

Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3874 OF 2008

Shri Ashok Anandrao Mane,		
Age : 62 years,		
Sushilanand, Plot No.18, E Ward,		
Shri Datta Co-operative Housing Society,		
Near Babar Hospital, Kavala Naka,		
Kolhapur.		 Petitioner

Versus

1. Managing Director,		
Maharashtra State Financial Corporation,		
New Excelsior Building, 9 th Floor,		
Amrit Keshav Nayak Marg, Fort,		
Mumbai – 400 001.		
2. Regional Manager,		
Maharashtra State Financial Corporation,		
S.P. College Compound,		
Tilak Road, Near Post Office,		
Pune.		 Respondents

Mr. Ram Apte, Senior Advocate, with Mr. Ashutosh Gole, for the Petitioner.

Ms. N.R. Patankar, with Mr. Prabhakar M. Jadhav, for the Respondents.

CORAM : A.K. MENON, J.

RESERVED ON : 7TH MARCH, 2019.

PRONOUNCED ON : 2ND MAY, 2019.

JUDGMENT :

1. The petition challenges an order of dismissal dated 13th March 1995 passed by the respondent-Maharashtra State Financial Corporation, pursuant to a domestic enquiry held against the petitioner. It also challenges the Judgment and Award dated 5th February 2007 passed by the Labour Court, Kolhapur, allowing the claim of the petitioner partly. While allowing the Reference (IDA) No.94/1996 partly, the order of forfeiture of the provident fund amount and interest thereon, under Regulation No.21(b) of the Bombay State Financial Corporation Employees Provident Fund Regulations, 1955, was set aside and the respondent-Corporation was directed to handover the amount, along with interest accrued thereon, till date of his dismissal, along with future interest. The impugned judgment of the Labour Court, however, upheld the order dismissing the petitioner from service. The petitioner is aggrieved by both these decisions.

2. The facts, in brief, are as follows :-

The petitioner was, at all material times, engaged as a Junior Officer in

the respondent-Corporation. The respondent is the Maharashtra State Financial Corporation, a Statutory Corporation, constituted under the provisions of the Maharashtra State Financial Corporation Act, 1951. It is an 'Industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The petitioner came to be promoted, after his initial appointment as a Junior Assistant on 1st September 1970. He came to be promoted to the post of Junior Officer on 25th April 1978. He was also an office bearer of the Maharashtra Shramik Sena, a registered Trade Union, working in the respondent-Corporation in or around 1988-89. It is believed that the dispute relating to the recognition of the said Union arose and the respondent-Corporation allegedly started harassing the petitioner in view of his involvement with union activities. The petitioner has contended that, he was refused casual leave, medical leave etc. On one occasion, he had filed a Complaint (ULP) No.65 of 1989. He was thereafter transferred from Kolhapur to Nagpur on 7th June 1990, but he did not join. According to the petitioner, he did not join at Nagpur, because his father and he himself, both, were ill. Soon thereafter, a charge-sheet came to be filed and the petitioner was convicted and was awarded punishment of reduction by three stages in time scale.

3. Meanwhile, the petitioner came to be transferred to Pune. He alleges that harassment continued even in Pune and four different charge-sheets

came to be filed. According to the petitioner, the false and frivolous charges, namely, failure to renew the insurance policies, change in insurance companies, branches, addressing letters to the State Ministers making allegations against the respondents etc. were levelled against him. The petitioner, therefore, filed Complaint (ULP) No.394 of 1992, seeking interim relief against the enquiry proceedings. However, his request was rejected and the enquiries were proceeded with by the respective enquiry officers. One enquiry was conducted by a former Judge of this court. The petitioner contended that he could not travel by train due to fracture to the left leg and despite this position, enquiries in respect of three charge-sheets dated 24th September 1992, 12th October 1992 and 22nd February 1993 were conducted in Mumbai and the enquiry in relation to the charge-sheet dated 6th July 1993 was conducted in Pune. The petitioner is believed to have attended the enquiry in Pune, which was conducted by different enquiry officer, but he was denied the right to be represented by an Advocate. The reports of the enquiry officer in respect of the three enquiries conducted in Mumbai were submitted on 2nd November 1994 and in respect of the Pune enquiry on 17th November 1994. The petitioner further contended that on 13th March 1995, the impugned order of dismissal came to be passed, whereupon the Reference came to be filed. The Reference confirmed the order of dismissal, as a result of which this petition came to be filed. In support of his case, Mr. Apte, learned Senior Advocate, submitted that the enquiry officer was biased. According to

him, the enquiries were bad in law for four reasons. Firstly, the venue ought to have been convenient for both the parties, but it was not. Secondly, the enquiry had to be held at the place within which the facts giving rise to the charge-sheet had taken place i.e. the place of the incident. This was not done, since the incidents complained of were at Kolhapur and Pune. Thirdly, he submitted that there was a demand to appoint an Advocate to represent him and that was denied. As a result, there was violation of the rules of natural justice. Lastly, he submitted that refusal to shift the venue from Mumbai by the enquiry officer, despite the fact that the Management had no objection to the same, had resulted in violation of rights / rules of natural justice.

4. In respect of the enquiry at Pune, he submitted that bias was evident. He further submitted that, on each count, in the earlier enquiry, he had been found guilty and promotion was refused. Furthermore, no evidence was recorded and the petitioner was not permitted to cross-examine the Management representative. In respect of the enquiry at Pune, Mr. Apte submitted that the likelihood of bias was very strong, in view of the fact that in an earlier enquiry also, the petitioner was denied promotion and Mr. V.T. Chari, the enquiry officer, could not have acted, since he was also the Managing Director of the respondent-Corporation and, therefore, there was strong likelihood of official bias. Mr. Apte further submitted that, considering all the four enquiries, if the petitioner was to succeed in any one of the

enquiry, the report has been held to be bad and therefore, he contended that the order of dismissal was based on a composite consideration of all the enquiry reports and even assuming that, the enquiry at Mumbai or at Pune were found to be bad for want of compliance with the rules of natural justice. Moreover, if bias exhibited against the petitioner, it will be fatal to the order of dismissal. He submitted that the petitioner need not succeed in establishing that all the four enquiries were bad and that if one of them were found to be bad, since the same arise from the same set of alleged incidents, all enquiry reports were vulnerable and, therefore, are required to be set aside.

5. In the specific terms in relation to each of the allegations, Mr. Apte submitted that the charge in relation to the insurance policy was only arising out of the preparation of a note suggesting that the companies be changed. He submitted that the actual decision to change the insurance company was taken by the Deputy Regional Manager and not by the petitioner. He submitted that merely because the petitioner may have suggested certain changes, it would not result in any objection to or the conduct leading justifying the charge sheet against the petitioner. As far as the insurance issues are concerned, no loss is caused to the respondent-Corporation. Absence without leave was for less than an hour, while he was stationed at Pune. He, therefore, submitted that the respondent had made a mountain of a mole-hill and had held the petitioner guilty in the alleged incident of

absenteeism; absence from the work for about an hour could not have been met with such a serious action. Apropos the allegation of misbehaviour with superiors, he submits that the order of dismissal is hugely disproportionate. In this behalf, he drew my attention to the two reports dated 2nd November 1994 and one report dated 17th November 1994 of the enquiry officer and to the reply in the form of two letters dated 7th December 1994 and one letter dated 6th December 1994.

6. Mr. Apte submitted that the Corporation examined large number of witnesses, but none of them were permitted to be cross-examined. The petitioner attended the enquiry only on one day i.e. in 23rd April 1993. There is a charge-sheet dated 24th September 1992. Mr. Apte made reference to the compilation of documents and invited my attention to the reports of the enquiries and the correspondence prior thereto, including the confidential communication from the petitioner to the enquiry officer in respect of the charge-sheets dated 24th September 1992 and 12th October 1992. He submitted that, on 25th February 1994, the petitioner had communicated to the enquiry officer his inability to attend in Mumbai, since he has suffered an accident and he could not undertake train or bus travel. He also informed the enquiry officer in Mumbai that another enquiry had been fixed at Pune and he would be grateful if the enquiry officer held the other enquiry in respect of the aforesaid complaint at Pune.

7. I may observe here that the petitioner has considered his request to hold the enquiry at Pune rather than Mumbai as a “trivial matter” and contended that, unnecessarily “no issue should be created” in that respect. He has asserted in a letter to the enquiry officer that the enquiry should be conducted at the place of the work of the accused person and that the employer has deliberately fixed the enquiry at Mumbai to harass him.

8. It is further contended that one Mr. Pawar, the then Chief Administrative Officer at Mumbai, had threatened the petitioner of dire consequences and, therefore, he was feeling very insecure to come to Mumbai. Mr. Apte further submitted that the enquiry officer had declined to accede to the request of the petitioner and had proceeded with the enquiry ex-parte, *inter alia*, observing that there is no cross-examination since the petitioner remained absent and proceeded to hold against the petitioner, concluding that the charges levelled against the petitioner regarding breach of Regulation Nos.25, 26 and 40(1) of the Bombay State Financial Corporation (Staff) Regulation, 1954, (*hereinafter referred to as “the Regulations”*), are proved under the charge-sheet dated 24th September 1992 and that the charges levelled under Regulation Nos.25, 26 and 40(1) and the charges under the second charge-sheet dated 12th October 1992 had been proved. In this manner, the enquiry was conducted without hearing the petitioner. Mr. Apte further submitted that, a reply to the report was filed on 7th December

1994, wherein the petitioner contended that he has requested the enquiry officer to allow him to be defended through an Advocate on several occasions, but the permission was denied and the enquiry begun on 23rd April 1993. Petitioner has also filed an application for grant of various reliefs. The matter was adjourned, but, on that day, he was threatened by the Management and it is for this reason that the petitioner has requested the enquiry officer to conduct the enquiry at Pune or Kolhapur.

9. The petitioner has further contended in the said reply that he could not attend the enquiry at Mumbai because of fear of loss of life. He complained of breach of rules of natural justice. In paragraph No.6 of his letter, he contended that, after closure of his evidence, the petitioner was desirous of submitting written arguments, but he was not allowed to do so. Had he been allowed to do so, he could have brought on record the discrepancies and controversies relating to admissions and omissions in the Management's evidence. Mr. Apte relied upon the fact that the enquiry proceeded ex-parte and, in effect, sought setting aside the report of the enquiry officer and to re-open the case at Pune or Kolhapur, when he would be defended by an Advocate. Alternatively, he sought exoneration from all the charges levelled against the petitioner, since, according to him, they were not proved. Mr. Apte further submitted that the petitioner had relied upon an affidavit filed by one Subhash Shirodkar, who was an employee of respondent No.1-Corporation

and who had contended that the Chief Administrative Officer had summoned the deponent and told him in the presence of the petitioner that it was futile to fight against the corporation and that the petitioner may compromise the matter, admit the faults and close the case.

10. The petitioner has relied upon a medical certificate dated 8th January 1994, certifying that the petitioner was in a plaster cast for a long time and a long journey and constant sitting was likely to produce oedema of the left foot and occasionally pain. Thus, it is contended that these factual aspects clearly ought to have been taken into consideration by the enquiry officer, but were not. Mr. Apte then next submitted that the petitioner was ready and willing to go through the enquiry, if it was held at Pune, where he could have attended the enquiry without fear to his life, in view of the threats held out. Mr. Apte also made reference to the second report of the enquiry officer, wherein it was held that all the charges levelled against the petitioner, except charge under Regulation No.77, had been proved. Thus out of the eight charges levelled in the charge-sheet dated 22nd February 1993, except the charge against Regulation No.77, all the charges, it was held, had been proved. Regulation No.77 dealt with the need for the applicant to submit a leave request at-least one month in advance of the date of the leave requested. On this aspect, it appears that there was no fault with the approach of the petitioner. Mr. Apte further relied upon a second letter also dated 7th

December 1994, in respect of the charge-sheet dated 22nd February 1993. In this behalf, it was contended that, Mr. Subhash Shirodkar, a colleague, had also offered to help the petitioner in the case, but despite knowing reason of the medical condition and the threats held out, due to which the petitioner has not been able to attend the enquiry proceedings in Mumbai, he was not granted the facility of utilizing the assistance of Mr. Shirodkar or an Advocate. He contended that the enquiry being ex-parte, was no enquiry at all. As far as the issue of leave is concerned, he contended that employee was sick and, therefore, a necessary certificate of the Doctor had been sent.

11. In this behalf, I may observe that the enquiry report absolves the petitioner of the allegation of breach of Regulation No.77 and, therefore, this aspect of the matter need not detain me. Mr. Apte then invited my attention to the various communications addressed by the petitioner and finally the report of the enquiry held in relation to the charge-sheet dated 6th July 1993 conducted by Shri V.T. Chari. From the report dated 17th November 1994, Mr. Apte pointed out that large number of witnesses were examined on behalf of the Management. On 17th November 1994, the enquiry officer recorded that upon production of management witnesses, the petitioner had stated that he did not propose to examine any defence witness and hence the case was fixed for submitting written arguments by both sides. The written arguments were received from the Management's representative on or about 15th July 1994,

but the petitioner, instead of filing his written submissions, contended that he wished to examine himself by submitting affidavit of examination in chief and offered himself for cross-examination.

12. This prayer was granted and a hearing was fixed on 19th August 1994, but the petitioner remained absent. A letter was received by the enquiry officer stating that petitioner could not attend the enquiry at Mumbai and requested that the hearing should be held at Pune. Accordingly, the hearing was held in Pune on 7th September 1994, when the petitioner submitted affidavit of examination-in-chief in writing. Finally, written arguments on behalf of the petitioner were filed on 20th October 1994. The enquiry officer, after dealing with the charge-sheet and the merits of the case, came to the conclusion that the charges under paragraph Nos.10(a), 10(b), 10(c) and 10(d) were proved. In that view of the matter, it was submitted that no proper opportunity was granted to the petitioner.

13. Mr. Apte further submitted that, apropos the allegation of irregularities in the matter of insurance policies, no loss of whatsoever nature has been caused to the respondent-Corporation. The Management had examined large number of witnesses, however, their cross-examination was not permitted. In this behalf, I may mention that the petitioner attended hearing only on 23rd April 1993 and thereafter he remained absent.

14. Mr. Apte relied upon the extract of the translations of the complaints filed by the petitioner. Mr. Apte also relied upon the fact that on 25th May 1993, the petitioner has addressed a letter to the Managing Director of the respondent-Corporation, *inter alia*, apprising him of the fact that during the enquiry relating to the charge-sheet dated 23rd November 1990, he had taken along with him Mr. Subhash Shirodkar, Junior Officer (Law) of the Regional Office at Thane as his defence representative. Later he learnt that Mr. Shirodkar had been denied promotion as Assistant Manager (Law) in 1992, only because he has acted as defence representative for the petitioner. It was contended that, Mr. Shirodkar thereafter refused to represent the petitioner. Further it is contended in the said letter that one Mr. Wadgiri had called the petitioner to his cabin and threatened to get him arrested. This, he submitted, amounted to threat to his life. By the said complaint, he requested the Managing Director of the respondent-Corporation to take action against Mr. Wadgiri.

15. The further complaint of the petitioner is that, on 23rd April 1993, one another employee of the respondent-Corporation by name Mr. Damle had called the petitioner to his cabin and warned him that, *"if he kept quarreling with Mr. Pawar, the then Chief Administrative Officer, the petitioner would not go home alive from Mumbai"*. Mr. Damle had then sent him to meet one Mr. Daflapurkar, who also threatened the petitioner, demanding that he

accept the charges in all the three charge-sheets and immediately resign. He further contended that when he appeared before the enquiry officer, he was in a disturbed state of mind, since nobody was willing to represent him. He has approached the enquiry officer seeking permission for engaging an Advocate, which was denied to him. Furthermore, it is contended that, the petitioner was threatened by said Mr. Pawar, who was found standing outside the Managing Director's cabin, saying that petitioner should give up, otherwise an untoward incident would occur, as described in the letter.

16. Mr. Apte, therefore, submitted that the petitioner has been treated unfairly, deprived of opportunity of defending himself, despite evidence of his medical condition and was even not permitted to engage the services of an Advocate. Even as regards the Pune enquiry, Mr. Apte invited my attention to the proceedings of the Pune enquiry and the fact that the letter dated 6th December 1994 had been addressed to the Managing Director of the respondent-Corporation, *inter alia*, informing the Managing Director that he has requested the enquiry officer Mr. V.T. Chari to allow the defence Advocate to appear, but the request was rejected. In the said letter, petitioner has contended that no employee of the respondent-Corporation was ready to defend him due to the fear of harassment by the management of the respondent-Corporation and, therefore, he could not get any help in defending his case before the enquiry officer. The letter also made reference

to the affidavit submitted by Mr. Subhash Shirodkar, who had initially offered to assist the petitioner in the enquiry, dealt with the merits of the allegations made against him and that of the witnesses for the Management, namely, Mr. S.G. Pawar (the then Chief Administrative Officer), Mr. Daflapurkar (Manager - Personnel Administration), Mr. Yadav, (Regional Manager - Public Relations), who had all given evidence for the Management and which evidence was accepted by the enquiry officer.

17. The petitioner had produced evidence by way of his deposition as well as number of documents. However, despite offering himself for cross-examination, petitioner was not cross-examined. It is contended by Mr. Apte that when a witness is not cross-examined, the testimony of that witness must be accepted as true. It is, therefore, contended that the enquiry officer had not analyzed the evidence of the petitioner or his evidence has remained unchallenged. Petitioner's deposition contains specific statements with details, on the basis of the documents produced. All the documents, it is submitted, had been proved and must be read in evidence in his favour.

18. In support of his contentions, Mr. Apte relied on the following judgments :-

- (i) *S. Parthasarathi Vs. State of Andhra Pradesh, (1974) 3 SCC 459.*

(ii) *Ramesh Chandra Vs. Delhi University and Others*,
(2015) 5 SCC 549.

(iii) *Wainganga Bahu-Uddeshiya Vikas Sanstha, Nagpur and Others Vs. Diwakar s/o. Maloji Kamble and Others*,
(2013) 2 Mah.L.J. 804.

19. In conclusion, Mr. Apte submitted that the reports of the enquiry officer ought not to have been accepted, since the excessive punishment meted out was totally disproportionate. He has, therefore, submitted that the Labour Court had erred in upholding the dismissal of the petitioner under Regulation No.40(1). He submitted that the order of dismissal is, therefore, required to be set aside for all the aforesaid reasons. In view thereof, the Labour Court has not appreciated the damage caused to the petitioner's case by the enquiry officer's resistance in acceding to the reasonable request for change of the venue and for engagement of the Advocate.

20. It is submitted that the Labour Court has also omitted to consider the impropriety of the conduct of the petitioner. These aspects have also brought before the Labour Court, which intermittently observed, after considering all the submissions, that there were various counts on which the charges have been proved. That discipline is required to be observed as also responsible behavior in order to maintain social order and in the collective interest of the society at large. It was found that, on the face of the proven misconduct of the

petitioner, there were no extenuating circumstances, which will come to the petitioner's rescue and that the punishment imposed was not shockingly disproportionate. Mr. Apte submitted that the view taken by the Labour Court cannot be sustained on the basis of the enquiry reports.

21. On behalf of the respondents, the petition was opposed by Ms. Patankar. She pointed out that, although the enquiry was to begin in Mumbai from 2nd August 1993 till 21st December 1993, no hearing was held in Mumbai. The accident, that the petitioner suffered, took place on 1st August 1993. It was contended that the petitioner's contention and as canvassed by Mr. Apte that the petitioner could not attend enquiry on account of his accident, had no merit in view of the fact that the accident occurred on 2nd August 1993 and from 2nd August 1993 till 26th December 1993, the petitioner was on leave. He resumed on 27th December 1993. Furthermore, even in the Pune enquiry, no enquiry was conducted during 2nd August 1993 to 26th December 1993. Hence, for more than four months, no enquiry was conducted either in Mumbai or in Pune. Even at the Mumbai enquiry, the enquiry officer had made all efforts to make the petitioner comfortable.

22. In fact, the enquiry officer, who was a retired Judge of this court, has offered to hold the enquiry at his residence, in order to facilitate the petitioner to attend the enquiry. Moreover, it was submitted that a medical certificate

had been obtained by the petitioner himself and there is no reason for not attending the enquiry at Mumbai and much less due to his medical condition. It was further submitted that, there was no real threat to the petitioner's life, as sought to be made out, and that no complaint is made by the petitioner against the then Chief Administrative Officer, Mumbai. If there was such a serious threat to his life and limb, surely the petitioner, who was also an active member of the Union, would have instituted a police complaint. No complaint has been filed. Furthermore, the petitioner was paid travelling allowance and daily allowance for attending the enquiry, which was collected by him; yet the petitioner avoided attending the enquiry.

23. My attention was invited to paragraph No.18 of the impugned order of the Labour Court, which records that the request was made by the petitioner to the enquiry officer to permit him to engage an Advocate on the ground that the person who was desirous of assisting the petitioner, (alluding to Mr.Shirodkar), was also victimized. The enquiry officer declined the permission and the Labour Court had found that the enquiry officer was the appropriate person to decide whether or not the employee was to be permitted to engage an Advocate, after taking into consideration the service rules and regulations. He submitted that the request of the petitioner in his letter dated 25th February 1994, which I have adverted to, has also been considered by the Labour Court and all these aspects had been held against

the petitioner. It is submitted that, all the reasonable opportunities were provided to the petitioner, however, it appears that the petitioner was not interested in attending the enquiry. Reference was made to paragraph No.19 of the impugned award, wherein the Labour Court has observed that no reliance was placed on any specific regulation pertaining to the type of person, who can represent a delinquent-employee in an enquiry and that all the case laws submitted before the Labour Court were in relation to the complicated questions, where assistance was required. Moreover, the Labour Court had found that there was no material before it that would lead the court to conclude that the Management's representative was legally well trained or having vast experience in conducting the enquiries or representing in enquiry. The Labour Court had considered the decision in the case of Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi¹.

24. In the instant case, it was submitted that, Mr. Apte has not made reference to any specific rule or regulation. On the other hand, the Labour Court had observed that, even the affidavit filed by Mr. Subhash Shirodkar, dated 20th July 1991, would be of no avail until the deposition was tested in cross-examination. Mr. Shirodkar did not appear for cross-examination. Moreover, the management submitted that said Mr. Subhash Shirodkar has joined Lok Housing and Construction Limited on 1st July 1993 as a Deputy Manager (Legal), which fact is evidenced by the letter dated 3rd November

¹ 1993 1 CLR 253

2006 issued by M/s. Lok Housing and Construction Limited, and presently Mr. Shirodkar is working as a Senior Vice President (Land & Legal). Thus, it is submitted that there is no question of Mr. Shirodkar assisting the petitioner during the aforesaid enquiries. The Labour Court has accepted the plea of the Management that Mr. Shirodkar has left his job with the respondent-Corporation not due to harassment, but because he had good career prospects and there was no connection between the complaints of the petitioner and resignation of Mr. Shirodkar. The Labour Court also found that there is no material placed on record to show that the petitioner had attempted to engage any other employee to assist him. The Labour Court, therefore, concluded that there was no specific rule, which permitted the petitioner to defend himself through an Advocate in the domestic enquiry and that in the facts of the case, if the petitioner had been denied that facility, it could not be said to be in violation of the rules of natural justice. In that view of the matter, the Labour Court came to the conclusion that the decision of the Management could not be faulted.

25. In paragraph No.21, the Labour Court has observed that one of the grounds challenging the enquiry is that the venue was not shifted from Mumbai to Pune; although Mr. V.T. Chari, the enquiry officer, in respect of one of the charge-sheets, had shifted the enquiry proceedings from Mumbai to Pune, Justice Dighe (Retd.) did not shift the enquiry proceedings to Pune,

despite the management having not objected and this was suggested as an example of bias. Although the reason for inability to attend at Mumbai was the petitioner's health and threat to his life from Mr. Pawar, the then Chief Administrative Officer, in the cross-examination, the petitioner admitted that he had not made any complaint to the police about the threat. Furthermore, the petitioner had been paid travelling allowance and daily allowance to attend the enquiry at Mumbai, which he availed of. Although he denied that the large number of witnesses examined were in Mumbai, the enquiry report and proceedings before the enquiry officer demonstrate that the large number of witnesses are from Mumbai. The enquiry officer had, in the proceedings dated 1st March 1994, observed that the excuses given by the petitioner were palpably false. In that event, if the petitioner wished to hear the matter at Pune, the petitioner would have presented himself before the enquiry officer and made out a case, instead of repeatedly writing letters.

26. Although the Advocate for the petitioner had contended that, merely because the petitioner did not appear before Justice Dighe (Retd.), refusing the petitioner's request was not proper, because it was the convenience of the delinquent-employee, which had to be taken into account, the Labour Court observed that, generally, the enquiry is held either at the place where the workman is posted or at the head-office and if the enquiry is held at the head-office, the workman to be given travelling allowance to come to the

place of enquiry. If there is any request for change of venue of the enquiry, there must be cogent reason and in the present case, no complaint having been made of threat to his life was sufficient to conclude that there was no substance in the contention of the petitioner. There was also no cogent evidence to show that the petitioner was physically unable to travel, because he had obtained a fitness certificate and had actually resumed the duty during that period. No prejudice has been demonstrated in not having changed the venue of the enquiry. The Labour Court also concluded on the preponderance of the probability that it was unlikely that certain offensive representations attributed to the petitioner were made by his wife and his father and, therefore, he could not be held to be guilty, which this court found unacceptable, holding that the representations could not be made by the family members. Moreover, false and defamatory allegations were made against Mr. V.T. Chari, the enquiry officer, as well and the finding is to the effect that the representations and appeals allegedly made by the petitioner's wife and father were not made by them, but these were sent by the petitioner himself in the name of his wife and father.

27. The Labour Court declined to interfere with the finding arrived at by the enquiry officer. The Labour Court has also observed that merely because the examination-in-chief of the petitioner had gone unchallenged, it would not help in concluding that the charges were false. The standard of proof

required in a domestic enquiry is not absolute and a conclusion has to be drawn based on the preponderance of the probabilities in the enquiry before Mr. Chari at Pune. The Management had examined a large number of witnesses and the petitioner had availed of an opportunity to cross-examine them. The enquiry officer had, therefore, considered the evidence led by the petitioner and the evidence led by the Management and found no infirmity or illegality committed by the enquiry officer.

28. Apropos the allegation of motivation to dismiss the petitioner from the service inasmuch as all the charge-sheets were issued from time to time, but enquiries were conducted jointly for the purpose of ensuring punishment and to make it severe, the Labour Court found that the ground of defence is not correct. Whereas, Justice Dighe (Retd.) submitted the reports on 2nd November 1994. Mr. Chari filed his report on 17th November 1994 All enquiry reports were placed before the Labour Court and the findings of the enquiry officer were provided to the petitioner and he was given an opportunity to file his say. Therefore, there is no question of any ulterior motive.

29. In relation to the contention of the petitioner that he was espousing the cause of his colleague, as a trade union activist and that he had been victimized for his trade union activities, the Labour Court found that during his cross-examination, the petitioner had deposed that he would produce

documents to show that he was an office-bearer of the said Union. However, no document was produced and there was no material whatsoever on record to justify that the petitioner was an office-bearer of the said Union and, therefore, he has been victimized. On this ground also, the award holds against the petitioner.

30. I have heard both learned counsel at some length and with their assistance, I have been able to peruse the record and I am of the view that, the charges having been proved and all relating to indiscipline, there was no justification for interfering with the order passed by the Labour Court and, therefore, the impugned order, in my view, correctly holds that the order of dismissal of the petitioner was appropriate and could not be faulted.

31. That having been said, the Labour Court found that the order of forfeiture of the provident fund was completely unjustified and, therefore, the Labour Court had granted relief to the petitioner. While setting aside the order of forfeiture, the Labour Court has directed payment of provident fund amount, along with interest accrued upto the date of the order and future interest as well. There is no dispute that the amount of provident fund has not been paid. In that view of the matter, I am of the view that there is no justification to the challenge made to the impugned order and to the findings arrived at by the Labour Court in the award, which are based on the enquiry

reports. The enquiry reports have indicted the petitioner in no uncertain terms, after having considered all the material; although it was not for this court to re-appreciate evidence. What has to be seen is whether the due process had been followed and that the reasonable opportunity was given to the delinquent-employee to present his case. That has been done and I am satisfied that the contentions taken up by the petitioner to challenge the impugned order and the enquiry reports lacks merits; in particular, the allegation made against the enquiry officer in respect of the two enquiries in Mumbai.

32. The enquiry report reveals that, on 23rd April 1993, when the appeal commenced, the petitioner was present in person. He had received the relevant papers and had no grievance regarding framing of charges, except that he had pleaded not guilty. The management was lenient when certain applications were made against the respondent-Corporation in the Industrial Court, Pune, seeking stay of the proceedings in the enquiry. Thereafter, the trial started in the presence of the petitioner, but the petitioner was not diligent and did not remain present on any date. The enquiry officer has recorded that, to test the case of the petitioner, the enquiry was fixed at his residence; yet, the petitioner did not attend, leading the enquiry officer to believe that probably the petitioner wished to delay the enquiry proceedings by entering into correspondence. The enquiry officer has also found that,

although two enquiry reports in relation to the two charge-sheets were pending, a third charge-sheet dated 22nd February 1993 was also adjourned till the other trials get over. Chances were given to the petitioner cross-examine the Management's witnesses, but the opportunity was not availed of. The enquiry officer has dealt with in detail with the rules and regulations of the respondent-Corporation, in relation to which the petitioner was stated to be in breach. In short, nothing has been shown to lead me to conclude that the petitioner has been denied an appropriate opportunity of being heard.

33. In the case of *Ramesh Chandra (supra)*, reliance was placed on paragraph No.66 of the said Judgment, wherein the Supreme Court observed that if a retired Judge before his appointment as a Judge had acted as lawyer of any of the party the disciplinary authority should not engage as an enquiry officer, because the other party may allege bias against the enquiry officer and the reputation of the Judge may be at stake. In that case, the Delhi University was directed not to engage any retired Judge or any earlier counsel for University as an enquiry officer. The enquiry officer, being a retired Judge and if the presenting officer was experienced, it would be necessary to consider whether the application of the delinquent-employee, seeking permission to be represented through a legally trained and qualified lawyer, should be allowed or not. In this respect, the Supreme Court has adverted to its own decision in the case of *Port of Bombay Vs. Dilipkumar*

*Raghavendranath Nadkarni*², in which it observed that if in an enquiry he delinquent officer is pitted against a legally trained mind and if he seeks permission to appear through a legal practitioner, refusal to grant permission would amount to denial of a reasonable request to defend himself and principles of natural justice would be violated.

34. The Supreme Court also considered its own decision in the case of *J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd* and finally observed that a demand for assistance of a legal advisor should be liberally construed in such a case and where the enquiry officer was a retired Judge of the court or was a Legal Practitioner, denial of assistance to the charge-sheeted employee would be unfair. The fact situation here, however, is slightly different. In the case in hand, the petitioner did not attend the enquiry at all. In my view, in order to demonstrate that the petitioner was at disadvantage, being pitted against legally trained mind and before the enquiry officer, who was a retired Judge of this court, requires him to demonstrate that injustice was caused to him during the enquiry. In the present case, he merely wrote letters. He did not present himself for the enquiry. He ought to have presented himself for the enquiry and then it would have been clear whether or not he was at disadvantage.

35. I am of the view that the petitioner has failed to make out a case that he

2 (1983) 1 SCC 124

has been put to a disadvantage. Mere apprehension that he was at disadvantage for want of legal representation, in my view, would not amount to a case of denial of the rules of natural justice. The allegations in the charge-sheets were, admittedly, not of a serious complicated nature, which required a trained legal mind to deal with it. In any event, the law is also loaded against the petitioner in the case of *H.C. Sarin Vs. Union of India and Others*³, wherein the Supreme Court has held, in no uncertain terms, that the appellant was not entitled, as a matter of right, to have the services of any railway officer stationed in India to assist him in the conduct of his defence. He wanted an officer from India whereas the appellant was given a wide field of choice either to choose any railway official stationed in London or in the continent or some other personnel of the Indian High Commission in London. The accusations made against the appellant were not such that required any expert or special skill. In that view of the matter, it was felt that there is no violation of principles of natural justice in not making available to the appellant services of a person from India to conduct his defence.

36. Reliance was also placed on behalf of the petitioner on the Judgment of a Division Bench of this court in the case of *Wainganga Bahu-Uddeshiya Vikas Sanstha, Nagpur and Others Vs. Diwakar s/o. Maloji Kamble and Others*⁴, wherein this court has observed that the enquiry officer was under

³ 1976 LAB. I.C. 1128

⁴ 2012 SCC OnLine Bom 1414

an obligation to obtain consent from the delinquent and hear the management on the application for changing the venue. In that case, the venue was changed from Sadak-Arjuni to Nagpur. No reasons were given. In the present case, I find that number of witnesses being from Mumbai justified the conduct of the enquiry relating to those charge-sheets at Mumbai. Furthermore, the contention of the petitioner that both the parties should be heard prior to taking a decision of change of venue could not survive, since there was no change in the first place. As regards the enquiry conducted at Mumbai, the petitioner attended the said enquiry once and thereafter did not attend the enquiry for the reasons best known to him. The place of instance also loses significance in view of the fact that the charges in the instant case pertain to addressing of numerous letters and correspondence of objectionable nature. They are not necessarily the incidents, which took place in Pune or Kolhapur and the localized impact is on the communication addressed out of the place of residence or work of the petitioner, but in respect of that, the Management had to engage large number of witnesses to be deposed, all of whom were from Mumbai. In that view of the matter, I am of the view that the decision in the case of *Wainganga Bahu-Uddeshiya Vikas Sanstha, Nagpur (supra)* is of no assistance to Mr. Apte.

37. One other judgment Mr. Apte has relied upon is in the case of *S. Parthasarathi Vs. State of Andhra Pradesh*⁵, in which the aspect of bias has

⁵ (1974) 3 SCC 459

been dealt with. In *Parthasarathi* reliance was placed on the test of bias in a departmental enquiry and in that respect, the Supreme Court held that, there must be a “real likelihood” viz a substantial possibility of bias. The court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of his own business. In my view, even considering these aspects, the judgment will not come to the assistance of the petitioner, since nothing has been shown to the Labour Court or to me that the petitioner harboured a real apprehension or bias. He may have had a suspicion, but that does not translate to real likelihood or reasonable apprehension of bias. All possible opportunities were granted to the petitioner, as seen from the factual aspects of the case in hand and I am of the view that the judgment in the case of *S. Parthasarathi (supra)* in no manner strengthens the case of the petitioner.

38. In another Judgment of this court in the case of *Bank of Baroda and Another Vs. Virsen Santhram Pradhan and Another*⁶, the learned Single Judge of this Court, as he then was, has observed that unless the rules, regulations or settlement provide for the engagement of a lawyer, the workman cannot demand that he should be represented by a lawyer. Furthermore, if the charges were simple, the employer would be right in denying to the workman the right to be defended by a lawyer. In the case at hand it was not the case of the petitioner that the charges involved complex questions or that the rules allowed for a defence representative.

39. In the circumstances, it would be appropriate, in my view, to quote the

6 2001 (3) LLN. 960

extract from the Judgment of Lord Denning, Master of the Rolls, in the case of *R. v. Secy. of State for the Home Department ex parte Mughal*⁷ in which he stated thus :-

“The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke ‘the rules of natural justice’ so as to avoid the consequences.”

40. In the instant case, I do not find charges to be complex or complicated, so as to require expert legal assistance of a trained Advocate. In the case of *National Seeds Corporation Ltd. Vs. K.V. Rama Reddy*⁸, the Supreme Court observed thus in paragraph 4.

“4. In support of the appeal learned counsel for the appellant corporation submitted that the law relating to engagement of legal practitioner in a disciplinary proceeding is too well settled. The High Court accepted that there was no legal right to ask for engagement of a Legal Practitioner. Having accepted this legal position, the High Court erred in holding that disciplinary authority taking into account the factual scenario could permit engagement of legal practitioner.

41. In the case of *Harinarayan Srivastav Vs. United Commercial Bank and Another*⁹, the Supreme Court once again reiterated that the facts not being

⁷ (1973) 3 ALL ER 796

⁸ (2006) 11 SCC 645

⁹ 1997 II CLR 16

complicated and the presenting officer in that case not being a legally trained person, the assistance of an Advocate is not mandatory. The case was simple and the employee himself could have defended it. Denial of assistance in that case, which pertains to sanctioning of a loan for fictitious persons, and the enquiry which resulted did not justify the engagement of an Advocate.

42. Yet, again in the case of *Biecco Lawrie Ltd. and Another Vs. State of Weest Bengal and Another*¹⁰, the Supreme Court in the case of domestic enquiry, while dealing with the contention that failure to facilitate legal representation has caused violation of rules of natural justice, the court found that the enquiry officer had sent notices postponing dates of hearing various times with the intention of permitting the petitioner to present his case, but the petitioner did not attend the enquiry and thereafter the proceedings were heard ex-parte.

43. In *Crescent Dyes & Chemicals Ltd. Vs. Ram Naresh Tripathi*¹¹, the court once again observed in paragraph 16 that, a delinquent has no right to be represented through counsel or agent, unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. Furthermore, in *Crescent*

¹⁰ 2009 (4) LLN. 91

¹¹ 1993 1 CLR 253

(supra) the court held the right to legal representation through a lawyer or agent of choice may be restricted by a Standing Order also and it would amount to denial of natural justice.

44. Thus, taking an overall view, I have no hesitation in holding that the petitioner has not been diligent. All reasonable opportunities were available to him to defend himself and come clean in the enquiry proceedings. The petitioner has, for the reasons best known to him, attempted to evade the enquiry and has suffered the consequences. But, for the respite he has received from the award of the Labour Court denying forfeiture of his provident fund and interest thereon, no case was made out against the respondent-Corporation. However, the Labour Court has ensured that the justice has been done in the case and I find no reason to interfere with that decision of the Labour Court. In consequence, the challenge fails and I pass the following order :-

- (i) Petition is dismissed.
- (ii) No order as to costs.

(A.K. MENON, J.)