

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

WRIT PETITION NO.3162 OF 2000

Philips Employees' Union,
a Trade Union registered under
the Trade Unions Act, 1928,
having its office at 35/86, Sadashiv
Peth, Pune-411 030.

.. Petitioner

Vs.

1) Peico Electronic & Electrical Co.Ltd.,
Company registered under the
Companies Act I of 1956 having its
factory at Loni-Kolbhor,
Pune-412 201.

2) S. S. Hirurkar,
Member, Industrial Court, Pune.

3) R. B. Nimse,
Judge, 3rd Labour Court, Pune.

.. Respondents

Ms. N.D. Buch a/w Mr. Sailesh K. More for the petitioner.

Mrs. N. R. Patankar, Mr. V. P. Sawant a/w Mr. Prabhakar Jadhav for respondent
nos.1 and 2.

CORAM : A.K. MENON, J.

RESERVED ON : 4TH APRIL, 2018

PRONOUNCED ON: 19TH JULY, 2018

JUDGMENT :

1. By this writ petition, the petitioner union challenges the dismissal of
complaint (ULP)no.55 of 1988 and Revision Application (ULP)nos.43 of 1998, 46

of 1998 and 55 of 1998. The three revision applications were filed by three employees who were members of the petitioner union upon dismissal of their complaints. The petition was filed initially under Article 226 and 227 of the Constitution of India. At the stage of admission, the petitioner's counsel submitted that he was not invoking jurisdiction under Article 226. As a result, reference to Article 226 are deleted. At the stage of final hearing both sides agreed that Writ Petition No.2678 of 2000 which was tagged along was not connected with this writ petition hence Writ Petition No.2678 of 2000 was detagged. The facts in brief leading to the present petition are as follows:-

2. The petitioner is a union representing employees of the respondent no.1. Respondent no.1 company is engaged in manufacturing of radio, electronics, tape recorders, repairs and various other identical and mechanical items. It had inter alia, two factories in District Pune one at Loni and the other at Pimpri. The company employed about 2250 persons.

3. On 29th June, 1993 the respondent company issued dismissal orders to 5 workmen viz. S. N. Hadke, V. M. Kalbhor, S. R. Shewale, J. J. Lawrence and D. N. Kalbhor. At the relevant time, the said persons were the President, Vice President, Secretary and members of the Managing Committee of the petitioner. It is contended that the dismissal orders were issued without reasons. No charge sheets were issued. No domestic enquiry was held. The challenge therefore is on the basis of violation of principles of natural justice. According to the petitioner,

they learnt much later that various false allegations were leveled against these employees. The company contended that it is not in the interest of employees to continue these 5 persons in their service.

4. It is the union's case that the dismissal orders contravened Standing Order no.25(3) and 24(4). They have further contended that as per the Standing Orders Act, it was mandatory to hold an enquiry against the concerned employee alleging misconduct under sub-clause (4) of clause 24 and in the instant case these provisions of the Standing Orders have been violated. It is alleged that the company was in a hurry to dismiss these employees with a view to victimize them for their legitimate trade union activities. It is alleged that the orders of dismissal were a colourable exercise of power and not in good faith.

5. The orders impugned recorded that four employees under the instigation of Mr. V. M. Kalbhor had participated in grave and serious acts of misconduct during the preceding seven months. Petitioners allege the management was attempting to implicate them on the basis of concocted evidence. Mr. Hadke was the President of the union. He had been removed from service once during the period when emergency had been declared but then, the union could not resort to a strike. The case of Mr. Hadke was referred to Arbitration and he was directed to be reinstated with full back wages. Since then, it is alleged, that the company had been trying to implicate him in other cases, Mr. V. M. Kalbhor and Mr. Hadke were suspended for three months. Mr. Kalbhor was prosecuted in a criminal case

but the allegations were not proved. Mr. Kalbhor was not found guilty and he was reinstated in service.

6. It is contended that all allegations are vague because on the date when certain instances are alleged to have taken place, Mr. Hadke had a visitor from outside India and he had accompanied the visitor to the company's factory at least two hours prior to the alleged incident taking place. Mr. Hadke is believed to have taken the visitor for a lunch at a restaurant far away from the factory. Similarly other employees had contended that they were not present at the place where the alleged incident is said to have taken place.

7. Being aggrieved, the petitioner filed the complaint alleging violation of items 1(a) of Schedule IV of the MRTU & PULP Act. A written statement was accompanied by voluminous documents which are denied by the petitioner in its rejoinder. According to the petitioner, the allegations based on which dismissal orders were issued were false. In any event, for four months after the alleged incident, they were not suspended. No other employee or the management had complained about the conduct of the five dismissed employees. The contention of the company that female employees were afraid of the five dismissed employees and therefore were not participating in the enquiry have been denied. It is contended that the company ought to have held an enquiry and granted an opportunity to the workmen to defend themselves, failure to do so, has resulted in violation of principles of natural justice. According to the five employees, they

were not present when the incident took place and had provided alibis yet they have been victimized. The management had led evidence of about 15 witnesses who were cross examined by the petitioner union. According to the union, the evidence was full of contradictions. Even in the written statement, there was no specific averments or particulars of the conduct of the employees. The complaint thereafter came to be heard and dismissed. The revisions applications likewise were also dismissed.

8. It was contended that the Labour and the Industrial Courts had failed to appreciate the evidence on record and the fact that the dismissal orders were issued in violation of principles of natural justice and in colourable exercise of power. The Courts failed to appreciate that none of the five employees were present on the date when the alleged incident is said to have been taken place and therefore they have been victimized. That both the Courts have committed grave errors of law by allowing the company to lead evidence without the company applying for leading evidence, therefore in breach of the decision of the Supreme Court in *Shankar Chakravarti v/s. Britannia Biscuits Co. Ltd.*¹

9. Ms. Buch, the learned counsel appearing for the petitioner contended that the basic principles of natural justice have not been followed. She submitted that the complaint very clearly spelt out the fact that the dismissal orders dated 29th June, 1983 did not mention any specific charge on the basis of which they were

¹ 1979 (39) F.L.R. 70.

being dismissed. The dismissal orders were clearly in breach of the Standing Orders and passed only to victimize the aforesaid persons for their legitimate trade union activities. It is contended that the company must be directed to cease and desist from engaging in unfair labour practices and in the meantime five employees were to be reinstated with full back wages for the period of unemployment and without prejudice any rights and contentions. Ms. Buch therefore submitted that the impugned orders are liable to be set aside on first principles.

10. Reliance is placed on the decision of the Supreme Court in ***U. B. Dutt & Co. v/s. Its Workmen***² wherein the Supreme Court found that Standing Orders provided for a procedure for giving notice and issuing termination orders issued without substantiating the allegations were held invalid. In that case the Supreme Court found that the appellants initiated departmental enquiry against the employee and also placed him under suspension. He protested and sought the holding of the enquiry as soon as possible. On 8th July 1992 the services of said employees were terminated. The Court held that the said termination was not valid and that the decision to discharge the employee was a colourable exercise of power under the Standing Order. Ms. Buch sought to emphasize that the Standing Orders should have been complied with in the instant case.

11. In another decision, ***Theatre Employees' Union & Ors. v/s. S. V.***

2 ***1962 1 LLJ. 874***

Kotnis and Ors.³ a Single Judge of this Court has held that “*the Labour Court was completely wrong in permitting the employer to lead evidence for the first time to establish the misconduct without even serving the employees with charge sheets.*” He submitted that the Labour Court was wrong in permitting the employer to lead evidence to establish the misconduct as the charge sheet has not been filed nor any enquiry has been held. Blind reliance placed upon the allegations against all the employees and the employees were at a great disadvantage. Yet another Single Judge, B. N. Srikrishna, J. as he then was, in **Miraj Taluka Girini Kamgar Sangh v/s. Manager, Shree Gajanan Weaving Mills & Ors.**⁴ held that the enquiry held was invalid in cases where the charge sheet was vague and bereft of particulars and therefore the immediate requirement was that of the charge sheet should contain sufficient and precise particulars consistent with the principles of natural justice. It was found that the charge sheet was delightfully vague and no opportunity was given to the petitioners to defend themselves against the charges. No specific instances of misconduct were cited in the charge sheet. It was lacking in particulars. Therefore the charges were held to have effected and the order of dismissal was quashed and set aside, reinstating the workmen in service with continuity of service and full back wages.

12. In yet another decision of this Court in **Maharashtra General**

3 **1994 LAB.I.C. 1647**

4 **1993 1 LLJ 686 H.C.**

Kamgar Union v/s. Anand Kamal Co-operative Housing Society Limited

and others ⁵ reliance was placed on the fact that termination of service without enquiry or charge sheet had rendered the order bad and the order of Labour Court was modified, holding that the workmen were entitled to back wages and the Court did not remand the matter to the Labour Court considering the delay of more than seven years.

13. On behalf of the respondent, Mrs. Patankar submitted that in the facts of the present case there was no question of any charge sheet being issued. The allegations in the complaint were vague and was misconceived. She submitted that the dismissal orders have nothing to do with the various positions that these persons are said to occupy in the petitioner union, however, the grave instances in which they were involved in the last months prior to their dismissal were found to be detrimental to the interest of the company, its employees and its business.

14. On 19th and 20th February, 1983 employees male and female have addressed letters to the company on their own alleging that they were terrorized by the employees concerned. She denied that the dismissal orders were in contravention of Standing Orders. The complaint was devoid of any particulars of how any unfair labour practices had been engaged in but the dismissal had nothing to do with the union activities. She submitted that Annexure 'A' to the written statement set out the various acts of misconduct which amounted to

⁵ ***1994 LAB I.C. 1647***

outraging, modesty of women as also inhuman behaviour, inasmuch as some of these employees had removed lady employees babies out of the creche and had left them in the harsh sun. They did not allow the lady employees to feed the children. Thus, harmless and innocent children were targeted. None of this could have been done in the name of union activities. She submitted that the impugned order was just and proper and did not suffer from any perversity. She therefore submitted that the impugned judgment of the Labour Court was justified and so were the orders passed in three revision applications. She submitted no interference is called for.

15. I have heard the parties at length. Mrs. Patankar, the learned counsel for the respondent has taken me through the impugned order which has dealt with the facts. After dealing with the facts, the judgment of the Labour Court is reproduced. The issues framed by the Court are 8 in number. On the aspect whether the dismissal was for false reasons, in undue haste and whether the punishment was shockingly disproportionate, the answer is in the negative i.e. in favour of the respondent.

16. As regards the ULP complaint, the Court answered the issue in favour of the respondent. It was held that the dismissal was legal and valid and that the petitioners had not proved that the employees were entitled to be reinstated. In the circumstances, there was no question of any back wages. I find that the petitioner union had vide Exhibit 26 dated 30th November, 1984 stated that they

were not desirous of leading oral evidence but sought to tender evidence in rebuttal. The company examined 15 witnesses. Meanwhile, the Court was appraised of the fact that the petitioner union had filed a separate complaint under item 9 of Schedule IV . The petitioner moved a interim relief application in that context which came to be dismissed against which a writ petition came to be filed in this Court. Rejection of that writ petition resulted in an appeal. The appeal also failed, so has the Special Leave Petition. No interference was found necessary at the interim stage.

17. Paragraph 19 to 45 of the impugned order deals with the evidence led on behalf of the respondent. The respondents' first witness Mr. Karambelkar deposed that while he was on duty on the material dates, the operators in his department objected to the appointment of one Mrs. Kank as Shop Clerk. Mr. Hadke the President of the Union was annoyed at the workers protest in the Foil Varco Department. There were about 295 lady operators working in the department and the male workers at the instance of the union leaders started shouting abusive slogans. On that date several of the female operators approached their supervisors seeking gate passes for going home because apparently their children who were in the Creche were ill-treated and were brought out of the Creche and were left on the lawns. A union representative instructed transport workers that they should not provide transport to the female employees. Similar conduct was noticed on 20th February, 1983.

18. Witnesses were cross examined and they confirmed the presence of Mr. Hadke. There was no challenge to the aspect that the female employees had stopped work on that date as stated above. It was established by evidence that the delinquent employees had played a major part in creating a very uncomfortable situation apart from interfering with the working of the respondent. Amongst the several witnesses examined by the company three were ladies employees in FOV department who were opposed to the appointment of Mrs. Konde as shop clerk. One of the witnesses Mrs. Date has deposed to the fact that the ladies were put to public humiliation. Apart from unparliamentary language it appears that the conduct of the workers concerned was abusive. In cross examination, it was suggested that Mrs. Date's evidence was false. She withstood cross examination and the Court found that there was no reason for disbelieving her deposition. From para 47 onwards the impugned judgment deals with the fact that no charge sheet has been issued and that no one should be punished without being heard. The management had contended that they were worried for the employees who had protested and if the charge sheets were to be filed the workmen concerned would have created havoc given their past conduct.

19. The lady employees who were substantial in number would be at great risk. The contention that employees concerned were not available on those dates at the premises has also been dealt with and the Court concluded from the voluminous evidence that the dismissed workmen had indeed committed grave

and serious acts of misconduct. They had put the lady employees to tremendous mental pressure, they had ill treated children, had used filthy language and shouted abusive slogans against the lady employees. The union submitted that the non-issuance of a charge sheet was violative of principles of natural justice. The counsel for the petitioner union agreed that out of the 5 workmen, 2 workmen viz. Mr. V.N.Kalbhor and Mr. D. N. Kalbhor had given up their claims. As far as Mr. Hadke was concerned, there was no question of reinstatement since he had retired on 15th June, 1996 but it was contended that he was entitled to back wages. The judgment made reference to the decision of the Supreme Court in Firestone (supra) and in particular the observation in paragraph 29(4) and (6) holding that even if no enquiry had been held by the employer or if the enquiry had held to been found defective, the tribunal must give an opportunity to the parties to adduce evidence and it was open for parties to lead evidence.

20. Ms.Buch relied upon the fact that the employees were liable to be reinstated because the standing Orders provided that no employee shall be dismissed without holding an enquiry. It was submitted on behalf of the respondent that reinstatement would impose a tremendous burden upon the company would prejudice the company's interests including the working of the factory. It was contended that three of the dismissed workmen viz. Mr. Hadke, V. N. Kalbhor and Shewale were accused of criminal offences had been convicted by the Court of Additional Sessions Judge under section 146 to 149, 307, 427, 449

and 455 of the Indian Penal Code. The Labour Court has recorded that it was justified in concluding that there was nothing on record which would have justified the agitation by the workers. The impugned judgment recorded that the Court had considered the judgment of the Additional Sessions Court, Pune which held that accused nos.16 to 19 had formed an assembly with the intention of committing the murder of one Emmanunel alias Andrews and caused grievous hurt to one Ravi Mulay. Considering the high degree of proof required in a criminal trial the conviction of three persons and the punishment of rigorous imprisonment would justify the action taken. The Court was satisfied that all the allegations against the concerned workmen had been established through evidence. The contention of Mr. Hadke and Shewale that they were not present on the scene would not justify a conclusion in their favour since it was always possible for a workman who had once entered the premises after punching the card and left temporarily, to come back without punching the card. The petitioners case was not found to be believable and therefore the complaint came to be dismissed.

21. In the revision application, the Court found that the order of the Labour Court was not wrong or perverse in any manner. The issues framed by the Labour Court were also considered. It was found that the petitioner union had not objected to the examination of witnesses by the respondent although they contended that would reserve their right to lead evidence in rebuttal. At the

same time, the union itself examined 5 witnesses meanwhile the 15 witnesses examined by the company were duly cross examined by the complainant union and during such cross examination the petitioner union made no grievance that the Labour Court had incorrectly granted permission to the company to lead evidence to prove the charges. The Court found that the union was at liberty to lead evidence before the labour court. There was no case that the services of the employees concerned were terminated by issuing orders of dismissal as a result of union rivalry or on the aspect that there was no charge sheet and that no opportunity was granted to establish their case. It was contended before the revision court that the company had incorrectly contended that lives of witnesses would have been in danger if charge sheets had been filed.

22. The Court recorded that the respondents witnesses were cross examined over long periods of time during which the petitioner tried to establish that the instances complained of had never occurred and that the 5 persons were dismissed due to union rivalry. The Revisional Court approved the findings of the Labour court and held that there was only one union at the material time. Admittedly, the second union came to existence after the dismissal of the employees concerned. The Revisional Court therefore approved the findings of the Labour Court that there was no question of union rivalry. The revisional court considered the various depositions and the conduct of the male workers. The deposition, portions of which are reproduced in the impugned order

establish unbecoming conduct of the workmen concerned. The lady employees were subjected to unprecedented trauma apart from being abused. Both lower courts were convinced of the acts of misconduct. From paragraphs 24 to 37 deals with the various aspects of the evidence which is unchallenged. Furthermore, I find that the assertions in the complaint had been denied at length in the written statement filed by the respondent.

23. In paragraph 21 of the written statement, specific reference was made to Annexure "A" to the written statement which listed out various acts of misconduct which amounted to inter alia outraging and modesty of women and cruelty including withdrawal of the children from the creche and leaving them in the harsh sun. Such acts display inhuman behaviour. It was contended that the company could not remain a silent spectator to the misconduct. The union had filed a rejoinder but to chose to deal with only some aspects of the written statement and averments in paragraph 21 were not dealt with at all, virtually admitting the conduct of the workmen concerned.

24. At this stage, I find it appropriate to refer to provisions of the Standing Order applicable to respondent no.1. Model Standing Order no.24 deals with acts and omissions which amounts to misconduct. Clause 24(1) deals commission of acts subversive of discipline or good behaviour. Likewise the clause clearly covers acts and omissions complained of. In the present case Standing Order 25(4) reads as follows:-

“25(4) – A workman against whom an enquiry is to be held shall be given a charge sheet clearly setting forth the circumstances appearing against him requiring explanation. He shall be given an opportunity to answer the charge and permitted to be defended by a workman working in the same department as himself. Except for reasons to be recorded in writing by the officer holding the enquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence led on other side and the workman's plea shall be recorded.”

The case of the union is that there has been violation of failure to holding an enquiry. Clause 25(3) provides as follows:–

“No order of dismissal under sub-clause (d) of clause (1) shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct in the manner set forth in clause(4).”

25. These are the main allegations made against the respondent company. According to the petitioners, the absence of an enquiry constitutes an unfair labour practice. There is no dispute that Standing Orders did apply. However, the question that came to be considered was whether the absence of an enquiry would render orders of dismissal non-est. In numerous cases the Supreme Court

has held that dispensing with an enquiry would be subject to the satisfaction of the authority and must be passed on objective criteria. It has been held in the case of *Tarsen vs. State of Punjab*⁶ that reasons for dispensing with an enquiry must be supported by documents. A formal enquiry was dispensed only on the ground that the appellant could win over the aggrieved persons as well as witnesses convincing them against giving evidence. However, in the instant case we have the benefit of the judgment of the labour court in the ULP complaint which negatives the petitioners' case. There was, in my view, substantial evidence on record to justify the dispensing with the formal enquiry.

26. In *Firestone (supra)* the Supreme Court had occasion to consider the desirability of holding a proper enquiry and the effect of not holding one. In paragraph 23 of the Supreme Court considered the decision of *Indian Iron and Steel Company Ltd. V/s. Workmen*⁷ referred to in *The Punjab National Bank Ltd. V/s. Its workmen*⁸ observing that in cases where an industrial dispute is raised, the Tribunal only wants to know whether the decision was preceded by a proper enquiry and whether a proper enquiry was held in accordance with the applicable Standing Orders. If it did not appear that an employer was a guilty of victimization or unfair labour practices and in such cases the tribunal is reluctant to interfere with the impugned order. It was further observed in the case that an

6 *2006(13) SCC 581*

7 *AIR 1958 SC 130*

8 *(1960) 1 SCR 806*

employer can dismiss an employee but must hold an enquiry prior to such dismissal and it always began with supply of a specific charge sheet. In the course of dealing with the judgment the Supreme Court also dealt with the effect of an employer not holding an enquiry and quoted from its decision in Punjab National Bank (*supra*) in the following words:-

“But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be proper order to make. In such a case the point about the exercise of managerial functions does not arise at all.” (emphasis supplied).

27. It can thus be seen that the merits of the dismissal was open for scrutiny before the labour court. In the instant case the labour court was entitled to decide for itself whether the misconduct was proved and if so make an appropriate order. In paragraph 32 of *Firestone (supra)*, the Supreme Court set out the broad principles emerging from numerous other decisions. Amongst them, it was observed that right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but the tribunal has the power to scrutinize the action of the employer if the dispute is referred to him. Normally, before imposing punishment the employer is expected to conduct an enquiry which should not be an empty formality. The Tribunal must be satisfied with the validity of the order and must give an opportunity to the

employer and employee to adduce evidence. The employer may adduce evidence for the first time before the tribunal, justifying its action and the tribunal has the jurisdiction to consider the evidence led before it for the first time even if no enquiry has been held. The Tribunal is not required to straightway direct reinstatement if no enquiry has been held or enquiry was found to be defective.

28. If the employer seeks to adduce evidence for the first time before the tribunal and asks for it at the appropriate stage, the tribunal has no power to refuse it. Once misconduct is proved in the enquiry or before the tribunal, the punishment imposed cannot be interfered with except in cases where the punishment is so harsh as to suggest victimization. Thus, there is no bar in the labour court considering the evidence led by the parties for the first time. The labour court has in my view proceeded to examine the facts and the evidence on the basis of the pleadings of the petitioner in its ULP Complaint. It was open for the petitioner to lead evidence which it did. It appears to have led evidence of 5 members. More importantly, it has cross examined the 15 witnesses on behalf of the respondent no.1 and extensively at that. There is no dispute between the parties as to a proper opportunity being given before the labour court to establish their case. The only grievance is that no enquiry was held and considering the fact that evidence has been led and that the petitioners had duly cross examined the witnesses and also introduced their own evidence no fault can be found with the impugned order. The underlying fact remains that the incidents complained

of amounted to serious misconduct but had not been effectively denied. The case of the petitioner that those dismissed employees were not on location at the relevant time has not been accepted by the evidence.

29. The essence of the petitioners case is that the incident took place on 18th February, 1983 and the concerned workmen were thereafter continued to be employed till 29th June, 1983. The impugned orders came to be passed thereafter and there was no reason for not holding an enquiry particularly in the face of Standing Order 25(3) 25(4) Ms. Buch has therefore contended that for over 4 months the persons concerned continued to work and were dismissed without any enquiry in violation of the said Standing Orders, none of which were complied with. Therefore the absence of an enquiry, being a fundamental aspect, could not be ignored. The impugned orders are therefore bad in law. She contended inter alia, that no police complaint had been filed, there was no charge sheet and hence the allegations remained vague. It was contended by Mrs. Patankar that in its written statement, the respondent had set out the reasons for not holding the enquiry and therefore in compliance with the broad principles emerging from *Firestone (supra)*. Ms. Buch contended that Firestone was rendered under the Industrial Disputes Act and not under the MRTU & PULP Act and therefore had no application in the facts of the present case. I am unable to agree with Ms. Buch on this aspect as well since *Firestone (supra)* laid down were the essential criteria to be considered in case where action was proposed to be taken against the delinquent employees for acts of misconduct or other acts of

misdemeanour. This principle culled out in *Firestone (supra)* would not in my view apply exclusively to cases under the Industrial Disputes Act since these are basic principles founded in the concept of *Audi alteram partem* which apply to all cases and can easily be adopted under different enactments. I cannot agree with the contention that *Firestone* being post charge sheet and being under the Industrial Disputes cannot be applied to the facts of the present case.

30. The ratio in *Firestone*, will in my, view apply since basic principles of natural justice are required to be followed whether under the Industrial Disputes Act or the MRTU & PULP Act. Merely because the facts in *Firestone (supra)* were sourced from a dispute under the Industrial Disputes Act it does not mean that the ratio of the judgment cannot be applied in the facts at hand. I find no reason to disbelieve the findings and the conclusions which the Labour Court and the Industrial Court has arrived. There is no reason to interfere with the facts of the present case. The challenge in my view must fail and in the result, I pass the following order:-

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

(A.K. MENON,J.)