

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

WRIT PETITION NO. 2993 OF 2011

Shri Sidhanath Bhanudas Ghodke	...Petitioner
Vs.	
M/s.Excel Industries Ltd.	...Respondent

Mr.R.V. Sankpal for Petitioner.
Mr.Rajesh Gehani with Mahendra Agavekar and Sujal Vikhare for Respondent.

WITH
WRIT PETITION NO. 3350 OF 2011

M/s.Excel Industries Ltd.	...Petitioner
Vs.	
Shri Sidhanath Bhanudas Ghodke	...Respondent

CORAM : S.C. GUPTE, J.

DATE : 20 JUNE 2018

P.C. :

Heard learned Counsel for the parties.

2 These cross petitions are filed by the original complainant employee and his employer, the Respondent to the complaint. The complainant was employed as a driver with the Respondent. He worked from 1 January 1985 till his discharge from service on 22 February 1990. It is the case of the Respondent that though his behaviour was found abnormal ever since inception, yet, on sympathetic grounds, he was continued in the employment. The complainant was frequently remaining absent from duty on the ground of ill-health. He was in the habit of

quarreling with co-employees and persistently making allegations against the Respondent and its officers. However, what led to his discharge was an incident that took place on 2 February 2000. A few days before this incident, on 28 December 1999, the complainant addressed a letter to the Managing Director of the Respondent cautioning him that if anything untoward happened to him, officers of the Respondent and co-workers would be held responsible. On 2 February 2000, during working hours, the complainant came from outside and went to the first aid room of the Respondent and asked for cough syrup from the first aider. After the first aider administered a spoon of zefs ayurvedic cough syrup, the complainant vomited and fell flat on the floor of the first aid room. He was then rushed to the Cooper Hospital, after the doctor engaged by the Respondent establishment initially examined him. The complainant was admitted in the ICU ward of the hospital. It is the case of the Respondent that all medical records, including hospital reports, showed that the complainant had consumed organophosphate contents, which were poisonous. The medical reports also showed that the complainant had needed psychiatric help and was recommended to the psychiatrist ward of the hospital. It is the case of the Respondent that it had every reason to believe that the complainant had tried to commit suicide in the premises and had carried out his earlier threat into concrete action. In the premises, the Respondent claims to have lost its faith in the complainant and decided to discharge him from the services, as it considered it risky to continue him in the employment as a driver. The complainant was, accordingly, discharged from the services of the Respondent upon payment of one month's notice pay and compensation that would otherwise have been due had the complainant been retrenched. The complainant accepted the payment offered to him along with the discharge order of 22 February 2000. The complainant

thereafter filed a complaint of unfair labour practice before the Labour Court. The Labour Court allowed the complaint and granted reinstatement with 33% backwages to the complainant. Upon revision, the Industrial Court set aside the order of backwages. The Industrial Court, however, did not interfere with the order of reinstatement with continuity of service. It now transpires that the complainant has already attained the age of superannuation and the dispute now pertains only to monetary compensation payable to the complainant.

3 If one has regard to the impugned order of the Labour Court, the order is clearly opposed to the evidence on record. Apart from the oral testimony of the manager of the Respondent, the first aider, who administered a cough syrup to the complainant, and the doctor, who examined him before the complainant was shifted to the hospital, there was voluminous medical record maintained by the hospital during ten days of admission of the complainant in the ICU and the ward. The oral and documentary evidence clearly establishes that organophosphate substance was consumed by the complainant. The Respondent certainly had a clear reason to believe that such consumption was an attempt of committing suicide, particularly in the light of the fact that just a few days before the incident of 2 February 2000, a strange communication was addressed by him to the Respondent cautioning the latter of serious consequences if anything were to go wrong with him and holding the officers of the Respondent and his co-workers responsible for it. Considering the fact that the complainant was working as a driver with senior executives of the Respondent company, if it was the Respondent company's case that it did not any longer have faith and trust in the complainant and as a result discharged him from service after payment of compensation due to him,

clearly no fault could have been found with the approach of the Respondent or the action it took. The discussion of the evidence of the Labour Court clearly demonstrates an approach which no reasonable person duly instructed in law could have adopted. There is absolutely no case of the Respondent's action being illegal and the resultant reinstatement of the complainant.

4 When one comes to the revisional order of the Industrial Court, the only discussion that one finds in the order is that the letter of discharge dated 22 February 2000 issued to the complainant was not based on any standing order and considering this aspect, the discharge could be termed as punitive in nature. Other than this, there is a bare statement in the order that there was no sufficient material on record in support of the allegations made against the concerned employee. On the basis of these cursory reasons, the revision application of the Respondent was rejected by the Industrial Court so far as the order of reinstatement was concerned. In the premises, the orders of both courts below are liable to be quashed and set aside.

5 Learned Counsel for the Respondent states that though the Respondent's revision succeeds in the above premises, the Respondent would like to further compensate the complainant on humanitarian grounds and as a gesture of goodwill.

6 Apart from the amount of Rs.1,19,403/- paid to him towards compensation when he was discharged, the Respondent has deposited in court a sum of Rs.1,02,270/- sometime in June 2011. Learned Counsel submits that this entire amount together with accrued interest can be

withdrawn by the complainant. Upon the court's inquiry as to whether any further compensation could be paid to the complainant over and above the deposit made in the court, learned Counsel leaves it to the discretion of the court. This court is of the view that considering the overall circumstances of the matter, including the unfortunate illness of the complainant and the trauma suffered by him as a result, this court is of the view that a further sum of Rupees One Lakh should be paid to him as an ex-gratia payment.

7 In the premises, the following order is passed:

(I) Writ Petition No.2993 of 2011 is dismissed. Writ Petition No.3350 of 2011 is disposed of by setting the impugned orders of the Labour Court in the complaint and of the Industrial Court in revision to the extent of reinstatement. The complaint stands dismissed. The Respondent company shall, however, pay a sum of Rs.1,02,270/- as of June 2011 and also a further sum of Rupees One Lakh as of date to the complainant. Accordingly, the Registry will permit the complainant, Siddhanath Banudas Ghodke, to withdraw a sum of Rs.1,02,270/- deposited by the Respondent company in court together with accrued interest thereon. In addition to this amount, the Respondent shall pay a sum of Rupees One Lakh to the complainant within six weeks from today. No order as to costs.

(S.C. GUPTE, J.)