

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5119 OF 2018

Maharashtra State Electricity
Distribution Company Ltd. & Anr. .. Petitioners.
Vs.
Laxman Jagannath Babar .. Respondent.

Ms.Anjali R.Shiledar-Baxi for the Petitioners.
Mr.Meelan Topkar for the Respondent.

CORAM : A.K. MENON, J.

DATED : 6TH MARCH, 2019

P.C. :

1. By this writ petition, the petitioners challenge the judgment and order passed by the Industrial Court, Satara dated 29th September, 2016 by which the revision petition filed by the petitioners was dismissed and the judgment and order dated 10th April, 2014 passed by the Labour Court under Complaint (ULP) No.71 of 2007 stands confirmed.
2. The Labour Court by its judgment and order dated 10th April, 2014 held that the petitioners have engaged in unfair labour practices under Item No.1(b) of Schedule IV of the MRTU & PULP Act and directed the petitioners not to terminate services of the respondent herein on the basis of the domestic enquiry and final show cause notice.

3. Mrs.Baxi, learned counsel for the petitioners submitted that the impugned order is bad in law and that the respondent was caught red handed by the Anti Corruption Bureau and was arrested during his employment as Sub-Engineer in erstwhile Maharashtra State Electricity Board. The respondent superannuated on 31st May, 2013. As per Service Regulations the respondent was suspended on 21st October, 2006. A charge sheet was issued on 8th June, 2007 and the departmental enquiry was held and show cause notice issued on 7th November, 2007 proposing termination of employment.

4. The respondent meanwhile filed an application under section 30(2) of the MRTU & PULP Act to restrain the petitioner from terminating the services and declaring the enquiry illegal. The petitioners had denied allegation and contended that Anti Corruption Bureau, Satara had filed a complaint under section 7, 12, 13(1) of the Prevention of Corruption Act. An enquiry was conducted and charges were said to be proved. Although an appeal could have been preferred under the Service Regulations the respondent chose to file a complaint which was defended by the petitioners. A preliminary issue came to be framed as to whether the enquiry held by the petitioners was legal and valid. It was contended that the documents demanded by the respondent during the course of enquiry were not supplied. On the contrary, Mrs.Baxi submitted that all documents were provided although the Labour Court held that proper opportunity of representation

was not given to the respondent. Mrs.Baxi submitted that the respondent was required to inform the Enquiry Officer in advance the name of the representative who was to assist the respondent but this was not done and one of the names suggested by the respondent was a person who acted as enquiry officer against the respondent in earlier enquiry conducted for the management, therefore that name was rejected. Despite this, the Labour Court had held enquiry to be illegal.

5. According to Ms.Baxi the respondent in his oral evidence admitted that the Deputy Engineer has provided the documents annexed along with charge sheet and had also asked the respondent to provide names and addresses of the witnesses that the respondent propose to examine and the respondent participated in the enquiry on 18th October, 2007 and cross examined the management's witnesses. It is contended that the respondent was not workman and the respondent had admitted during the cross examination that he was empowered to write confidential reports of the Linesman, Assistant Linesman and Helpers and in that view of the matter, he could not have approached the Labour Court under the MRTU & PULP Act.

6. Ms.Baxi further submitted that the Court had come to the finding that services of the respondent could be protected despite pendency of criminal cases. However, later observed that he had been acquitted in the criminal case and after acquittal the petitioners had failed to produce any further evidence regarding misconduct. The Court in revision also proceeded

on the basis that the party had been acquitted. She further submitted that in view of supervisory nature of his duties the complaint was not maintainable.

7. Mr.Topkar, learned counsel on behalf of the respondent has opposed the application. Mr.Topkar supported the impugned order and submitted that it does not call for interference.

8. I have heard learned counsel for the parties and have perused the impugned orders. The order of the Labour Court has found in favour of the respondent inasmuch as the petitioners were found to have engaged in unfair labour practices and the respondent was entitled to permanent injunction. I find that the contentions now raised by Mrs.Baxi apropos the issue whether the respondent was workman or not has already been considered by the Labour Court. The petitioners' witness Mr.Rajaram Mane was examined. His evidence has been taken into consideration. The Labour Court relied upon cross examination which showed that the respondent was not authorised to appoint any person or dismiss any person. All that he could do, as evident from the documents produced, was that he could forward relevant communications in relation to the personnel referred, namely, Linesman and Assistant Linesman and Helpers. The respondent did not have authority to issue show cause notices in relation to services of those persons.

9. It was found by the Labour Court that the nature of duties of the respondent could not be treated as being in a supervisory capacity. The respondent has also deposed that the work assigned to him was of a technical,

skilled and clerical relating to surveys of new connections and taking meter readings of some consumers, preparing report and new connections and forward the same to the sub-division. Further, he was required to forward attendance reports, leave applications and other applications of the employees to the sub-division. No documentary evidence was however brought on record by the petitioners to show that the Linesman, Assistant Linesman and Helpers were working under the supervision of the respondent. It is in this background that the Labour Court decided in favour of the respondent while concluding that the petitioners herein had not established the fact that the respondent was not a workman but was engaged in a supervisory capacity. As far as preliminary issue is concerned, the domestic enquiry was found to be illegal since the allegations were not proved and the respondent was also acquitted in the criminal case under section 7 13(1)(d) read with 12(2) of the Prevention of Corruption Act, 1988.

10. In this background the issues were answered in favour of the respondent. The Court in revision has also upheld the order passed by the Labour Court. The only challenge in the revision was that the Labour Court had not considered the case in proper perspective and had drawn the wrong conclusions. The Supervisory nature of the respondent's duties were once again urged merely because the order of acquittal was subject matter of the appeal before the High Court. The Revisional Court did not find it necessary to interfere. The evidence has also been considered by the Court in revision.

The impugned orders to my mind are based on proper appreciation of evidence. Nothing has been shown to me to be perverse. It is not in dispute that the petitioners did not lead proper evidence to establish their case. This aspect has been reiterated by the Labour Court and apart from taking up submissions in written statements, no evidence is produced to show that the respondent was engaged in a supervisory capacity and that he was writing confidential reports. Furthermore, the enquiry was also found to be perverse. In this view of the matter, I am not persuaded to interfere in writ jurisdiction of this Court. Accordingly, I pass the following order :

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

(A.K. MENON,J.)