

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

WRIT PETITION NO.13418 OF 2016

Smt. Chaya Jagannath Mhetre

.. Petitioner

Vs.

Depot Manager, MSRTC, & Anr.

.. Respondents

Mr. Suhas S. Inamdar for the petitioner.

Mr. Rakesh Singh a/w Ms. S. S. Pardikar i/b. M.V. Kini & Co. for the respondents.

CORAM : A.K. MENON, J.

DATED : 10TH JANUARY, 2018.

P.C. :

1. By this writ petition, the petitioner seeks to challenge the orders dated 5th June, 2012 and 29th November, 2012 passed by the Labour Court, Solapur, and the order dated 21st November, 2013 passed by the Industrial Court in Revision (ULP)No.5 of 2013.
2. The petitioner was engaged by the respondent-Corporation as a cleaner. She was appointed on compassionate groundS upon the demise of her husband who was employed as a driver with the Corporation. The charge against the petitioner was that of habitual absenteeism. On the preliminary point of enquiry, the findings are that the enquiry conducted against the petitioner was fair and proper and in accordance with the principles of natural justice.

3. The petitioner is said to have been absent from duty on 2nd May, 2008, 12th May, 2008 to 14th May, 2008, 21st May, 2008, 10th June, 2008 to 17th June, 2008 and 30th June, 2008 to 5th August, 2008 i.e. total 50 days without applying for leave and without prior permission of the authorities.
4. It is the case of the respondent that by letters dated 5th July, 2008, 17th July, 2008 and 26th July, 2008 the petitioner was called upon to report on duty but she failed to attend. The Labour Court having gone through the enquiry papers found that the petitioner was given all relevant documents along with the chargesheet and also given an opportunity to engage a union representative but she declined the offer and wanted to conduct the matter herself. She took part in the departmental enquiry in person. At one stage, she contended that due to household work and mental tension, she remained absent and she relied upon a medical certificate to support her plea that she was unwell during the period from 30th June, 2008 to 5th August, 2008. Even on merits, the finding is that during the course of enquiry it is found that even the medical certificate relied upon by the petitioner as evidence that she was suffering from Chikungunya was interpolated. A copy of the medical certificate filed in Courts below and has been produced before this Court. It clearly shows that the illness complained of is described as “tension and headache”. There is no

mention of Chikungunya. Further, the period of treatment is shown to be commencing on 30th June, 2008 to 5th August, 2008. However, the date 5th August, 2008 contains alterations which are not authenticated so also the date of prescription is also shown as 5th August, 2008. The case against her is that of habitual absenteeism. It is + not in dispute that on 29 occasions, she remained absent. The record indicates that she is in the habit of remaining absent and her duties as a cleaner were neglected. She has relied upon only one medical certificate in support of her contentions. The Labour Court vide judgment dated 29th November, 2012 dismissed the complaint having found that the allegations of unfair labour practices was not established.

5. The order of 1st September, 2010 was challenged only on the ground of unfair labour practices and hence there was no relief granted to the petitioner. The order of dismissal was upheld. The judgment records that even in the past, she remained absent on 20 occasions and on 18 occasions some minor punishments were meted out including reduction of her basic pay. However, she continued to misconduct herself.
6. Being aggrieved by the order dated 29th November, 2012, the petitioner filed a Revision (ULP)no.5 of 2013 but judgment of the

Labour Court was upheld. The Revision came to be dismissed.

7. Mr. Inamdar submitted that the enquiry held was not held fair and proper and that the respondent no.1 acted as enquiry officer as well as management representative. He also acted as prosecutor and therefore that amounts of violation of principles of natural justice. This he contended goes to the root of the matter and hence, the findings were liable to be set aside. The learned counsel for the petitioner had contended that out of the three letters said to have been sent to the petitioner, only one letter was produced before the Court. However, that is not of much relevance since according to the petitioner herself, she was unwell for the period from 30th June, 2008 to 5th August, 2008 i.e. during the period the letters dated 5th July, 2008, 17th July, 2008, 26th July, 2008 are believed to have been written calling upon to report. He sought to rely upon a decision of the Supreme Court in the case of *Jorsingh Govind Vanjari v/s. Divisional Controller Maharashtra, State Road Transport Corporation, Jalgaon Division, Jalgaon (2017 AIR (SC) 57)* in support of his contentions. In that case the Supreme Court held that the High Court had gone wrong in holding that the Labour Court did not follow the procedure. The award indicated that the management had not sought an opportunity for leading evidence. Despite granting an opportunity,

no evidence was adduced after the Labour Court held that the findings of the enquiry officer are perverse. However, I find that the decision in Jorsingh Govind Vanjari (supra) is of no assistance to the petitioner in the facts of the present case, since the fact situation in the case of Vanjari (supra) is not similar to the present case. In the circumstances, I find that despite being appointed on compassionate grounds the petitioner has been found to be habitually absent. As far as the opportunity was given to her during the enquiry was concerned, there is no reason to interfere with the findings, no prejudice is seen to be caused to her. I therefore, do not find that this is a fit case to interfere in the writ jurisdiction of this Court and I pass the following order:-

- (i) Writ petition is dismissed.
- (ii) No orders as to costs.

(A.K. MENON,J.)