

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3035 OF 2000

Mahindra Sintered Products Ltd.,
C-18, MIDC Industrial Estate,
Ahmednagar

-- PETITIONER

VERSUS

1. Bansi Gopinath Thore,
At and Post Nimbalak
Tal and Dist. Ahmednagar,

2. The Hon'ble Labour Court,
at Ahmednagar

-- RESPONDENTS

Mr.V.S.Bedre, Advocate for the petitioner.
Mrs.Renuka Palve-Ghule, Advocate for the respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/03/2018

ORAL JUDGMENT :

1. The petitioner/Management is aggrieved by the judgment and award dated 31/03/2000 delivered by the Labour Court, Ahmednagar by which Ref.(IDA) No.49/1989 has been partly allowed. The respondent has been granted reinstatement with continuity of service from the date of termination and with 50% back wages.

2. I have considered the strenuous submissions of the learned

Advocate for the petitioner/Management and the respondent/employee. With their assistance, I have gone through the record available.

3. The respondent joined employment with the petitioner in 1981. By charge sheet dated 21/11/1988, he was charged for remaining unauthorizedly absent for 62.5 days. The enquiry conducted by the Management resulted in the Enquiry Officer concluding that the charge of unauthorized absence for 46.5 days was proved. He was further charge sheeted on 31/12/1988 for unauthorized absence of 25 days. He was again charge sheeted on 22/01/1989 for unauthorized absence for a period of 14 days. He was finally dismissed from service for remaining unauthorizedly absent for a total period of 85 days vide the order of dismissal dated 04/03/1989.

4. The respondent raised an industrial dispute and the matter was referred to the Labour Court as Ref.(IDA) No.49/1989. The enquiry was held to be legal and proper. However, the findings of the Enquiry Officer were held perverse. It reveals from the record that the findings of the Enquiry Officer were declared to be perverse in the impugned judgment without framing an issue.

5. It appears from the record that though 2 issues with regard to the fairness of the enquiry and the findings of the Enquiry Officer have not been framed by the Labour Court as against the settled law in the light of Workmen of Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Limited [AIR 1965 SC 1803], Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh, [1972 (1) SCC 595] and The Workmen of M/s Fire Stone Tyre and Rubber of India Private Ltd., Vs. The Management and others [AIR 1973 SC 1227 = 1973(1) SCC 813], yet the parties were permitted to lead oral evidence.

6. It also appears that the litigating sides have not pointed out the law applicable in such matters where the fairness of the enquiry and the findings of the Enquiry Officer have to be dealt with peremptorily. It is only after the enquiry is vitiated that the Management gets a right to conduct a *denovo* enquiry in the light of the judgment of the Hon'ble Apex Court (5 Judges Bench) in the matter of KSRTC Vs. Laxmidevamma and another [2001(2) CLR 640].

7. However, the learned Advocate for the respondent/employee submits that as the respondent has attained the age of superannuation in 2015 and is now 61 years of age, he would suffer

manifest inconvenience and grave hardships if the matter is remitted to the Labour Court for conducting a *denovo* enquiry. It is further submitted that the respondent has not challenged the impugned award praying for enhancement of wages and no prayer for seeking 100% back wages has been put forth. The respondent was drawing wages of about Rs.40/- per day on the date of his termination.

8. It is quite obvious that if on account of non observance of the procedural law, the matter is remitted to the Labour Court for permitting the Management to conduct a *denovo* enquiry, they would have to collect evidence with regard to the charge sheets that were issued in 1988 and would have to produce evidence after 30 years. This would be quite cumbersome even for the Management. So also the respondent would have to face litigation after retirement and it cannot be speculated as to how many more years would this litigation take to attain finality. It is in these peculiar facts of the case and considering the request of the respondent that I am not remitting the matter to the Labour Court.

9. The Labour Court, by the impugned award, has concluded that the respondent was guilty of remaining absent unauthorizedly. Though he could have sought leave and intimated the Management

as regards the reasons for remaining absent, he has not followed the procedure and the rules applicable to the factory. The Labour Court, however, concludes that on some occasions, he was absent due to unavoidable circumstances. Ultimately, the Labour Court concludes that the respondent is guilty of unauthorized absenteeism and the punishment of dismissal from service awarded to him is shockingly disproportionate considering his clean past service record and the gravity of the misconducts proved against him.

10. Taking into account the entire facts and circumstances recorded as above, I am of the view that even if it is accepted that the respondent was unauthorizedly absent for 85 days as has been held by the Enquiry Officer, he has put in 8 years of service and there is no evidence on record to indicate that prior to the charge sheets issued in 1988, he was ever punished for any misconduct. Considering his earlier past service record and taking into account that he was unauthorizedly absent for 85 days in a total period of service of 8 years, the punishment of dismissal from service would amount to civil death to the respondent and would therefore be a shockingly disproportionate punishment. So also, he needs to be punished for his unauthorized absence and the Labour Court has deprived him of 50% back wages. This Court has stayed the

impugned award while admitting this petition on 12/09/2001 and the respondent has already attained the age of superannuation at the age of 58 years in 2015.

11. Considering the above, since the respondent would be entitled for 50% back wages to be computed on the basis of Rs.40/- per day as his last drawn salary from March 1989 till his date of retirement in 2015, the 50% back wages will be about Rs.1,00,000/-.

12. So also, the gratuity amount which is unpaid considering the continuity of service, will have to be computed by the Management from 1981 till 2015 @ Rs.40/- per day, as per the gratuity formula which is 15 days wages per year of service. This amount will have to be paid by the Management to the respondent.

13. Considering the above, this petition is disposed of. Rule is discharged. In order to bring this litigation to an end, I find it appropriate to observe that the petitioner/Management would pay an amount of Rs.1,00,000/- towards back wages and will also calculate the gratuity for the period from 1981 to 2015 and would pay both these amounts within a period of 8 weeks from today. In so far as the PF accumulations are concerned, the respondent would be at

liberty to seek withdrawal of the PF accumulation, if any, from the appropriate Provident Fund Department.

(RAVINDRA V. GHUGE, J.)