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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 291 OF 2017.**

|                                                 |   |                   |
|-------------------------------------------------|---|-------------------|
| M/s Laljee Godhoo & Co.                         | ] |                   |
| A Partnership firm duly registered under Indian | ] |                   |
| Partnership Act,                                | ] | <u>Petitioner</u> |
| Through partners                                | ] | Original          |
| having office at : 213 Samuel Street,           | ] | respondent.       |
| Mumbai 400 003.                                 | ] |                   |

V/s.

|                                |   |                   |
|--------------------------------|---|-------------------|
| Suresh Bandu Salunkhe          | ] |                   |
| residing at 1-2 Shivneri Sadan | ] | <u>Respondent</u> |
| Patkar compound, Gaondevi Road | ] | Original          |
| Tulshet Pada, Bhandup (West)   | ] | complainant.      |
| Mumbai 400 078                 | ] |                   |

Mr. Vijay P.Vaidya i/by P.C. Pawaskar, for the  
Petitioner.  
Mr. Rafique Ahmed Shaikh a/w Mr. Sharif Khan, for  
respondent

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 6<sup>th</sup> DECEMBER, 2018.**

**Oral Judgment :**

1] Heard learned counsel for the petitioner and respondent.

2] Admit.

3] With the consent of learned counsel for both the parties, the petition is taken up for final hearing at the stage of admission itself.

4] This petition takes an exception to the judgment and order dated 6.8.2015, passed by the Industrial Court, Mumbai, thereby allowing Revision Application (ULP) No.149 of 2009, preferred by the respondent employee, challenging the judgment and order dated 21.05.2009, passed by the 4<sup>th</sup> Labour Court, Mumbai in Complaint (ULP) No. 259 of 2008.

5] The said complaint, before the Labour Court, was preferred by respondent herein, challenging the termination of his services on the ground that it was by way of victimization in the colourable exercise employer's right and by falsely implicating him in criminal case by manipulating and concocting evidence. The specific allegations made by respondent in his complaint, were that the petitioner has engaged in unfair labour practice under item 1(a) (b), (c) and (d) of the schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 (for short called as "MRTU and PULP Act").

6] According to respondent as he was an active member of Mumbai Kamgar Sabha and taking part in the activities of the Union, there was grudge against him, in the mind of the present petitioner. Hence, he was called upon to resign from the membership of the Union. However, as he refused, his services were terminated illegally, by way of victimization.

7] This complaint was resisted by the petitioner, contending *inter alia* that the services of respondent were terminated for loss of confidence in him. It was submitted that by letter dated 19<sup>th</sup> June, 2008, it was informed to the respondent that he alongwith co-worker, has committed the theft of the company goods comprising Hing, which has resulted into his arrest by police. He has also admitted the said fact. The company has, therefore, lost confidence in him and the company does not consider it to be in the interest of the company to retain him in service and therefore, his services stood terminated with immediate effect. It was denied that such action was taken malafide or in the colourable exercise of employer's right. It was also denied that any false evidence or material was concocted to implicate the respondent falsely in the said case. Conversely, reliance was placed on the police papers, especially the complaint lodged before Andheri Police Station and the investigation conducted in the said

complaint by the police, including the Memorandum Panchnama of the respondent, leading to the discovery of the stolen property and also seizure of the cash amount from him. There was also seizure of the stolen articles, at the instance of one Kamlesh Uddhav Unnadkar, to whom respondent and other co-accused had sold the stolen articles.

8] Before the Labour Court, in support of his case, respondent examined himself; whereas on behalf of the petitioner, one of its partner Bimal Merchant has led his evidence. On appreciation of their evidence, the Labour Court found that there was sufficient material to justify the case of the petitioner employer that they lost confidence in respondent. As against it, there was no material to show that this action of termination was taken by way of victimization or in the colourable exercise of employer's rights. The learned Judge, has therefore, dismissed the complaint on proper appreciation of the material on record.

9] Respondent, has however, challenged the said finding of the Labour Court before the Industrial Court. In its revisional jurisdiction, the Industrial Court has set aside the finding and, as rightly submitted by the learned counsel for the petitioner, the

findings recorded by the Industrial Court are totally erroneous and on irrelevant aspects. The learned Industrial Court has totally lost sight of the fact that herein the case, the termination of respondent's services was on the ground of loss of confidence and it was challenged only on the ground that the termination was amounting to unfair labour practice in the colourable exercise of employer's rights and/or for falsely implicating on the basis of concocted or manipulated evidence.

10] There is substance in the submission of learned counsel for the petitioner that the learned Industrial Court has unnecessarily entered into all other irrelevant aspects like whether the secondary or hearsay evidence, reflected in the police papers can be considered for the purpose of termination of service. When the complaint filed before Labour Court was alleging only victimization or colourable exercise of employer's right, as alleged by respondent herein, it was necessary for the Industrial Court, only to consider whether there was such prima facie evidence showing that respondent was a member of Union and he was taking active part in the activities of the Union and, therefore, he was called upon to resign from the membership of the Union and as he has not done so, he was falsely implicated in the case. On this aspect, however, there was absolutely

no material on record produced by the respondent. Conversely, the cross examination of respondent goes to show that he was not the office bearer of that Union or was not President or Vice President of the Union. He was merely a member and not even member of the Managing Committee. Further, his evidence goes to show that the relations between the petitioner company and the said Trade Union were cordial. Both of them were settling the disputes amicably. He has further admitted that though he has requested the Union to reinstate him, the Union has refused to do so, or to take up his cause for reinstatement. If he was actively participating in the union activities and on his refusal to resign from the said membership, action has been taken to terminate his services, it goes without saying that the Union would have espoused his cause. The very fact that the Union has not done so and expressly refused to espouse his cause, inspite of his request and the fact that the relations between the Union and the petitioner company are cordial, rules out that his termination was by way of victimization in colourable exercise of employer's right. Therefore, the Labour Court has rightly dismissed his complaint.

11] Even as regards, respondent's allegation that he is falsely implicated in the criminal case, the Industrial Court has gone to the

extent of scrutinizing the material produced in the Criminal Case as if to record the finding as to whether the charges levelled against him are proved beyond reasonable doubt. In this case, the Court was expected only to prima facie consider whether there was sufficient material, which can be sufficient for any employer to lose confidence in that employee. It has to be stated that in this case more than sufficient material was produced by the petitioner before the Labour Court, to that effect in the form of police papers. It can hardly be accepted that such material was concocted or manipulated and that too by an independent agency like police machinery. In addition to the complaint lodged by the Partner of the petitioner firm, there was independent evidence like recovery panchnama of the stolen articles and that too at the instance of the respondent, in pursuance of the memorandum of panchnama given by him. There was also material to show that respondent's wife has produced cash, earned from selling of stolen articles. The said cash was substantial to the tune of Rs.80,000/-. The stolen articles were recovered at the instance of one Mr. Kamlesh Unnadkar, who has purchased the stolen articles from the respondent and the co-accused. The police have after completion of due investigation, filed charge sheet in the Court against respondent and the case is pending for trial.

12] Therefore, it is not the case where one can say that petitioner has implicated the the respondent in the criminal case on the basis of manipulated or concocted material. As a matter of fact, the complaint lodged by the Partner of the petitioner also goes to show that it was not lodged merely on suspicion, but after verifying certain facts. In this proceeding, the production of the stock register or details of business of petitioner was not at all necessary, as the Court has to only to consider whether there was sufficient material produced by the petitioner which is enough to infer that any employer can lose confidence in the employee, if such material is produced before him and that is the very ground on which the petitioner has terminated the services of the respondent.

13] While deciding the question as to what should be the criteria for considering as to whether the material produced is sufficient or not, one can safely place reliance on the judgment of the Apex Court in the case of **L. Michael and another -vs Johnson Pumps Ltd (1975) 1 SCC 574**. While dealing with this exact question, it was held in paragraph No.20 that:-

“20. In the light of what we have indicated, it is clear that loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and

motivations. The Court is concerned with the latter and not with the former, although circumstances may exist which justify a genuine exercise of the power of simple termination. In a reasonable case of a confidential or responsible post being misused or a sensitive or strategic position being abused, it may be a high risk to keep the employee, once suspicion has started and a disciplinary enquiry cannot be forced on the master. There, a termination simpliciter may be bonafide not colourable, and loss of confidence may be evidentiary of good faith of the employers”.

14] Therefore, it is clear that it is the subjective satisfaction of the employer on objective set of facts which is crucial test for considering the issue of loss of confidence. In this case, there was objective set of facts reflected in the police papers. Those objective facts were sufficient for the subjective satisfaction of the employer, like the petitioner, to lose confidence in it's employee.

15] As held in above said judgment when these objective facts leading to subjective satisfaction is sufficient, then the disciplinary enquiry also cannot be forced on the master and the employer can terminate the employee simpliciter. The above said legal position has been considered by this Court also in the judgment of **Siddhanath**

**Krishnaji Kadam -vs- Dadajee Dhackjee and Co.Pvt.Ltd**  
[I.C.R.177, 257]; wherein it was held that this legal position is applicable not only in cases where employee holds some position of confidence, but in case of other employees also.

16] Here, in the case therefore, it was not necessary that respondent should have held the position of confidence, but the very fact that he was working as employee of the petitioner is sufficient as the employer-employee relationship underlies or make it necessary that there should be confidence between the two. The loss of confidence in such cases can be sufficient to terminate the services, without holding of disciplinary enquiry .

17] The submission of learned counsel for respondent is that in the termination letter dated 19.6.2008, it is stated that his employment shall stand terminated with immediate effect being by way of punitive action. Therefore, according to him, if any action is taken, as punitive action, then it may amount to stigma and therefore, there should have been disciplinary enquiry before passing any termination order.

18] In the first place, it has to be stated that the respondent, in

his complaint has not challenged the termination order on the count that there was breach or violation of principles of natural justice and he was not given sufficient opportunity to show cause. Hence this contention cannot be available now.

19] Secondly, this Court, has in the case of **Kamal Kishore Lakshman -vs- Management of M/s Pan American World Airways Inc and others [(1987) 1 SCC 146]**, in paragraph No.11, after relying upon the judgment of the Hon'ble Apex Court, in the case of **Chandu Lal -vs- Pan American World Airways (1985) 2 SCC 727**, held as follows :-

“11. Several decisions were relied upon by respondent's learned counsel in support of his contention that the conclusions in *Chandu Lal* case that loss of confidence amounted to stigma was wrong. We have not been shown a single case other than *Chandu Lal* where this aspect has been directly considered. Whether termination is grounded upon stigma would vary from case to case depending upon whether it involves a government servant or a workman. But the procedural safeguards appear to be different when termination is sought to be founded upon stigma. If disciplinary inquiry has not preceded the prejudicial order in the case of a government servant the action would be bad while in the case of a workman the order could be justified even in the course of

adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no inquiry had been undertaken earlier”.

20] Therefore, even in the absence of the disciplinary enquiry, such termination would be justified in adjudication under the Industrial Disputes Act. Here, in the case this contention is, therefore, also not available to the respondent.

21] The net result is that the Industrial Court has totally misguided itself and as a result, has set aside the well reasoned order passed by the Labour Court dismissing the complaint of respondent.

22] In view thereof, the Writ Petition is allowed.

23] The impugned order passed by the Industrial Court, therefore, is quashed and set aside.

24] In consequence the order passed by the Labour Court, dismissing the complaint is confirmed.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**