

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

WRIT PETITION NO.7278 OF 2004

Shri Prakash Porcelain Works	...	Petitioner
Versus		
Shri Yashwant Sawanta Bhandari		
And Others	...	Respondents

.....

None for the Petitioner.

Ms. Seema Sarnaik for Respondent Nos.1 to 3.

.....

CORAM : S.C. GUPTE, J.

DATE : 10 DECEMBER 2019

P. C. :

. Heard learned Counsel for the Respondent Nos.1 to 3. None appears for the Petitioner. This is an old writ petition. It is of the year 2004. The weekly list on which the petitioner appears was published on Friday, 6 December 2019. The Petitioner had sufficient notice. This court, in the premises, is not inclined to consider any adjournment or accommodation for the Petitioner.

2 The petition challenges two revisional orders passed by the Industrial Court at Sangli. The dispute concerns a disciplinary enquiry against Respondent Nos.1 to 3 herein and their suspension pending such enquiry. The first impugned revisional order, which

was passed on 22 January 2004, was on a revision arising out of an order passed by the Labour Court at Sangli during the pendency of a complaint of unfair labour practice made by Respondent Nos.1 to 3 before the court. At that stage, the Respondents, who were served with separate charge-sheets alleging misconduct on their part, had prayed for quashing of the charge-sheets and enquiry initiated in pursuance thereof. They also made an application for stay of the enquiry till the decision of the complaint. The charge against them was of willful absenteeism on 7 November 2002 and instigation of other employees of the Petitioner herein for a sit-down strike, which resulted in the employees omitting to work on the following day, i.e. 8 November 2012. During the pendency of their complaint before the Labour Court, the Respondents made an application for amendment of the complaint. The amendment application was allowed. The amended complaint took up a position that the enquiries were contrary to the principle of natural justice. At that stage, the Petitioner applied for permission to take disciplinary action against the Respondents. That application (Exhibit C-11) was allowed by the Labour Court, holding *inter alia* that nothing was pointed out by the complainant-employees as to why action should not be taken against them and that the Petitioner, as an employer, had every right to take disciplinary action against its employees in accordance with law. This order was challenged by the Respondents herein in a revision before the Industrial Court. The Industrial Court noted some important developments subsequent to the dictation of the order by the labour court on Exhibit C-11. (The order was dictated on 8 September 2003,

but was yet to be typed when the purported developments took place.) The complainant employees (Respondent Nos.1 to 3 herein) had made an application (Exhibit U-18) on same day to stay the order on the ground that they desired to challenge the same before the higher court. The labour court directed maintenance of *status quo* till the order was typed and signed. The following day was a holiday. The complainant employees, on the next date, i.e. 10 September 2003 (Exhibit U-19) applied for stay of execution of the impugned order. On this application, the Petitioner was directed not to take any action against the complainants till 16 September 2003. The complainant employees, thereafter, filed their revision application challenging the order of 8 September 2003. On these facts, the revisional court noticed that the Petitioner-employer had come with a mala fide plea that the services of the complainant employees were terminated by an order dated 9 September 2003. None of the complainants had received any termination order. In the premises, the revisional court observed that on perusal of the impugned order (i.e. the order of 8 September 2003), it was apparent that the labour court had neither considered nor discussed any of the multifold contentions raised by the complainants after amending their complaint. The court noted that the complainants had elaborately pleaded why no action should be taken against them on the basis of the enquiry reports. The revisional court found that there was no discussion in the impugned order regarding the complainants' objections in the amended complaint and that such non-consideration was an error apparent on the face of the record. The revisional court noted that the employer no doubt had the right

to take disciplinary action; but that, in the present case, he was directed not to take any further action. He then appeared to have made an application (Exhibit C-11) for permission. The court noted that it was not case of the employer that the earlier order directing not to take any further action on the enquiry report was illegal, as the same was not challenged. On the contrary, it was accepted and that was the reason why the employer made its application for permission (Exhibit C-11). In these circumstances, the revisional court noted that the trial court ought to have considered the objections of the complainants. The court noted that the complainants had raised about twelve pleas, by amending the complaint, in addition to their original pleas and these were neither considered nor discussed even *prima facie* in the impugned order by the labour court. In the premises, the court set aside the impugned order passed by the labour court below Exhibit C-11 and remanded Exhibit C-11 to the labour court for consideration afresh and in the light of its observations.

3 There is no infirmity to be found with the impugned order of the revisional court in connection with Exhibit C-11. The trial court was indeed expected to consider the complainants' objections to initiation of disciplinary action based on the enquiry report raised in the amended complaint and non consideration of such objections even on a *prima facie* footing clearly amounted to an error apparent calling for a remand by the revisional court. The conclusion of the revisional court is clearly a possible conclusion. It is supported by some evidence; it takes into account all relevant and germane circumstances

and materials; and does not consider any irrelevant or non-germane material or circumstance to arrive at the conclusion. There is, accordingly, no reason for this court, sitting in writ jurisdiction, to interfere with the revisional order.

4 The second order impugned in the present petition is the revisional order passed by the Industrial Court at Sangli on an application in connection with suspension allowance claimed by Respondent Nos.1 to 3 during their suspension with effect from 25 March 2003. It was not in dispute that the Respondents, who were original complainants before the labour court, had been under suspension from 25 March 2003 to 8 September 2003, on which date, the employer's application (Exhibit C-11) came to be allowed by the labour court as mentioned above. It was also not in dispute that the complainants had received suspension allowance for the earlier period of suspension, i.e. prior to 25 March 2003. The original complainants had moved an application (Exhibit U-8) on 7 April 2003 for getting further suspension allowance. The complainants filed another application (Exhibit U-17) on 21 August 2003, once again praying for suspension allowance from 25 March 2003 onwards. On 10 April 2004, the original complainants once again moved an application (Exhibit U-28) praying for suspension allowance not paid to them since 25 March 2003. The revisional court observed that the trial court had kept all three applications, i.e. Exhibits U-8, U-17 and U-28, filed by the complainants for getting suspension allowance, pending. The revisional court was of the view that the trial court

ought to have decided all three applications on merits and could not have kept them pending till decision on Exhibit C-11. (As we have noted above, the order passed by the trial court on Exhibit C-11 was itself set aside by the revisional court as noted above.) The revisional court, accordingly, set aside the order dated 5 June 2004 passed by the labour court on Exhibit U-28 and directed the labour court to decide the applications pending at Exhibit U-8, U-17 and U-28 independently and expeditiously on merits. The order of the Industrial Court cannot be faulted as either in breach of law or perverse. There was no dispute that the original complainants were under suspension, and if that was so, they were entitled to suspension allowance and non-payment of such allowance was an independent cause, that is to say, independent of the employer's application to seek permission for initiating disciplinary action against the complainants. There was no reason, therefore, to keep the employees' application for suspension allowance pending during the pendency of the employer's application for permission. The revisional order does not merit any interference. Even otherwise, if the industrial court, in its revisional jurisdiction, merely directs the trial court, namely, the labour court, to decide three pending applications for suspension allowance on merits, there is no reason why, on these facts, this court, exercising jurisdiction under Articles 226 or 227 of the Constitution of India, should interfere with such order.

5 Accordingly, there is no merit in the challenge to either of the two revisional orders passed by the Industrial Court. The writ petition is, accordingly, dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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by Rajesh V.
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