

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 630 OF 2017
WITH
WRIT PETITION NO. 8596 OF 2017

THE EXECUTIVE ENGINEER MSEDCL AND ANR
VERSUS
NIMBA RAMDAS BHADANE DIED THROUGH LRS

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Advocate for Petitioner : Shri Bajaj A.S.
Advocate for Respondents : Patil Shrikant S.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 12, 2018
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PER COURT :-

1. While issuing notice in the first matter, filed by the management, I had recorded the submissions in my order dated 20.1.2017, which are as under:-

"1 The Petitioner is aggrieved by the judgment of the Labour Court dated 04.03.2016 by which Complaint (ULP) No.31/2011 filed by the deceased workman was allowed. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 20.08.2016 by which it's Revision (ULP) No.18/2016 has been dismissed.

2 The Respondent was served with the charge sheet dated 26.07.2005 for remaining unauthorizedly absent for 68 days. After conducting an enquiry, he was awarded the

punishment of dismissal from service since his past service record was blemished. The Labour Court vitiated the enquiry on the ground that the findings of the Enquiry Officer are unsustainable. The Petitioner proved the charges before the Labour Court which concluded that the punishment of dismissal from service is illegal and the deceased was granted reinstatement with continuity. The Revision (ULP) filed by the Petitioner was dealt with differently by the Industrial Court by partly setting aside the judgment of the Labour Court and by concluding that the Petitioner should pay the retrenchment compensation from the date of termination dated 29.05.2006 till the date of demise of the workman dated 26.04.2016.

3 Shri Bajaj, learned Advocate for the Petitioner, strenuously submits that when the deceased was dismissed from service for proved misconduct and one month's notice period was paid by way of a precaution, the order of punishment would not be transformed into the order of retrenchment, as is wrongly understood by the Industrial Court. When the past service record of the deceased was blemished, it would operate as an aggravating factor. Hence, the punishment of dismissal from service for having remained unauthorizedly absent for 68 days, would not be shockingly disproportionate.

4 Considering the above, issue notice before admission to the Respondent returnable on 17.02.2017.

5 Till the next date of hearing in this matter, the

impugned judgment of the Industrial Court shall stand stayed on the condition that the Petitioner shall deposit the amount of six months gross wages of the deceased last drawn by him prior to his dismissal from service. The said amount shall be deposited on or before 10.02.2017 in this Court.

6 *The copy of the petition paper book shall be supplied for issuance of notice on or before 25.01.2017, failing which the ad-interim protection shall stand vacated. So also, if the amount as directed above is not deposited, the ad-interim protection shall stand vacated without further reference to the Court.”*

2. In both these matters, I have extensively heard the submissions of the learned Advocates for the respective sides. The matter was posted today for enabling the learned counsel for the management to place on record the service book of the employee in order to appreciate his past service record.

3. Learned counsel has placed before the Court the original service record of the employee, who has been terminated on 29.5.2006 and has subsequently passed away on 26.4.2016.

4. The management as well as the employee, through the L.Rs. have challenged the same judgments of the Labour Court as

well as of the Industrial Court. The Labour Court had granted the relief of reinstatement with continuity of service with backwages from the date of the complaint, which is 21.2.2011. The order of termination by way of punishment dated 29.5.2006 was set aside and was replaced by the relief of admonition / warning to the employee with a caution that he will obtain permission before proceeding on leave. The Industrial Court while setting aside the order of the Labour Court has concluded that as the employee has passed away, the order of reinstatement would not survive. The deceased employee be paid retrenchment compensation from the date of termination till the date of his demise.

5. I have gone through the record available with the assistance of the learned Advocates. There is no dispute that the Labour Court has concluded that the enquiry was conducted in a fair and proper manner, though the findings of the enquiry officer are perverse. The enquiry was, therefore, vitiated and the management conducted a *de novo* enquiry before the Labour Court. The Labour Court concluded that the management has proved the charges of absenteeism levelled upon the employee. However, it went on to hold that the action of issuing the order of termination, by way of punishment, amounts to retrenchment as one month's pay was offered by the management while

terminating his services and hence it is presumed that they have never punished him and have merely retrenched him by partly violating Section 25F of the Industrial Disputes Act, 1946.

6. I find from the order of termination dated 29.5.2006 that the management has specifically imposed the punishment of termination from service for proved misconducts. The employee was, therefore, awarded the punishment of termination and while doing so, the management voluntarily paid one month's wages.

7. It is beyond comprehension as to how could the Labour Court and the Industrial Court completely ignore and overlook the opening paragraph of the order of punishment and the specific punishment quoted in the said order, by which, any prudent person would realize that it is an order of punishment terminating the services of the employee for proved misconducts. I am unable to understand as to how the Labour Court as well as the Industrial Court how focused upon payment of one month wages and thereby presumed that the entire order of punishment stood watered down and got converted into an order of retrenchment. To say the least, I find that the learned Judge of the Labour Court as well as the learned Member of the Industrial

Court have demonstrated total non-application of mind and casualness while arriving at the conclusion that there is no order of termination by way of punishment in the eyes of law merely because the management voluntarily paid one month's wages along with the order of termination.

8. In these circumstances, both the impugned judgments are rendered utterly perverse and grossly erroneous.

9. Learned counsel for the employee has then strenuously canvassed that even if the order of punishment is to be scrutinized, the employee has been terminated from service for a misconduct which is of a minor and technical character. Considering his submissions, I have scrutinized the charge sheet, which indicates that the employee was absent without leave for 68 days, within the period of March, 2005 to July 2005. By no stretch, can it be said that absence of 68 days in a period of 150 days in five months could be said to be a minor absence.

10. Moreover, the contention of the proportionality of punishment is to be considered by taking into account the past service record of any employee. If the past record is clean, it would operate as a mitigating factor. *Per contra*, if a past record

is highly blemished, it would amount as an aggravating factor. The service record of the respondent employee indicates that he was not only habituated to remaining absent, but was practically addicted to absenteeism. The instances that emerge from the service record would surprise any judicial authority. For instance, the employee was absent for about 640 days on leave without wages in between 14.6.2001 till 12.3.2003. There are several such instances of leave without wages and there are also several instances of he being punished for remaining absent unauthorizedly.

11. Considering the above and keeping in view the law laid down by the Honourable Apex Court in the matter of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and others [(2001) 1 SCC 182 = AIR 2001 SC 24], unless a punishment appears to be shockingly disproportionate so as to shock the judicial conscience of a Judge, no interference is called for, merely because it may amount to a disproportionate punishment. I do not find that the punishment awarded to the deceased employee could be termed as being disproportionate, much less, shockingly disproportionate.

12. In the light of the above, the Writ Petition No.630 of

2017, filed by the management is allowed. The impugned judgment of the Labour Court dated 4.3.2016 is quashed and set aside and Complaint (ULP) No.31 of 2011 stands dismissed. Consequentially, the impugned judgment of the Industrial Court dated 20.8.2016 stands quashed and set aside and Revision (ULP) No.18 of 2016 filed by the management is disposed off. Needless to state, Writ Petition No.8596 of 2017, filed by the employee through the L.Rs.,stands dismissed.

13. The learned Registrar (Judicial) of this Court is directed to place a copy of this judgment before the learned President of the Labour and Industrial Courts, Mumbai so as to be brought to the notice of the learned Judge, who has delivered the judgment in Complaint (ULP) No.31 of 2011 dated 4.3.2016 and the learned Member, who has delivered the judgment in Revision (ULP) No.18 of 2016, dated 20.8.2016.

(RAVINDRA V. GHUGE, J.)

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