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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10270 OF 2017

Uttam B. Patil

... Petitioner

vs.

Menon Pistons Limited

... Respondent

.....

Mr. Umesh R. Mankapure a/w. Mr. R. A. Naik for the Petitioner.

Mr. Meelan Topkar for the Respondent.

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CORAM : A.K. MENON, J.

DATE : 5th FEBRUARY, 2018

JUDGMENT

1. By this Writ Petition the petitioner challenges the impugned order dated 15th November, 2016 passed by the Industrial Court, Sangli in Revision (ULP) No. 27 of 2013 whereby the revision filed by the petitioner came to be rejected. The petitioner's services were terminated. The brief facts are as follows:-

The petitioner was employed with respondent company as a probationary turner on or about 14th October, 1992. After the period of probation he was appointed as a permanent employee on 1st January, 1994 and is stated to have been promoted as of 5th August, 1996. The respondent company is engaged in trading and manufacturing of pins, pistons and other allied products.

2. The allegation against the petitioner was of absenteeism and failure to meet the production targets set by the company. Commencing from 10th January, 2000

several notices came to be issued to the petitioner in regard to his absence during duty hours. He was subsequently suspended from 17th January, 2001 and charge sheeted on or about 22nd January, 2001 under clause-24 (a, b, c, d & f) of the Model Standing Order for alleged misconduct which included absenteeism and also failure to achieve daily targets. After enquiry, finally it was found that the employee was guilty of absenteeism and failed to meet the required targets. That apart, there were allegations of misconduct in the nature of insubordination and disobedience which was stated to be grave in nature.

3. Despite several Show Cause Notices issued to the petitioner, there was no improvement in the petitioner's conduct and as a result of which his services came to be terminated vide order dated 17th September, 2001, w.e.f. 19th September, 2001. The petitioner filed a complaint under Section 28 read with Item 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTTP and PULP Act, 1971 at the Labour Court, Sangli wherein he sought reinstatement with back wages. The petitioner alleged victimization. He contended that the charges were all bogus and that the enquiry conducted against him was biased. Vide order dated 14th February, 2012, a preliminary issue no.1 was decided and it was held that domestic inquiry conducted was fair and proper. Vide order dated 26th July, 2012 a preliminary issue no. 2 was decided and it was held that the findings of enquiry officer are not perverse and thereafter the Labour Court considered the grievance of the petitioner and concluded by final order dated 7th March, 2013 that the order of termination was justified.

4. According to Mr. Mankapure, learned Counsel for the petitioner, quite apart from the fact that the enquiry was not fair and proper inasmuch as it did not consider evidence of one Mr. Jadhav which was material to the facts of the case. It proceeded on the wrong premise that the respondent had set a target to be achieved by the workman and as contemplated in the order. The allegation being that the petitioner was to produce a minimum of 750 units per day. According to Mr. Mankapure, there was no such production target to be achieved and therefore the entire basis of the order passed by the Labour Court was vitiated. Furthermore the punishment is said to be disproportionate. Mr. Mankapure had also relied upon the judgment of the Supreme Court in the case of *G. Rajendra vs. Vikrant Tyres Ltd and Anr. [(2002) 10 SCC 438]* in which he submitted the petitioners case was not one of chronic absentee.

5. Mr. Topkar on behalf of the respondent company while opposing the petition contended that the case of the petitioner is without any basis. He pointed out that the Advocate for the petitioner, in the process of cross examination of one of the respondent's witnesses had clearly suggested that there was a target of 750 units per day. He had then given details of how different targets had been set for different machines. Thus it is not an adhoc figure that has been suggested by the respondent but it was always known to the petitioner that a minimum of 750 units had to be produced. Mr. Topkar therefore submitted that there is not merit in the challenge.

6. Heard learned Counsel for the parties. I find charges against the petitioner were of serious nature, show cause notices have been given to him. In fact in the impugned order the contention of the petitioner have been dealt with and it was found that the petitioner was represented by an Advocate who had cross examined all the management witnesses. The petitioner was also given opportunity to submit his say on the findings of the enquiry officer and thus the petitioner was given a full opportunity of defending himself before the employer. Even otherwise considering the submission made by the learned Counsel for the petitioner today, I find that although the statement of Mr. Jadhav had not been taken into consideration, this was not issue that has been raised before the Labour Court or in the revision and the petitioner cannot be allowed to agitate the same at this stage.

7. In the case of *G. Rajendra (supra)*, the workmen was held guilty of one time unauthorised absence. In the instant case the petitioner has been found to be a chronic absentee and did not mend his ways despite 11 notices. The report in that behalf noted that the petitioner was avoiding his work and frequently remained absent in place of work without permission of his reporting authority. Given the fact that from January 2000 to October 2000, 11 notices were issued to the petitioner to conduct himself properly and also to ensure adequate production and yet the production targets were not met. The punishment meted out could not be faulted.

8. The Labour Court also observed that even assuming that the workman did not meet the production target on one or two occasion it could have been considered but in the instant case the petitioner failed to meet these targets repeatedly and despite such notices. In the circumstances, I find nothing perverse or illegal in the impugned order. There is no case for interference in the Writ Jurisdiction of this Court.

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)