

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12442 OF 2018

BABASAHEB KONDIRAM BARANDE.
VERSUS
AURANGABAD DISTRICT COOPERATIVE MILK PRODUCERS UNION
LIMITED AURANGABAD.

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Advocate for the Petitioner : Ms.Rakh Asha D. and Ms.Sonpethkar Sangita
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Advocate for the Respondent : Shri Nagargoje R.T..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th February, 2019

Per Court:

1 I had considered the submissions of the learned Advocates appearing for the respective sides canvassed on 21.01.2019 and today. The Petitioner/ workman is present in the Court.

2 The Petitioner had preferred Complaint (ULP) No.21/2011 before the Labour Court at Aurangabad challenging his termination dated 22.05.2007. It was contended that he is a permanent employee of the Respondent/ establishment. He was earlier dismissed on 16.06.2005. He rejoined the employment as a fresh appointee on 18.06.2005. He is terminated on 22.05.2007 without issuance of any charge sheet and without conducting any enquiry. The resolution was passed by the

Director in it's meeting on 15.05.2007 and he was terminated on 22.05.2007.

3 The Labour Court has allowed the complaint by it's judgment dated 20.03.2017. The Respondent/ Establishment preferred Revision (ULP) No.21/2017 before the Industrial Court. By judgment dated 04.10.2018, the revision petition has been allowed and the judgment of the Labour Court has been quashed and set aside.

4 The learned Advocate for the Respondent/ Establishment submits that this petitioner has developed a habit of remaining absent unauthorizedly. He joined duties on 31.05.1991. He was confirmed in employment. In between 1998 to 2002, he was continuously unauthorizedly absent. The domestic enquiry was conducted against him and the punishment of dismissal from service was proposed. The workman gave a good behaviour undertaking on a bond paper and he was given an opportunity of improving himself by reinstating him in service. Yet, he continued to remain absent and therefore, the resolution was passed by the Board on 09.05.2005 that all such employees who remain unauthorizedly absent for long durations would be discontinued. Accordingly, this petitioner was terminated on 16.06.2005. He requested for a fresh appointment and the said request was entertained. He was issued an appointment order dated 17.06.2005 and he joined on 18.06.2005. Thereafter, in a period of about 23 months from 2005 to

2007, he has remained unauthorizedly absent for 125 days.

5 It is further contended that the Labour Court has allowed the complaint on the solitary ground that the Management did not conduct the departmental enquiry against the workman. The Labour Court ignored the view taken by the Honourable Supreme Court in the matter of ***State of Punjab v/s Krishan Niwas, AIR 1997 SC 2349*** that once an employee accepts a fresh employment, he cannot make a grievance as regards his disengagement. As such, since the Petitioner/ workman remained unauthorizedly absent for 125 days within a period of 23 months from joining as a fresh appointee, the Management was not required to conduct an enquiry as he was deemed to be temporary worker.

6 The learned Advocate for the Management submits that they have no animosity against the Petitioner. Their problem is that the employees like this Petitioner, who are habituated to remaining absent frequently, unauthorizedly and for a long durations, need not be kept in employment as they create grave hurdles in the day to day manufacturing activity of the Establishment. Their unpredictable behaviour disturbs the routine manufacturing process. He further submits that if an enquiry is required to be conducted before the Labour Court for proving the charges against the Petitioner, the Management is agreeable to file the charge sheet- cum- show cause notice within four weeks before the Labour Court and conduct an enquiry.

7 The learned Advocate appearing on behalf of the Petitioner has consulted the Petitioner in the Court and makes a statement that firstly, the enquiry be conducted only in the Labour Court so that it would be conducted impartially and secondly that, the Petitioner would join duties under the orders of the Labour Court if the charges are not proved and if his complaint is allowed. He would then perform his duties in a disciplined manner.

8 I find from the record that as this Petitioner had voluntarily applied for a fresh employment and has voluntarily joined as a fresh appointee on 18.06.2005, he would not be entitled to connect his earlier employment with his fresh appointment, keeping in view the law in ***State of Punjab (supra)***. He would, therefore, be precluded from seeking any advantage or service benefits of his earlier employment, which culminated in his termination on 16.06.2005.

9 Insofar as the conducting of an enquiry before the Labour Court is concerned in view of the statements made by the rival sides, this Writ Petition is partly allowed with the following directions :-

- (a) The judgment of the Industrial Court dated 04.10.2018 would stand modified only to the extent of partly allowing Revision (ULP) No.21/2017 leading to the quashing of the judgment of the Labour Court dated 20.03.2017.
- (b) Complaint (ULP) No.21/2011 shall stand restored to the file

of the Labour Court-1, Aurangabad. Both the litigating sides would appear before the Labour Court on 04.03.2019.

- (c) The Management shall enter the charge sheet- cum- show cause notice before the Labour Court with reference to the Petitioner for his alleged absence in between 18.06.2005 to 22.05.2007.
- (d) The Petitioner would be at liberty to enter his written explanation to the charge sheet before the Labour Court on or before 18.03.2019.
- (e) The Management would file all such original records that it desires to place reliance upon with reference to the charge sheet along with the list of witnesses, before the Labour Court on or before 30.04.2019. Copies of the original documents, unless they are very bulky or form a part of any register, would be supplied to the complainant on or before 30.04.2019.
- (f) Those documents which are in bulky form or in the form of registers would be offered for examination to the complainant in the Labour Court.
- (g) The complainant shall enter his list of witnesses and documents, if any, before the Labour Court on or before 15.06.2019.

- (h) After this process is complete, the Management would first commence the recording of evidence followed by the complainant and the said departmental enquiry would be conducted.
- (i) Needless to state, the Labour Court would decide Complaint (ULP) No.21/2011 in the light of the enquiry and it's conclusion and would also consider the aspect of proportionality of punishment in view of the past record of the complainant.
- (j) The Labour Court would dispose of the said complaint by it's judgment and order on or before 30.06.2020.

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(RAVINDRA V. GHUGE, J.)