

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

WRIT PETITION NO.3106 OF 2000

Yeshwant Sahakari Soot Girni

Niyamit, Solapur & Ors.

.. Petitioners

Vs.

Nagnath Ambaji Dedhe

.. Respondent

Mrs. Meena H. Doshi for the petitioner.

Mr. Amey Tamhane i/b. Mrs. Madhavi Mhatre for the respondent.

CORAM : A.K. MENON, J.

DATED : 14TH MARCH, 2018.

ORAL JUDGMENT :

1. By this writ petition, the petitioner has challenges the orders dated 29th February, 1992 passed by the Labour Court, Solapur, to the extent that it granted reinstatement to the respondent and an order dated 16th March, 2000 passed by the Industrial Court in a Revision Application (ULP)No.87 of 1992. The order of the Industrial Court was a common order in Revision Application (ULP)No.57 of 1992 and 87 of 1992. The Revision Application (ULP)No.57 of 1992 was filed by the respondent in this petition whereas the Revision Application (ULP)No.87 of 1992 was filed by the petitioner.
2. The brief facts are as follows:-

The petitioner was at all material times is a Co-operative Textile Mill registered under the Maharashtra Co-operative Societies Act, 1960. The respondent was an employee of the petitioner. At the time of filing of this petition, the respondent had superannuated on 1st January, 1999. During the pendency of this petition, the petitioner was ordered to be wound up and the petitioner is now been prosecuted by the Liquidator appointed pursuant to the order of this Court.

3. The petitioner was engaged initially as a helper since the year 1970. He also worked as a badli jobber. On 21st September, 1981 he was required to work as a badli jobber in the second shift in the winding department wherein certain duties were assigned to him. However, it was alleged that between 4.30 p.m. and 5.15 p.m. he left his department without arranging the work entrusted to him and without supplying material to the winders resulting in the work of the winders suffering. It is stated that defective material had been supplied to the winders concerned who then reported the matter to the spinning master/factory manager. This act of having absented himself from his designated post was considered as a matter of misconduct and a chargesheet came to be issued on 29th August, 1991 under Standing Order 21(L). The respondent refused to accept and acknowledge the alleged misconduct. A domestic enquiry was held in October 1991,

during which the respondent did not remain present. The enquiry proceeded to record the evidence of two witnesses and the Enquiry Officer submitted his report and findings.

4. After having considering the report, it was decided to dismiss the respondent from service and consequently show cause notice came to be issued on 24th November, 1981 calling upon him to submit an explanation to show cause as to why the order of dismissal should not be issued. No reply was filed by the respondent. Thereafter the petitioner dismissed the respondent vide order of dismissal dated 26th December, 1981. The respondent filed a revision being Revision Application (ULP)No.109 of 1986 which came to be disposed of by the Industrial Court, Solapur on 29th September, 1989. The Revision was partly allowed and the matter was remanded to the Labour Court for being heard in accordance with law. After remand, the petitioner and the respondent led oral evidence. The Labour Court partly allowed the complaint and directed the petitioner to reinstate the respondent but without continuity of service and back wages.
5. It is the petitioner's case that the respondent was reinstated on or about 26th March, 1992. He therefore served with the petitioner till he reached the age of superannuation. On 1st January, 1999 the

respondent ceased to be in the service of the petitioner. In the meantime, the parties being aggrieved by the order of the Labour Court filed two Revision Applications in the Industrial Court being Revision Application (ULP)No.57 of 1992 by the respondent and Revision Application (ULP)No.87 of 1992 by the petitioner and a common order passed whereby the Revision Applications were disposed of by dismissing the Revision Application (ULP)No.87 of 1992 filed by the petitioner and allowing the Revision Application No.57 of 1992 filed by the respondent-employee. As a result, the petitioner was directed to pay back wages.

6. According to the petitioner and as canvassed by Ms. Doshi, the impugned order dated 16th March, 2000 is not sustainable inasmuch as since the respondent has approached the Labour Court with a complaint of unfair labour practices under items 1(a) to (d) of Schedule IV of the MRTU & PULP Act. Specific averments are made as to the manner in which the petitioner had indulged in unfair labour practices.
7. According to the respondent, his past record was satisfactory and unblemished and in the instant case the immediate cause for issuance of show cause notice and the subsequent dismissal was his absence

from place of work for a period of 45 minutes on 21st September, 1981. According to the respondent, he had been supervising winding work which was said to be in progress in the doubling department and at that time one Mr. Shaikh (the winder concerned) made a false complaint due to previous enmity. Based on these charges, the respondent was found guilty of committing an unfair labour practices as complained of. Ms. Doshi submitted that the Labour Court in the first instance had framed six issues which are as follows:-

- “(1) Whether the complainant proves that he is dismissed from service by way of victimization?*
- (2) Whether the complainant proves that he is dismissed from service not in good faith but in colourable exercise of employer's rights?*
- (3) Whether the complainant proves that he is dismissed for patently false reasons?*
- (4) Whether complainant proves that he was dismissed from service by the opponent by undue haste?*
- (5) Whether the punishment awarded to the complainant is shockingly disproportionate?*
- (6) Whether the complainant is entitled for reinstatement, continuity of service and back wages?”*

8. Issue nos.1 to 4 dealt with the specific allegations of unfair labour

practices under items 1(a) to (d) and issue no.5 deals with the punishment. Ms. Doshi submitted that the Labour Court had not found in favour of the respondent as far as issue nos.1 to 4 are concerned. However, on the 5th issue a finding was in the affirmative since the punishment was held to be shockingly disproportionate as contemplated under item 1(g) of Schedule IV. In respect of issue no.6 the finding was partly in the affirmative inasmuch as the respondent was directed to be reinstated but without continuity of service or back wages.

9. Ms. Doshi submitted that the findings on issue nos.5 and 6 are not sustainable considering the facts on record and this aspect was dealt with in the Revision Application. The impugned order of the Industrial Court after considering the challenge, found in favour of the respondent without any basis. Ms. Doshi invited my attention to the reasoning in the order of the Industrial Court which proceeded to hold that the punishment was shockingly disproportionate considering the fact that the respondent workman was away from the work place only for about 45 minutes.

10. Secondly, the Industrial Court incorrectly observed that the previous service record had not been considered by the Enquiry Officer and only gross negligence was proved in the enquiry. It was further

submitted that the Industrial Court had misconstrued the provisions of Standing Order 21(L) which reads as follows:-

“ 21(L) Habitual negligence or neglect of work”.

While construing the effect of clause 21(L) the Industrial Court proceeded to hold that the clause contemplated “habitual negligence” and that such habitual negligence had not been established and therefore the order of the Labour Court required interference to the extent it declined to grant continuity of service and back wages.

11. In the circumstances, the grant of relief in Revision Application (ULP)No.57 of 1992 is assailed as perverse based on incorrect appreciation on the effect of standing order 21(L) as also ignoring the fact that no unfair labour practice has contemplated under item 1(g) had established.

12. On behalf of the respondent, the learned counsel submitted that the impugned order has correctly considered the fact that habitual negligence has not been proved and read with the findings that the punishment was shockingly disproportionate. It was obvious that the respondent was entitled to continuity of service and back wages.

13. In my view, the Industrial Court failed to appreciate the factual basis

of the challenge inasmuch as issue nos.1 to 4 had also been held against the respondent. As a result, none of the issues as to victimization, lack of good faith or dismissal for patently false reasons has been established. Furthermore, the respondent has failed to establish that there is any undue haste in passing the order of termination of service and for dismissal. The record reveals that the respondent had remained absent during the enquiry. No attempt was made to establish the grounds on which he filed the complaint at the first instance.

14. The Labour Court in its judgment dated 29th September, 1992 has recorded that the past record of the respondent was produced before the Court and past service record indicated that the respondent had committed various acts of misconduct. In paragraph 11 of the impugned judgment of the Labour Court, the Court recorded the past service record of the respondent which reveal that the respondent had been given written warnings for absenteeism without leave, negligence in work resulting in his suspension and various other acts of misconduct. It was contended that only if the misconduct is committed thrice within one year, the previous punishments would not be considered for awarding punishment of dismissal. It is observed that the respondent had apologized vide his letter dated 31st December,

1981. However, this letter was submitted after his dismissal and hence the Labour Court found against the respondent considering his previous service record and gravity of the misconduct.

15. The Industrial Court has obviously ignored these findings while coming to the conclusion that the respondent was not found liable for habitual negligence, yet, it records finding against the respondent. In my view, it was necessary to consider the fact that clause 21(L) also specified “neglect of work” as one of the reasons in the instant case especially since it was established during the enquiry and also before the Labour Court and as upheld by the Industrial Court in Revision, that the respondent had committed an act of gross negligence. The Industrial Court has misconstrued the provisions of Standing Order 21(L) by not considering the actionable provisions for neglect of work.

16. Furthermore, relief was denied to the petitioner also on the ground that no loss was caused to the petitioner by temporary absence of the respondent. On this aspect, there was no evidence to come to a finding. It appears that the Industrial Court held that loss would not have been caused but this aspect has not scrutinized by the Labour Court. There was no finding on facts as evident from paragraph 11 of the order of the Labour Court.

17. In the circumstances, the order of the Industrial Court is contrary to the findings of fact and is perverse. As a result I find that the grant of relief by the impugned judgment dated 6th March, 2000 cannot withstand scrutiny and calls for interference. In the circumstances, the petition must succeed. I therefore pass the following order:-

- (i) Rule is made absolute in terms of prayer clause (a).
- (ii) The impugned orders dated 29th February, 1992 passed by the Labour Court, Solapur in Complaint (ULP) No.11 of 1982 and the judgment dated 16th March, 2000 is hereby quashed and set aside.
- (iii) No orders as to costs.

(A.K. MENON, J.)

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