

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

WRIT PETITION NO.56 OF 2017

Assistant Engineer
Maharashtra State Electricity
Distribution Company Ltd. .. Petitioner.

Vs.

Shri Vishnu Punjaji Khairnar .. Respondent.

Ms.Anjali R. Shiledar Baxi for the petitioner.

Mr.Neel Helekar for the respondent.

CORAM : A.K. MENON, J.

DATED : 26TH MARCH, 2018.

P.C. :

1. By this writ petition, the petitioner has challenged the impugned order dated 18th November, 2013 passed by the Industrial Court, Nashik in Revisional Application (ULP) No.32 of 2013 arising out the judgment and order passed by of Ist Labour Court, Nashik in Complaint (ULP) No.72 of 2005.
2. By the impugned judgment, the revision application filed by the present petitioner was dismissed. The challenge before the Revisional Court was order passed on 14th March, 2013 in complaint (ULP) No.72 of 2005.
3. Brief facts that led to the petition are as under : The original complainant was a line helper on 17th September, 2013 when the petitioner was known Maharashtra State Electricity Board. The respondent – appellant

had remained absent some time in February 1995 and has submitted his application from February 1995 to 5th May, 1995 and thereafter from 6th May, 1995 to 5th December, 1995 on account of illness of his father. The judgment records that on 6th December, 1995 the respondent reported for his duties. The Assistant Engineer on duty reportedly asked the petitioner to obtain a certificate that his mental condition was proper. The letter to this effect was issued on 5th December, 1995. Thereafter the respondent was not allowed to join the duties and it was his contention that he was not indisposed and there was no question of submitting any fitness certificate.

4. The respondent contended that he had taken leave on account his father's illness. It is further contended by the respondent that if the petitioner desires to obtain any certification of his health, the respondent could have been sent for medical examination to the Civil Surgeon by the petitioner themselves. However, the petitioner has incorrectly refused to allow him resume his duties. Thereafter the charge-sheet came to be issued on 23rd June, 1997 and an enquiry was held. The inquiry was later on found to be unfair by the order dated 11th April, 2005. In the complaint (ULP) No.72 of 2005 it was found that the complainant had failed to establish that the petitioner had engaged in unfair labour practice and the complaint was dismissed. Thereafter a Revision Application came to be filed by the respondent being Revision (ULP) No.53 of 2011 which was heard and disposed of vide order dated 16th

October, 2012 setting aside the order of the Labour Court dismissing complaint (ULP) No.72 of 2005 and directing that the said complaint be heard and decided by the Labour Court as early as possible after giving an opportunity to the petitioner to prove misconduct against the respondent-employee and thereafter considered the aspect of vicitimisation alleged by the respondent.

5. The admitted position today is that although an opportunity was given to the petitioner, no evidence was led to establish alleged misconduct. In the circumstances, the impugned order proceeds to hold that the finding is to the effect that no document or evidence is produced by the petitioner before the Labour Court or during the domestic enquiry conducted which was held to be unfair against the principles of natural justice.
6. In my view burden was on the petitioner to establish misconduct but they have not led any evidence. The impugned order records that the petitioner have failed to prove their case. In my view, the order impugned in this petition does not suffer from any perversity and does not call for interference. In the circumstances, Writ Petition is dismissed. No orders as to costs.

(A.K. MENON,J.)