

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

WRIT PETITION NO.5104 OF 2017

M/s. Bansi Pulp & Paper Mills Pvt. Ltd. ... Petitioner

Versus

Sopan Krishna Pawar ... Respondent

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Mr. Sandeep S. Mutalik a/w. Mr. Sandeep Mahadik for the
petitioner.

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CORAM : M. S. KARNIK, J.

DATE : 9th APRIL, 2019.

P. C.:

1. Not on board. Taken on board.
2. Heard learned counsel for the petitioner.
3. By this Petition filed under Article 226 and 227 of the Constitution of India, the petitioner challenges the order passed by the Labour Court holding that the enquiry conducted against the respondent is not legal, proper and fair. The Court held that the findings recorded by the Enquiry Officer are ex-parte and not on merits of the enquiry, as also findings are perverse. This order of the Labour Court was challenged in Revision Application under Section 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred to as "the said Act" for short). The Industrial Court has

dismissed the Revision Application and confirmed the findings recorded by the Labour Court. Learned counsel for the petitioner submitted that the enquiry was conducted against the respondent in compliance with the principle of natural justice. The respondent was given proper opportunity to defend his case. He would submit that not only the respondent engaged an advocate to defend himself during the course of enquiry, but even in connected matter he has engaged services of an advocate. He would submit that there was deliberate attempt on the part of the respondent to delay the proceedings before the Enquiry Officer. In his submission, non-payment of subsistence allowance is the only ground taken by the respondent to contend that prejudice is caused to the workman during the course of the enquiry.

4. Learned Counsel for the petitioner, relied on the decision of the Apex Court in the case of **Indra Bhanu Gaur and Committee, Management of M.M. Degree College and other, reported in 2003,(99), EL.R., Page No. 1040**. He would submit that unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a cause to vitiate the proceedings in every case. According to him, it is to be specifically pleaded and established as to in what way

affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings.

5. Learned Counsel would submits that the Enquiry Officer in his report has taken into consideration all these aspects. According to him, no prejudice is shown and established. Mere non-payment of subsistence allowance cannot be a cause to vitiate the proceedings as in this case the workman was represented by an advocate.

6. None appears on behalf of respondent workman though he is served.

7. With the assistance of learned Counsel for the petitioner, I have gone through the findings recorded by the Labour Court as well as Industrial Court. The Labour Court for the reasons recorded has come to the conclusion that as a result of non-payment of subsistence allowance, prejudice is caused to the workman. In these circumstances, after giving proper reasons, the Labour Court came to the conclusion that the enquiry held against workman is not legal, fair and proper. The Revisional Court has thereafter come to the conclusion that the Labour

Court considered the facts and prejudice caused to the respondent workman and has rightly held that the enquiry conducted is not legal, fair and proper and that findings of the Enquiry Officer are perverse. The revision applications were dismissed accepting the reasoning of the Labour Court that due to non-payment of subsistence allowance to the employee as per law within time, petitioner could not engage an Advocate to defend his case on merit and ultimately, the Enquiry Officer closed the enquiry and recorded his findings. The Industrial Court has taken into consideration the settled principle of law that mere non-payment of subsistence allowance is not sufficient reason to vitiate the enquiry but while deciding this issue it has to be seen that due to non-payment of subsistence allowance what prejudice is caused to the delinquent employee to defend his case before the Enquiry Officer. Thus, both the Courts have concurrently found that though the respondent had engaged an Advocate who appeared before the Enquiry Officer once but subsequently he has not appeared. Due to non-appearance of the advocate the Managements witness was not cross-examined and the respondent workman failed to adduce his defence evidence. Though the respondent had filed an application before the Enquiry Officer for directions to pay him the subsistence

allowance but the Enquiry Officer failed to direct the Management to pay the subsistence allowance. The Industrial Court further held that the advocate did not appear due to non-payment of his legal fees. Due to non-payment of subsistence allowance the workman could not defend his case according to law. The Courts below in my opinion rightly came to the conclusion that the respondent was denied opportunity to defend his case by engaging an advocate as he was not paid the subsistence allowance.

8. In this view of the matter, if the courts below have come to the conclusion that respondent has established that prejudice was caused to him due to non-payment of subsistence allowance, the view does not appear to be perverse.

9. In this view of the matter, there is no reason to interfere with the concurrent findings recorded by the Courts.

10. The Writ Petition is therefore, dismissed.

(M. S. KARNIK, J.)