

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

912 WRIT PETITION NO.933 OF 2014

SANJAY MANIKRAO MISAL
VERSUS
KINETIC ENGINEERING LIMITED

...

Advocate for Petitioner : Mr. A. B. Dhongade & Mr. Deepak D. Chaudhari.

Advocate for Respondent : Mr. Vinayak Sudhakar Bedre.

...

CORAM : **T. V. NALAWADE, J.**
DATE : 13th February, 2019.

ORDER :

. The petition is filed to challenge the order of penalty imposed against the Petitioner by the Respondent, employer of removal from service and also the decisions given by the Labour Court, Ahmednagar in Complaint (ULP) No.25 of 2008 and the learned Member Industrial Court in Revision (ULP) No.10 of 2013.

2 Both the sides are heard.

3 The submissions made and record show that the Petitioner was employed in the factory of the Respondent as a labour.

Some misconduct was noticed by the Respondent from Petitioner on 12th October, 2007. When he was given work in heat treatment machine section on shot blasting machine, he was not discharging his duty and then he was noticed in control panel cabin and there he was sleeping. The security watchmen noticed this conduct and then they reported the incident to the higher ups. As on that day no work was done by him and there was misconduct of aforesaid nature and as in the past also there were incidents of misconduct, he was suspended and departmental enquiry was initiated against him. In reply to show cause notice, the employee denied the allegations of misconduct. Inquiry officer was appointed and there was a charge in respect of misconduct, sleeping at work place and not giving expected output as the worker of the company. The Petitioner objected to the appointment of inquiry officer by contending that the inquiry officer was the legal advisor of the company, but he participated in the enquiry. Before the inquiry officer, aforesaid two witnesses and also engineers, who were supervising the work were examined. General evidence was given that the watchmen had noticed that the Petitioner was found sleeping in the cabin and they were required to wake him up on that night. Nothing was suggested to the witnesses to create probability that these watchmen had any grudge against him. The relevant record

was produced. The evidence on expected work was given, but the inquiry officer held that the allegation that output was not upto the expectation was not proved. He took the defence that he had made complaint against the persons involved in the Management and as case was filed in the Court against them, out of revengeful attitude, departmental enquiry was started. As the misconduct was proved, opportunity was given to the Petitioner to have his say on the point of penalty. In that notice, the previous five incidents of misconduct were informed to him and then he came to be terminated from service.

4 The learned Judge of the Labour Court considered the material, which was made available by the employer and which was also considered by the inquiry officer. The Labour Court held that sufficient opportunity was given to the Petitioner to defend the charge. The nature of allegations made against the Petitioner in the past were also considered by the Labour Court and considering his overall conduct, which include his attempt to commit suicide and involve the officers involved in the Management for the same is considered by the Labour Court. These things are considered by the learned Member of the Industrial Court also.

5 The scope of present proceeding is limited. The employer has right to decide when a particular employee like Petitioner is found guilty of such misconduct. A copy of order made by this Court in **Writ Petition No.5575 of 2016**, (*Ambadas s/o Pandurang Gurav/ Waghmare, Vs. Kinetic Engineering Ltd.*) is produced on record by the employee and it shows that in other similar case, this Court refused to interfere in the finding but dismissal was converted into an order of discharge to see that some benefits like gratuity amount and retiral benefits etc. are made available to the employee, who had rendered service of around 30 years. There is no dispute over the proposition that the quantum of punishment can depend on various factors. The submissions made show that FIR, which was given by the Petitioner against the officers involved in the Management that they were responsible for the incident of attempt of suicide is quashed by this Court by order dated 4th January, 2017 passed in Criminal Writ Petition No.431 of 2005. That incident had taken place in the premises of the factory. Such person can create danger not only to his superior officers, but also to his colleagues. In view of the nature of work, which he was expected to do, this Court holds that it can be said that no alternative was left by the Petitioner before the employer than to

take the decision of dismissal. This Court sees no reason to interfere in the order. In the result, the petition stands dismissed.

[T. V. NALAWADE, J.]

ndm