

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.5421 OF 2018**

Nasik Industrial Co-op Estate Ltd	.. Petitioner
vs	
Rajendra Adhar Katkar	.. Respondent

Mr.Avinash Jalisatgi with Mr.Vaibhav Jagdale
I/b Mr.Amol B.Desai for Petitioner
Mr.Uday P.Warunjikar for Respondent

Coram : S.C.GUPTA, J
Date : 7th JUNE 2018

P.C

1. This petition challenges orders passed by the Labour Court in a complaint of unfair labour practice and by the Industrial Court in a revision from the order of the Labour Court.

2. The petitioner is a co-operative society registered under the Maharashtra Co-operative Societies Act. It owns industrial premises/galas and leases them out to its members. The respondent was employed with the petitioner as a peon since about 1.6.1996. In March 2001, the respondent met with an accident due to which he remained absent from duty for a long duration. It is the petitioner's case that after he reported for duty after this absence, he was found to be mentally unfit to perform his duties. It is submitted that he started quarrelling with his colleagues and superiors and his conduct amounted to a criminal offence. On 23.9.2001, the petitioner directed him to go on compulsory leave on the ground that he hurled

abuses at the Manager using filthy language. On 11.10.2001, the management terminated the services of the respondent on the ground that it was not possible to repose confidence in them. The termination was challenged by the respondent before the Labour Court in a complaint of unfair labour practice under item 1 (b) and 1 (f) of schedule IV of the MRTU and PULP Act, 1971. The Labour Court, by its order dated 8.7.2013, allowed the complaint holding the unfair labour practice under item 1(b) and (f) of the Schedule as proved. The Labour Court, however, was of the view that though ordinarily the respondent would have been entitled to re-instatement, the facts on record do not warrant such re-instatement. The Court observed that from the evidence of the petitioner herein, it was apparent that the petitioner was no more interested in continuing with the respondent in its service and in such circumstances, the reinstatement of the respondent would cause multiple difficulties to him during his service in future and that, in the premises, award of a reasonable compensation to the respondent would be an appropriate relief. The Court accordingly directed payment of compensation to the respondent equal to the amount of full back wages from the date of his termination till the date of the order. This order was challenged by both the petitioner and the respondent herein before the Industrial Court at Nasik in revision. The Industrial Court, by separate orders passed on 25.1.2018, rejected the revision application of the petitioner herein and partly

allowed the revision application of the respondent herein, modifying the order of the Labour Court by reinstating the respondent with continuity of service on his original post with 50% of back wages. The petitioner has come in challenge from that order in the present writ petition.

3. The thrust of the submissions of Mr.Jalisatgi, learned counsel for the petitioner, is that the Labour Court erred in observing in its impugned order that the facts alleging misconduct on which evidence was adduced by the petitioner were not pleaded by the respondent in his written statement. It is submitted that foundational facts demonstrating the reasons for the respondent's dismissal were pleaded in the written statement and it was open for the petitioner to elaborate on these facts by leading evidence. It is submitted that in the face of extensive evidence led before the Court, the Labour Court erred in coming to the conclusion that the misconduct on the part of the respondent was not proved. Learned counsel submits that the order of the Labour Court was upheld in revision by the Industrial Court on altogether different grounds which were not considered by the Labour Court. Learned counsel submits that the revisional's Court's concurrence with the findings of the Labour Court is vitiated by a clear error of law inasmuch as the findings are contrary to the evidence and unsustainable.

4. In the first place, it is important to note that the two Courts below have concurrently come to a finding that the alleged

misconduct of the respondent, on the basis of which he was terminated, was not proved. Admittedly, the petitioner, before terminating the respondent, did not hold any inquiry or afford any opportunity to the respondent to show cause against his proposed termination. Before the Labour Court, the petitioner took up the position that the respondent's termination was not on account of any disciplinary action but was a result criminal misbehaviour against the officials of the petitioner, as a result of which the petitioner had lost its trust and confidence in him. In the backdrop of these facts, and considering that the complainant-employee had disputed the alleged misconduct, the burden was upon the petitioner-employer to prove such misconduct, either in a domestic inquiry or before the Court if such inquiry was not held. The Court allowed the petitioner to prove the misconduct, since domestic inquiry was admittedly not held in the matter. Both the petitioner and the respondent led evidence before the Labour Court. The Court examined the evidence before it particularly in the light of the fact that the acts attributed to the respondent in evidence were not pleaded in the written statement. The Court commented upon this by observing that the alleged acts ought to have been pleaded in the written statement so as to give an opportunity to the respondent to dispute the same. Anyway, the Labour Court, after examining the evidence before it, came to a categorical conclusion that the petitioner had utterly failed to prove the misconduct of the respondent. The Court did not accept the oral

evidence of the Manager of the petitioner without the support of any cogent corroborating evidence on record. The Court also held that the documents produced by the petitioner before the Court were not proved with the support of any witness. The Court, in the premises, held the termination to be an unfair labour practice within the meaning of item 1 (b) & 1 (f) of Schedule IV of the MRTU and PULP Act, 1971. The Industrial Court on revision has come to a concurrent finding concerning the unfair labour practice. The Industrial Court broadly agreed with the findings of the Labour Court, though a couple of new points were also considered by the Industrial Court in favour of the respondent. One of the points considered by the Industrial Court was that there were reasons to believe that the witness of the petitioner who deposed in the matter belonged to the same village as the respondent and relations between the two were strained on account of local elections. The Industrial Court accordingly did not accept the evidence of the sole witness of the petitioner, which was uncorroborated by any documentary or other oral evidence. No fault can be found with the approach of either of the Courts. The conclusions of the Courts are a possible view based on the material before the Courts.

5. The respondent was terminated by the petitioner on 11.10.2001 on the ground that after the former's accident on 21.3.2001 where he was disabled in his leg, the respondent was unfit to work as a peon in the office of the petitioner. Secondly, his

conduct with the officials of the petitioner was habitually high-handed and subversive of discipline. The petitioner alleged that such incidents had occurred on numerous occasions for which the respondent was reprimanded by personal written communications. Thirdly, it was alleged that he was unauthorizedly residing in a place belonging to the petitioner. Even in the written statement filed by the petitioner before the Labour Court, general averments were made concerning the alleged misbehaviour or criminal acts resorted to by the respondent. It was submitted that this misbehaviour had led to loss of confidence of the petitioner in the respondent. All these allegations are delightfully vague. Even in the oral evidence of the petitioner's Manager, who had deposed generally to the alleged criminal misdemeanour of the respondent vis-a-vis his colleagues and superiors, the witness had deposed to numerous written communications by the petitioner to the respondent in this behalf. None of the communications referred to in this behalf by the witness or produced before the Court indicates that there was any communication to the respondent about his so called misdemeanour or criminal actions. The only concrete instance referred to in this behalf by the petitioner's witness, and which is reflected in one of the written communications produced before the Court, is an incident of 23.9.2001, when the witness claimed that the respondent had abused the Manager of the petitioner and purportedly used filthy language in the name of his mother, sisters and father. The witness

was cross-examined of this fact. Several suggestions were made to him, and some admissions obtained from him in cross-examination, concerning enmity between the witness and the respondent arising out of local elections in the village to which both belonged. Further, in the face of suggestions made to the witness about his not having actually submitted any report to the management, there is no record to indicate that this report was in fact made by the witness to the petitioner. The other letters and communications produced on record by the petitioner merely indicate that on some occasions, the petitioner was late in attending the office or took unauthorized leave. These do not make out any case of misdemeanour or criminal behaviour. There is no evidence of the respondent being in any way unfit to perform his duties as a peon. There is no credible evidence that he was unauthorizedly occupying any premises of the petitioner. In the face of these circumstances, the appreciation made by the Courts below cannot be termed as perverse or impossible. The appreciation indicates a possible view of the evidence and no interference is called for with such appreciation in writ jurisdiction of this Court.

6. In the premises, there is no merit in the petition. The Petition is dismissed.

7. Learned counsel for the petitioner applies for stay of this order. After concurrent findings of two Courts below and this Court having extensively considered and comprehensibly rejected the

petition, there is no question of granting any stay. The Application is rejected.

(S.C.GUPTE, J)