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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 430 OF 2001

Tukaram Vishnu Desai
Indian Inhabitant of Bombay
residing at Mohammed Kedia Chawl,
Kaju Tekadi, Parshiwadi,
Pipe Line, Ghatkopar (West),
Mumbai 400 084. ...Petitioner

versus

1. The Railway Goods Clearing and
Forwarding Establishment Labour
Board for Greater Bombay and
Authority Constituted under
Section (91) of the Mathadi, Act
1969 having its office at
84-A Broach Sadan, Devji
Ratansey Marg, Danabunder,
Mumbai 400 009.

2. The Secretary,
Labour & Industry Department,
Mantralaya, Mumbai to be served
on Asst. Government Pleader,
Original Side, Mumbai. ...Respondents

……….

Mr. V.P. Vaidya, for the Petitioner.

Mr. Sanjay Prabhakar Shinde, for Respondent no.1.

Mr. Kaushal Trivedi, AGP for Respondent no.2.

……….

CORAM : A.A.SAYED AND M.S.KARNIK, JJ.

RESERVED ON : 26th July, 2017.

PRONOUNCED ON : 4th August, 2017

JUDGMENT (PER M.S. KARNIK, J.) :-

The challenge in this petition is to an order dated 7th January, 2000 passed by the Deputy Labour Commissioner and President of the Respondent no.1 Board, terminating services of the petitioner from 7/1/2000.

2. The petitioner joined employment of respondent Board on 20th March, 1978. He was working as a Table Clerk at Mulund Yard for the period from April, 1989 to December, 1991. There were two employees working as Table Clerks at Mulund Yard i.e. Shri Shankar Vithal Jadhav and the petitioner. It is the case of the petitioner that the work of both the clerks were identical wherein they were required to take wages and levy deposited by the registered employers, maintain registers to that effect and distribute wages to the Mathadi workers concerned with the work of registered employers. The work was divided into two tables i.e. Table No.12 and

Table No.13. The registered employers allotted to Table no.12 were (a) Kapoor & Sons and (b) Farooque Ajju & Co. etc. It is the petitioner's case that all allegations pertain to the non-payment of wages and levy by the said two registered employers who are concerned with Table no.12. There are no allegations against the registered employers allotted to Table no.13.

3. On 26/6/1995, the petitioner was charge-sheeted on the following charges :-

CHARGE NO.1

Adopted improper procedure, adopted pressurizing tactics upon the colleagues and provoke them to disburse payment to the worker and other financially beneficial amounts and cause financial loss to the Board.

CHARGE NO.2

Preparing document / undertaking illegally and collusively and deceive the Board and cause financial loss to it.

CHARGE NO.3

Not maintaining, intentionally the check muster (documents) required to be maintain while working as Table Clerk and deceive the Board.

CHARGE NO.4

Violate Board's Code of Conduct.

CHARGE NO.5

Lose the trust of the Board.

4. An inquiry was held against the petitioner in respect of the charges levelled against him. Two witnesses i.e. Mr. Pednekar Accountant and Mr. Shankar Vithal Jadhav were examined by the Board to support the charges. The Inquiry Officer considering the documents, the evidence, written statement submitted by both the parties, analysis of each of the charge in the report held that the charges levelled against the petitioner are proved. This eventually led to the passing of the order of dismissal by the disciplinary authority.

5. Learned Counsel for the petitioner assails the findings of the Inquiry Officer in as much as according to him none of the charges can be said to be proved. The inquiry officer's finding is perverse as conclusion is not based on any material. Learned Counsel for the petitioner was at pains to point out that all the allegations were in respect of the registers maintained in respect of Table no.12.

The petitioner was working on Table no.13 and therefore, the initiation of the inquiry itself was without any basis. According to him, the evidence on record is sufficient to indicate that the petitioner was working on Table no.13 and if that is so none of the charges levelled against the petitioner can be said to be proved. It is further submitted that the witness Shri Pednekar joined the Railway Board in 1994 and had no personal knowledge in respect of the events alleged in the charge-sheet which have taken place between the period April, 1989 to December, 1991. It is further submitted that Charge no.1 is based on the letter dated 4/6/1994 from Shri Shankar Vithal Jadhav to the Chairman of the Board levelling certain allegations against the petitioner. It is submitted that Shri Shankar Vithal Jadhav was working on the Table no.12 and therefore, on the basis of the letter dated 4/6/1994, Shri Jadhav tried to implicate the petitioner and shift the blame on him. An inquiry was conducted against Shri Jadhav. Shri Jadhav was terminated but he has not challenged his termination.

6. Learned Counsel for the petitioner submits that no reliance can be placed on the evidence of Shri Pednekar as he was not working at the relevant period in respect of which the allegations

are made. Shri Jadhav was the concerned table clerk working on Table no.12, in respect of the work of which table all the allegations are made, Shri Jadhav was proceeded against with departmentally as well as criminal proceedings are initiated against him, the evidence of Shri Jadhav cannot be relied upon. In the submission learned Counsel for the petitioner if the testimony of both these witnesses is discarded, no evidence remains on record, in which case the findings of the Inquiry Officer can be said to be based on no evidence and hence perverse. Learned Counsel for the petitioner submits that the findings of the Inquiry Officer is based on mere conjectures and not on the materials on record. Learned Counsel further invited our attention to the examination of Shri Pednekar particularly in respect of question nos. 18,25,26,34,35,63,83,84,108,114 and 118. In his submission though in cross examination Shri Pednekar has deposed in favour of the petitioner, this part of the evidence is completely ignored and the Inquiry Officer has arbitrarily come to the conclusion that the petitioner is guilty of the allegations made against him. Even as regards the alleged undertakings given by the petitioner which is alleged to be made in 1991, it is submitted that the petitioner had signed a blank stamp paper in respect of some tenancy / leave and license for room in the neighbourhood where the petitioner was living and that Shri Shankar Vithal Jadhav took advantage of his signature on blank stamp paper.

7. Learned Counsel for the respondent on the other hand supported the findings and conclusion of the Inquiry Officer. According to him, the findings are based on the materials on record. In his submission there is ample documentary evidence on record to support the finding. Even Shri Pednekar is competent to depose as witness. In his submission Shri Jadhav has deposed about the working in respect of the Table no.12 and in this regard has admitted that he was also a party to the illegal procedure adopted at the instance of the petitioner which resulted in loss to the respondent. In his submission inquiry officer on appreciation of the materials on record has arrived at the findings that the charges are proved. He submits that the inquiry is conducted in accordance with the principles of natural justice and every possible opportunity is given to the petitioner to defend himself. The petitioner has cross examined the witnesses at length.

8. We have considered the submissions advanced by the learned Counsel for the parties. We have gone through the inquiry

proceedings and the report of the inquiry officer. The Inquiry Officer took into consideration the various documents produced by the respondent Board during the course of the inquiry as well as the documents submitted by the petitioner. Based on the evidence on record the Inquiry Officer has arrived at the finding that the petitioner was working as a table clerk on Table no.12 in Mulund Railway Yard Branch during the relevant period. Although a sum of Rs.1,91,842.03 was due from the employer to the Board, he pressurised his then colleague Shri Shankar V. Jadhav, Table Clerk, and forced him to distribute the wages of the workers and other amounts. The Inquiry Officer has taken into consideration the letter signed by the Table Clerk Shri Shankar Vithal Jadhav to the Board on 4/6/1994. The prevailing procedure of the Board is that if the payment of labour charges and levy for more than one month remains in arrears from the registered owner then in such a case, the wages of the workers are disbursed generally with the prior permission of superior officers of the Board. Neither the petitioner obtained the permission of the superiors nor submitted the particulars of the amount due and without informing his superiors the petitioner took the decision of disbursement of payments to the workers and thus the Board had to suffer heavy loss for which the petitioner was liable. The Inquiry Officer took into consideration the various registers, account statement of various Tolis and the deposition of the witnesses. The Inquiry Officer took into consideration that by a letter dated 25/4/1991, the petitioner was asked to look after the work of Table No.12 and Shri Jadhav was asked to look after the work of Table no.13 during the year 1990-91 and 1991-92. The original copy of this order is at Exh.125. During the year 1990-91 to 1991-92 the Tolis working for M/s.Kapoor and Sons and M/s. Farooque Ajju & Co. were concerned with Table No.12. Even Shri Jadhav in his deposition stated that the petitioner was working prior to him and that Shri Jadhav was doing the work of Table No.13 and the petitioner was assigned Table no.12. It is at the instance of petitioner that he was disbursing the payments to Tolis attached to Table no.12. Though the Board has issued orders assigning Table no.13 to Shri Jadhav but at the instance of the petitioner he was disbursing payments to Tolis attached to Table no.12. The petitioner was looking after the work of disbursement of the amount of labour charges and levy from the owner and contractor and whether the same has been received in Mulund Yard. Shri Jadhav has clearly stated that besides himself and the petitioner no one else was working in Mulund Yard during the period from

1990 to 1992 and that the registers of both their tables was one. It is the petitioner who was pressuring and forcing Shri Jadhav to disburse the payment.

9. The Inquiry Officer considered the objection of the delinquent that Shri Pednekar joined Board on deputation from 16/9/1994 and as he was not in service during the concerned period and therefore, it was not possible for him to know the then procedure of work. According to the Inquiry Officer, Shri Pednekar who has deposed in the inquiry was working as Accountant in the Board and the clarification which he has made regarding the documents, is in respect of those documents which are part of the record. The said Shri Pednekar had information in that regard and could give clarification. In these circumstances the Inquiry Officer was of the opinion that it is not necessary that Shri Pednekar should have actually worked at the said place during the relevant period and hence relied upon the evidence of said Shri Pednekar. We do not find the approach of the Inquiry Officer unreasonable or perverse.

10. As regards the contention of the learned Counsel for the petitioner that Shri Jadhav while giving evidence and defending

himself was trying to shift the charges on the petitioner, the Inquiry Officer has taken into consideration that the charges framed against Shri Jadhav and the petitioner are near-about same. Both of them were serving in Mulund Yard during the relevant period and both are liable for the financial loss caused to the Board. Shri Jadhav in his evidence categorically stated that the registers of both their tables was one and both of them used to disburse payment to workers of both the tables and prepare summary statements.

11. The Inquiry Officer based on the materials on record came to the conclusion that the petitioner and Shri Jadhav both were aware about the amounts due from the owners and therefore although the amount was due from the owners, payment was being made to the workers. In fact the petitioner undertook on the stamp papers of Rs.10/- that the petitioner shall be liable for the concerned amount and he has signed on the stamp paper. The petitioner in his evidence has admitted that the signature on the stamp paper is his. The Inquiry Officer has rejected the contention of the petitioner that for transaction of the room at Ghatkopar, Shri Jadhav had obtained signature of the petitioner on blank stamp paper and that he had misused the same. According to the Inquiry Officer an educated

person will not sign on a blank stamp paper. Moreover the petitioner submitted that both of them belong to the same village and since they were in opposite groups, animosity between them had increased. The Inquiry Officer in this background did not find it possible that the petitioner would have signed blank stamp paper. Upon appreciation of the evidence, the Inquiry Officer has come to the conclusion that the purpose behind executing the agreement appears to be that both were aware of the amount due from the owners. The agreement is illegal. In these circumstances, the Inquiry Officer came to the conclusion that the petitioner without informing the Board about the amount due from the owners, the petitioner as well as Shri Jadhav collusively executed an agreement and therefore held the charges as proved.

12. Even as regard 3rd Charge, the Inquiry Officer concluded that cheque musters for the concerned period were not maintained. Without sending them to the Head Office, it was contended that the same were sent and thus the Board was deceived. The Inquiry Officer found that cheque musters were not prepared and were not submitted to the Head Office of the Board.

13. Upon appreciation of the evidence on record, the Inquiry Officer has returned the finding that the charges levelled against the petitioner stand proved. It is not open for us to re-appreciate the evidence on record in the exercise of writ jurisdiction. We do not find that the findings of the Inquiry Officer are in any manner perverse as the same are based on the materials on record. The inquiry has been conducted in consonance with the principles of natural justice after giving due opportunity to the petitioner. In these circumstances, we do not find any reason to interfere with the order of dismissal passed by the Disciplinary Authority. The Writ Petition is accordingly dismissed with no order as to costs.

14. Rule to stand discharged.

(M.S.KARNIK, J.) **(A.A.SAYED, J.)**