

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

WRIT PETITION NO.11386 OF 2016

M/s Hindoostan Mills Limited Petitioner

Vs.

Mr. Sanjay Sahebrao Nikam Respondent

Mr. Avinash K. Jalisatgi a/w Mr. Amol B. Desai for the Petitioner
Mr. Vaibhav R. Gaikwad for Respondent no. 1.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 4th September, 2018,

P.C.:

1 Heard respective Counsel. Rule. Rule made returnable
forthwith with the consent of the parties.

2 The petitioner herein being aggrieved by the order dated
8th August 2016 passed by the Member, Industrial Court, Satara
arising out of the order passed by the Labour Court, Satara on 13th
November 2013 has approached this Court.

3 The facts of the case in a nutshell are as follows :

The respondent herein was a workman in the Textile Mill of the petitioner-Company at Taswade, Taluka Karad, District Satara. The respondent herein was dismissed from service on 26th March 2013. Being aggrieved by the order of dismissal, the respondent herein had approached the Labour Court by filing a Complaint (U.L.P. No. 25 of 2012). Notices were issued to the petitioner-Company. An application was filed below Exhibit 2 seeking interim relief during the pendency of the final adjudication of the complaint.

4 The petitioner herein had filed a reply and had stated before the Labour Court that an enquiry was held against the respondent in accordance with law. The charge-sheet was before the Court. According to the petitioner, the respondent herein was absent from duty without permission of the authority and without submitting any application seeking leave. The Labour Court had perused the charge-sheet, which was issued to the respondent on 4th October 2011. The allegations in the charge-sheet were as follows :

“The applicant had remained absent in October and November 2010 for 1 day each without filing any leave application. In March 2011, he was absent from working for 5 days, in May 2011 for 17 days, in April 2011 for 5 days and in August 2011 for 1 day.”

According to the charge-sheet, the respondent had not offered any explanation for absenting from work. The second allegation was in consonance with the first allegation and had only clarified that due to absence from work of the respondent, there was a deficit in manufacturing and hence caused loss. It also held that the rules and discipline were not followed. It was stated that irrespective of the fact that oral and written instructions were given, the respondent continued to conduct himself in the similar manner. That, there was a breach of Rule-23 of the Standing Orders. The Labour Court had recorded a prima facie finding that the charge-sheet was ambiguous and innocuous. That no show cause notice was issued to the delinquent prior to issuing the charge-sheet. That the respondent in the complaint had failed to produce on record the necessary documents to show that a Memo was given to the respondent in the past for his misconduct. According to the Labour Court, the

delinquent did not have proper opportunity to defend himself, due to the ambiguity in the charge-sheet. All the records were placed before the Court for the first time. It appears that the attendance record was with the petitioner-Company and they were directly produced before the enquiry officer.

5 The learned Labour Court has recorded a prima facie finding that since the charge-sheet was ambiguous, the complainant could not make out his case before the enquiry officer and hence passed an order below Exhibit 2 that during the pendency of the proceeding, the complainant be permitted to resume and that he should not be thrown out of the house. It was a temporary arrangement made by the learned Labour Court vide order dated 13th November 2013.

6 At the prima facie stage, the learned Labour Court had not commented upon the findings recorded by the enquiry officer, since the only issue before the Court as to whether the enquiry was conducted in a fair manner. Being aggrieved by the said order, the

petitioner had approached the Industrial Court. At the interim stage, the impugned order was stayed. However, by the judgment and order dated 8th August 2016, the Complaint (ULP) No. 39 of 2013 was dismissed by the learned Industrial Court, Satara.

7 The learned Industrial Court had considered the aspect that the original complainant was a permanent employee, he was working as a Weaver since 1995. On 4th October 2011, the charge-sheet was issued against him for the misconduct of absenteeism. The learned Industrial Court has further recorded the finding that the attendance card was not produced. The photocopies of the muster roll were placed on record and therefore according to the learned Industrial Court, the Labour Court had rightly considered that the balance of convenience lies in favour of the original complainant. The Industrial Court had also considered the Say of the respondent in the revision petition on humanitarian ground. That the respondent was staying with his family in the premises of the petitioner-Company and upon termination/dismissal, he was asked to vacate the premises at a short notice. That the issues as to whether the

enquiry was fair and as to whether the findings recorded by the enquiry officer are based on the relevant documents and are justifiable is yet to be adjudicated by the Labour Court.

8 It is clear that since 2013, the respondent is not in service. The impugned order was passed two years ago i.e. on 8th August 2016. The present petition was filed on 29th September 2016. The first order dated 3rd October 2016 reads as follows :

“In the meanwhile no precipitative steps to be taken pursuant to the impugned orders.”

9 Hence, the order passed by the Industrial Court upholding the order of the Labour Court calls for no interference at this stage. Needless to say that the interim orders stand vacated.

10 The petitioner shall comply with the order dated 13th November 2013. It's being more than five years that the respondent is out of service and without wages, the order to be complied with two weeks from today. The issue of back-wages will be considered only at the time of final hearing.

11 The Labour Court is requested to make every endeavour to hear the complaint finally and decide the same as far as possible within one year from the date of receipt of this order.

12 Learned counsel for the petitioner has vehemently submitted that at that stage, the relief that is granted in favour of the complainant equates to final relief that could have been granted only after recording of the evidence and at the final stage of adjudication.

13 This Court is of the opinion that the order was rightly passed in the interest of justice, since the balance of convenience was considered by the Labour Court more particularly on the fact that the charge-sheet which was issued to him was ambiguous in nature. No interference with the interim orders is warranted at this stage.

14 Rule is discharged in above terms. The petition stands disposed of.

(Smt. Sadhana S. Jadhav, J)