

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO.1335 OF 2014
WITH WP/1353/2014

MANOHAR SHANKAR SURYAWANSHI & ANOTHER
VERSUS
THE DIRECTOR, SUBHEDAR RAMJI AMBEDKAR VIDYARTHI VASTIGRUHA
AND OTHERS

...
Advocate for Petitioner : Mr. A.N. Sabnis h/f Mrs. Gour Rashmi P.
Advocate for Respondent No.1 :Mr. G.G. Kadam
Advocate for Respondents No.2 & 3 :Mr. S.B. Pulkundwar
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CORAM : **RAVINDRA V. GHUGE, JUDGE**

(Date : 1ST March, 2019)

PER COURT :-

1 The petitioners in both these petitions, were working as Superintendent and Supervisor respectively, with the respondent establishment, who are aggrieved by the Judgment and Order dated 4.8.2012 delivered by the Labour Court, vide which complaint ULP.Nos.69 and 68 of 2009 filed by these petitioners, challenging their termination, have been dismissed. Both of them are also aggrieved by the Judgment dated 4.9.2014 delivered by the Industrial Court, rejecting their Revision ULP. Nos. 55 and 54 of 2012.

2 I have heard the learned Advocates for the respective sides and have gone through the impugned judgments.

3 Considering the order that I am passing, I am not required to advert to the entire submissions of the litigating sides. Suffice it to say that, both the petitioners have been working for periods of 15 years and five years, as Superintendent and Supervisor/watchman, respectively. Both have been charged with remaining unauthorizedly absent. Certain other charges are also leveled against them. It is admitted that, no charge sheet was issued by the employer and therefore, obviously, no domestic enquiry was conducted. Another issue that comes-up for adjudication is, as to whether these two employees can be defined as workman under section 2(s) of the Industrial Disputes Act, 1947 read with section 3(5) of the MRTU & PULP Act, 1971.

4 I find from the impugned Judgments which are common, that the Labour Court has faltered on two issues. In so far as the petitioner Manohar is concerned, it is concluded that his salary was Rs.3,000/- p.m. and therefore, he is not a workman. It is observed that, no other factor is required to be considered, while deciding his status. This conclusion is absolutely erroneous and runs counter to the catena of Judgments.

 In the case of **Chandrashekhar Chintaman Vaidya versus National Organic Chemical Industries limited, Akola (2010 (3) Mh.L.J.434)**, it was held by the learned

Division Bench of this Court at Nagpur that, the predominant factor which is decisive and not the nomenclature of the post to conclude as to whether an employee would be a workman or a Manager. Factors like salary or designation would not be significant.

5 In both these cases, the petitioners have been terminated. The allegations against Mr. Manohar is that, he used to remain absent and has also sold certain goods of the establishment. In so far as the second petitioner Ajay is concerned, it is alleged that, he was remaining absent. Both were issued with the show cause notices in April, 2008 and they were finally terminated on the ground of absenteeism on 20.6.2009, without conducting any enquiry.

6 The Labour Court, as well as the Industrial Court, have concluded that, both the employees had abandoned employment. Per contra, both of them have contended that, as they were agitating for their rights, they were not permitted to sign the muster roll and were marked absent. Notwithstanding these peculiar factors, the law requires that the employer should initiate disciplinary proceedings, since the abandonment of service is a claim of an employer, that rests on the allegation of

remaining unauthorizedly absent. Since this constitutes a charge, an enquiry is necessary. Such a case of absence for about six months or a little more, cannot be equated with a case, wherein, an employee is unauthorizedly absent for a period of five years or ten years as the case may be, since a long duration of unauthorized absence would be a ground in itself to presume abandonment of service.

7 Considering the above, both the petitions are partly allowed. The impugned judgments of the Labour Court and the Industrial Court are quashed and set aside.

8 The revision petitions filed by these petitioners stand disposed off. Complaint ULP. Nos.69/2009 filed by Manohar and complaint ULP. No.68/2009 filed by Ajay, stand remitted to the Labour Court at Nanded. The Litigating sides shall appear before the Labour Court on 25.3.2019. Formal notices are not required to be issued.

9 The learned advocate for the employer submits that a *de-novo* enquiry would be conducted before the Labour Court against both these employees to prove the charges leveled upon them. Considering the said submission, following directions are being issued:

- a) The employer would be at liberty to frame a charge sheet cum show cause notice in accordance with law applicable and file it in the Labour Court on or before 5.4.2019.
- b) Both the original complainants shall tender their reply to the said charge sheet on or before 22.4.2019.
- c) The employer is at liberty to produce all such documents as advised, before the Labour Court along with the list of witnesses on or before 3.6.2019.
- d) Same liberty is granted to the complainants to produce their documents and list of witnesses on or before 29.6.2019.
- e) The Labour Court shall then permit the employer to commence recording of evidence to prove the charges against the complainants. Needless to state that, after recording of the evidence is closed, the complainants would be at liberty to lead their evidence in rebuttal.
- f) The Labour Court would be at liberty to frame an issue as to whether the complainants are 'workman' and decide all issues together.
- g) The Labour Court shall decide the proceedings expeditiously.

**(RAVINDRA V. GHUGE),
JUDGE**