

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 291 OF 2019

Kailas S/o. Gajanan Joshi

.... Petitioner

Versus

The Sangamner Merchants Co-operative
Bank Ltd., through its Chief Executive Officer

.... Respondent

.....

Appearances : -

Mr. Sharad V. Natu, Advocate for the petitioner

Mr. A. V. Patil & Mr. V. P. Golewar, Advocates for respondent

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23RD SEPTEMBER, 2019

PER COURT:-

1. I have considered the submissions of the learned counsel for the respective sides. A short issue has been raised for the consideration of this Court, as to whether the Industrial Court could issue a direction to the Management to correct its charge-sheet at a very initial stage in the enquiry, if it appears that specific Standing Orders have not been quoted.

2. The petitioner is aggrieved by an interlocutory order dt.21.11.2018, by which the Industrial Court has passed an order directing the respondent-Bank to correct the charge-sheet so as to

make the charges specific and quote the Standing Orders which are applicable considering the alleged conduct or acts of the charge-sheeted worker.

3. This petitioner had approached the Industrial Court with Complaint (ULP) No. 84 of 2018. It was alleged that, the charge-sheet is vague and ambiguous and the charge-sheeted workman is not made aware as to which are the clauses of the Standing Orders which would be invoked so as to prove that the acts alleged to have been committed by the petitioner would amount to a misconduct. It was therefore prayed that, the charge-sheet be quashed and set aside and the departmental enquiry be aborted.

4. The learned advocate for the petitioner has strenuously canvassed that, it would be a very uncertain situation, which the petitioner would find himself in while facing the departmental enquiry under the Certified Standing Orders framed by the Management under the Maharashtra Industrial Relations Act. The charges are vague and he is not aware as to which would be the Standing Order under which his alleged conduct would amount to a misconduct. Unless an act is defined to be a misconduct under the Standing Orders, the employer cannot simply narrate vague and

ambiguous acts as being allegedly committed without intimating the workman that these acts would amount to misconducts.

5. He submits that, this Court has passed an *ex parte* order on 14.01.2019 and has stayed the enquiry. The petitioner is in employment. The Management is precluded from proceeding with the enquiry.

6. In my view, it is settled law that an employer is duty bound to conduct an enquiry against an employee with regard to such charges that, if proved, would lead to a possibility of imposing a punishment of dismissal from service. As per clause 16 of the Certified Standing Orders of the respondent-Bank, the employer is duty bound to conduct a domestic enquiry, if after holding the enquiry, the Management is likely to award the punishment under Clause 16(1) (c) to (i). No enquiry is mandated if an employee is to be warned or censured or fined.

7. In the above backdrop, the petitioner had raised the ground that the charges are vague and ambiguous. In the judgment delivered in the matters of Electric Instruments and Another And State of West Bengal and Others, [1999 (I) L.L.J. 877], a punishment

awarded in pursuance to an enquiry conducted on the basis of vague or ambiguous charge-sheet, is liable to be interfered with. At an interim stage, when the ULP (Complaint) is still pending with the Industrial Court, I am of the view that, it would be beyond the purview of the Industrial Court to step into the shoes of the employer and redraft a charge-sheet. So also, whether a charge-sheet is vague and ambiguous is a matter to be considered by the Enquiry Officer and it is always open to a workman to indicate that a charge-sheet is vague and ambiguous.

8. I have perused the charge-sheet corrected by the Management dt. 24.12.2018, pursuant to the directions of the Industrial Court. The charges as regards an alleged news being published in two newspapers defaming the management and an act of disrespectfully behaving with a lady customer, could be said to be evident.

9. Considering this position, I find that the Industrial Court has passed an equitable order. Rather than waiting for the Management to conclude the enquiry and pass an order on the quantum of punishment and then vitiate the enquiry under the Part-I order or award, will cause grave hardships and manifest in

convenience to both the sides. Instead, if the Industrial Court finds it fit to direct the Management to put forth specific Standing Orders under which the employee is charged of having committed misconducts, it cannot be said to be an act of exercising jurisdiction not vested in it by law. This is in fact in the interest of both the parties.

10. If this order is to be interfered with and the Management is to continue on the basis of a defective charge-sheet, a stage would arise after the imposition of the punishment that the enquiry would be held to be vitiated and a *de novo* enquiry would be conducted in the court. In such circumstances, no interim relief could be granted to an employee in the light of the crystallized position of law. This would be counterproductive. In view of the above, I do not find that this petition deserves to be entertained. The same is therefore dismissed.

11. Three petitions from this group have been adjourned as they pertain purely to a news appearing in the newspaper, allegedly inserted by these petitioners. This petitioner is also charged with a similar act. As such, if this petitioner is willing to insert an apology statement with a clarification in the same two newspapers in which

the news was published on 26.04.2018, the Management may consider as to whether the charges pertaining to such publication of the news could be dropped from the charge-sheet while conducting the enquiry. This is left to the decision of the Management.

[RAVINDRA V. GHUGE]
JUDGE

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