

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

WRIT PETITION NO.14306 OF 2019

ASHOK DAMODAR PARDESHI
VERSUS
THE CHAIRMAN JAWAHAR SHETKARI SAHAKARI SOOT GIRNI LIMITED
AND OTHERS

...

Advocate for the Petitioner : Shri Patil Sandesh R.

Advocate for the Respondents : Shri Patil Shrikant S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th November, 2019

Per Court:

1 The petitioner, original complainant/ workman in Complaint (ULP) No.30/2018, is aggrieved by the order dated 23.10.2018 passed by the Labour Court by which, his application exhibit U/2 praying for interim relief, has been rejected. He is also aggrieved by the judgment dated 24.07.2019 delivered by the Industrial Court, Dhule by which, his Revision (ULP) No.16/2018 has been dismissed.

2 I have heard the strenuous submissions of the learned advocates for the petitioner and the respondents.

3 The petitioner had approached the Labour Court challenging

his dismissal from service dated 08.08.2018. He had earlier filed Complaint (ULP) No.28/2018 to challenge the second show cause notice proposing the punishment of dismissal and the said complaint was withdrawn and disposed off.

4 The charge sheet indicates that the petitioner has used the most foul and filthy language against the Managing Director of the factory. The language alleged to have been used by him and the charges levelled upon him, are held to have been proved. The language used is such that I do not find it appropriate to reproduce the same in this order and the said language is visible from the opening paragraph of the charge sheet dated 03.01.2018.

5 The learned advocate for the petitioner/ complainant submits that this is an exceptional case for grant of interim relief. He has elaborated on this issue by stating that all the allegations are false and he never abused the Managing Director and in fact it was the Managing Director, who abused him in foul language.

6 I called upon the learned advocate to point out from the record available as to whether, the petitioner had immediately approached the Deputy Commissioner of Labour or the Assistant Commissioner of Labour or the Government Labour Officer or any Police Station for complaining against the Managing Director for allegedly using foul and filthy language. His answer was that the petitioner has not approached

any authority or police station and had not filed any complaint. Prima facie, in view of the enquiry report based on the evidence recorded, I find that the contention of the petitioner that he had not abused the Managing Director and instead, the Managing Director had abused him, is unbelievable.

7 The law in relation to the scope of the Labour Court in interfering with dismissal from service under item 1(g) of Schedule IV of the MRTU & PULP Act, 1971 has been crystallized by this Court in the matter of *Colour Chem Limited and others vs. A.L. Alaspurkar and others, 1993 (III) LLJ 838* and again by the Honourable Supreme Court in the matter of *Colour Chem Limited and others vs. A.L. Alaspurkar and others, 1998 (I) CLR 638*, wherein, it has been held that unless the misconduct is covered by item 1(g) of Schedule IV, thereby establishing that the misconduct proved is of a minor and technical character and if the past record is clean over a considerable period of time, the Court could consider the grant of interim relief.

8 This Court has recently delivered a judgment in the matter of *Dhanraj Bhaurao Gaikwad vs. The Divisional Controller, MSRTC, Latur, Writ Petition No.13454/2019 (Aurangabad) decided on 08.11.2019*, wherein, this Court has concluded on the basis of the extensive law applicable to the cases of proposed dismissal being challenged at a penultimate stage and the cases which are before the

Court after the order of dismissal by way of punishment has been imposed. It is held, by way of a test that, even if it is presumed that all charges are proved against the workman and yet the punishment of dismissal from service would be shockingly disproportionate to the gravity and seriousness of the proved misconduct, in such cases, the Court can grant interim relief by modifying the relief suitably keeping in view the judgment delivered by this Court in the matter of *Narsinggirji Mills vs. Abdul Rashid Ladlesab Shaikh* (1993(2) CLR 866 : 1994 (2) LLJ 152 wherein, this Court has concluded that since interim relief cannot be in the nature of reinstatement in service, the Court can grant the relief of 50% wages or 75% wages in lieu of reinstatement as interim relief.

9 In the case in hand, two issues, whether, the complainant proves that the enquiry is perverse and vitiated for non compliance of the principles of natural justice and whether, the complainant proves that the findings of the Enquiry Officer are perverse, will have to be initially dealt with by the Labour Court and the Labour Court will have to deliver a part-1 judgment.

10 The learned advocate for the petitioner submits that the procedure applicable to conducting of domestic enquiries has not been properly followed by the management. This aspect would have its roots in the records and proceedings of the enquiry and the Labour Court can consider these contentions while deciding whether, the enquiry is vitiated

or not.

11 Considering the above, this Writ Petition, being devoid of
merit, is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)