

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.759 OF 2000

The State of Maharashtra,
Through Sub Divisional
Forest Officer, Beed

-- PETITIONER

VERSUS

Sukhdeo Haribhau Mujmule,
(Watchman),
C/o Trade Union Centre,
Bashirgunj, Beed

-- RESPONDENT

Mr.S.R.Yadav-Lonikar, AGP for the petitioner/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/03/2018

ORAL JUDGMENT :

1. Despite service of Court notice, the sole respondent has not caused an appearance either in person or through an Advocate. I have heard the learned AGP on behalf of the petitioner/State and have gone through the petition paper book with his assistance.

2. The petitioner has challenged the judgment and award dated 19/03/1999 delivered by the Labour Court, thereby allowing Ref. (IDA) No.118/1992. The respondent is granted reinstatement and

continuity of service. Back wages are denied.

3. The petitioner approached this Court and by order dated 21/06/2001, this petition was admitted and by way of interim relief in terms of prayer clause "D", the judgment and award was stayed. An application for last drawn wages u/s 17-B of the I.D.Act has not been filed by the respondent.

4. Considering the evidence taken into account by the Labour Court while delivering the impugned award, it has been recorded that a show cause notice was issued to the respondent, on 19/11/1991 since it was noticed that stray cattle were grazing in the plantation area which destroyed the plants and the respondent who was appointed as a Watchman, was missing. After the show cause notice was issued, the respondent is alleged to have stopped reporting for duties. After one year, he raised an industrial dispute and approached the Labour Court alleging termination vide the show cause notice dated 19/11/1991. In the statement of claim, it was alleged that the respondent was terminated on 19/11/1991 under oral orders. The petitioner specifically took a stand that no termination order has been issued as the communication dated 19/11/1991 is purely a show cause notice issued to the respondent

and fearing disciplinary action, he has absconded.

5. I find that the impugned order is unsustainable for the reason that after concluding that there was no evidence on record that the respondent/workman attempted to join duties after 19/11/1991, yet the Labour Court concluded that the show cause notice dated 19/11/1991 can be treated as an order of termination and since allegations were levelled in the show cause notice, it could be presumed that it was a stigmatic termination.

6. A show cause notice can never be termed as an order of termination as the delinquent is called upon to explain as regards the charges levelled upon him. If he does not reply to the notice and doesn't put forth any explanation, such a show cause notice can never be termed as being an order of punishment passed without conducting a domestic enquiry. Learned Advocate for the petitioner submits that even today, if the respondent replies to the show cause notice, the Management would consider the same and decide the future course of action strictly in accordance with Law and hence the reference before the Labour Court is a pre-mature litigation.

7. Considering the above, this petition is allowed. The impugned

judgment and award dated 19/03/1999 is quashed and set aside.

8. Though the learned AGP points out from the communication dated 23/03/1998 received from the Majalgaon Sahakari Sakhar Karkhana addressed to the Range Forest Officer that the respondent/workman has already taken employment with the said Sugar Factory from 05/02/1993, I keep the said contention open for the petitioner to canvass before the Labour Court.

9. Ref.(IDA) No.118/1992 is remitted to the Office of the Labour Court at Aurangabad. The petitioner shall appear before the Labour Court on 02/04/2018 and formal notice need not be issued to the petitioner who is the first party. The Labour Court shall then issue fresh notice to the respondent, who is second party workman before it and reconsider the case on its own merits without presuming that the show cause notice dated 19/11/1991 would amount to an order of termination.

10. Liberty is granted to the litigating sides to lead additional oral and documentary evidence considering the passage of about 19 years from the date of the award. All contentions of the litigating sides including the option of the petitioner to initiate a departmental

enquiry at its end, if so advised, are kept open.

11. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)