned Counsel for the Petitioner that an inquiry was conducted by the Petitioner by constituting an Inquiry Committee. The Inquiry Committee undertook the exercise of recording the statement of the witnesses. The evidence was also brought before the Tribunal in support of the Petitioner. It was the submission of learned Counsel for the Petitioner that the act of the Respondent of committing theft was a serious misconduct and the Respondent caused loss of confidence of the Petitioner. Learned Counsel for the Petitioner submitted that as the Respondent lost confidence of the Petitioner, the Petitioner could not have been thrust with reinstatement of the Respondent. Learned Counsel then submitted that the Presiding Officer also committed an error in awarding 60% of the backwages. Learned Counsel for the Petitioner submitted that as there was no material before the Tribunal to show that the Respondent was not gainfully employed in the period of his termination, the Tribunal ought not to have awarded 60% backwages.

4 Learned Counsel appearing for the Respondent supports the judgment and order impugned in the petition.

5 I have gone through the material placed on record. On perusal of the material placed on record, I am unable to accept the submissions of learned Counsel appearing for the Petitioner. The material placed on record was that the Petitioner constituted committee of four members, (1) Director Talent Management, Singapore, (2) Mr.Rajah Sharekha, Loss Prevention Manager, Singapore, (3) Mr.Vispi Patel, C.E.O. India, and (4) Mr.Viren Ahuja, Director DFS India Pvt.Ltd. The Inquiry Committee refers to an information provided by one of the employees Neha Patil to On-duty

Security Guard, Mrs. Jayashree Save. Neha Patil informed that she saw the Respondent and other employees Sameer transferring 12 bottles of JW Black Label from 2C Departure to 2C Arrival warehouse without any record. Then it refers to the information provided by Jayashree Save to another security Supervisor, Dinesh Karakesia. There was some exchange of conversation between Chavan and Sawant and in turn, information to Mr. Prasanna Pai. It then refers to during inquiry, number of people interviewed by the , who gave their statements in writing and then the conclusion arrived at the by the Committee that Mr. Sunil Raisinghani and Mr. Prasanna Pai, Mr. Nandkumar Chavan and Mr. Sameer Sawant are involved in misappropriation of stocks of liquor as well as theft of liquor. Then the committee was of the opinion that the management cannot find afford to repose faith and confidence in such employees and then recommended the management to take action of termination of services of Nandkumar Chavan after taking legal advice. The material placed on record further shows that Mr. Sunil Raisinghani, Mr. Prasanna Pai tendered their resignations. The Respondent was put under suspension pending the investigation. The Respondent Chavan raised grievance against his termination that the dispute was referred to CGIT for adjudication, namely, (1) Whether the action of the management of Duty Free Shop (India) Pvt. Ltd., Mumbai in terminating Shri Nanakumar G. Chavan, Warehouse Assistant, from the services w.e.f. 15.5.2009 as contended by the workman concerned is justified and legal? (2) To what relief is the workman concerned entitled? As stated above, the reference was partly allowed.

6 Learned Counsel appearing for the Petitioner though vehemently submitted that there was ample material before the Industrial Court and also before the Tribunal to support the termination of Respondent

No.1, Nandkumar Chavan, and the same was not properly appreciated by the Tribunal, I am unable to accept the submission of learned Counsel for the Petitioner. Learned Counsel for the Petitioner placed heavy reliance on the Inquiry Committee's findings. The Industrial Court only refers to an information provided by Neha Patil and Jayashree Save. There is also a statement of Neha Patil placed on record. Interestingly enough, the Industrial Court specifically refers in its report that during the inquiry, number of people were involved by the committee, who also gave their statement in writing but the committee is silent either on the name of these people whose statements were recorded or status of these people either they were employee or some passengers. Before the CGIT on behalf of the Petitioner company, oral evidence of Mr.Kailash Bhushan was led. Mr.Kailash Bhushan was working as Vice-President in the Joint Venture Partner. Admittedly, he was not employee of the Petitioner, i.e. the first party. The Tribunal observed that on going through his evidence, it appeared that his evidence is hearsay in respect of the alleged incident of theft. The Petitioner made no attempts to examine any member of the committee. The learned Tribunal was justified in observing that no witness was examined by the first party who has allegedly seen the second party while committing the alleged act of misconduct. Though there was a reference of the other employees from whom the information was provided, namely, Ms.Neha Patil, Mrs.Jayashree Save, Mr.Pai, Mr.Karakesia and Mr.Dewalekar, none of these persons was examined as a witness by the Petitioner. The learned Tribunal also found that the statement recorded by the Committee of Mr.Dewalekar was contradicting the statement of the other employees, Mr.Karakesia and Neha Patil. The Tribunal also found that though there was a reference made to the statement of Mrs.Jayashree Save, reference to the statement of Ms.Neha Patil, the date was missing in the

statement. Similar was a case in respect of the statement of other employees. Interestingly enough, the statement of Mrs. Jayashree Save appearing the date as "22 July 2010" was recorded after the termination order was effected and statement of claim was filed by the Respondent, second party, on 5 May 2010. Though learned Counsel for the Petitioner made an attempt to submit that the discretion was left with the management to terminate the services of the Respondent when it was found by the management that the Respondent was indulged in an act of theft and the other employees, against whom the allegation was that they were also indulged in the act of theft along with Respondent No.1, admitted their guilt and resigned. The submission of learned Counsel of the Respondent cannot be for the reason, firstly, that there is no material to show that the inquiry was conducted in a fair manner and secondly, merely because the other employees, against whom the charge of theft was levelled, opted for tendering resignation and the Respondent opted for challenging the termination by taking legal recourses, it cannot lead to an interference of his guilt. Learned Counsel was also justified in observing that the services of the Respondent were terminated illegally without any inquiry, the Respondent was entitled for 60% backwages. Though learned Counsel for the Petitioner made an attempt to submit that the Respondent could not have been awarded with 60% of backwages as he was working as an RTO agent and was gainfully employed. the perusal of the record shows that the suggestion of the Respondent being gainfully employed and working as an RTO agent was denied by the Respondent and the Petitioner failed to place on record any material to support the case that the Petitioner was gainfully employed. Thus, even on this aspect, no fault can be found in the impugned order of the learned Presiding Officer of CGIT.

7 The petition, thus, being devoid of merits, deserves to be dismissed and the same is accordingly dismissed.

(PRASANNA B. VARALE, J.)