

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

LETTERS PATENT APPEAL NO. 333 OF 2007
IN
WRIT PETITION NO. 5431 OF 2007

Ms. Shakuntala T. Nikalje

.. Appellant

Vs.

M/s. Dalal Mott MacDonald Pvt. Ltd. & Ors.

.. Respondents

Mr. V. P. Patil for the Appellant.

Mr. V. N. Tayade for Respondent No.1.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATE : 8th NOVEMBER, 2019.

P. C. :

1. Dismissing the LPA filed by the Appellant, today we recorded the order as under:

“1. Heard learned Counsel for the parties.

2. The impugned order dated 18.10.2006 reads as under:

“Undisputedly, the Labour Court in the Complaint (ULP) No.511 of 1994 by order dated 24th April, 2001 had held that the inquiry conducted by the respondents was legal, fair and proper, and the findings of the Inquiry Officer were not perverse. The said findings have not been challenged by the petitioner. In the circumstances, once the charges

have been proved and the inquiry has been conducted properly without any violation of the basic principles of natural justice and the findings of the Inquiry Officer were not perverse, no fault can be found with the punishment imposed against the petitioner for dismissal from the service, particularly taking note of the nature of the misconduct proved against her. Being so, in some other cases, merely because the management has taken some lenient view, that itself does not give rise to right in favour of the petitioner to contend that the petitioner also should be meted with the same punishment.

2. As no other point is canvassed in the matter, there is no case for interference in the impugned order, and the petition fails and is dismissed.”

3. Concededly, before the learned Single Judge the findings returned by the enquiry officer were not questioned nor was the report submitted by the enquiry officer. The only contention advanced before the learned Single Judge was that some employees who were charge-sheeted were allowed to be voluntarily retired.

4. Now, this took place when the charge-sheet was issued and the Appellant could have also sought voluntary retirement.

5. Suffice it to state, if some employees sought to be voluntarily retired, and their offer was accepted, other

charge-sheet employees who did not seek voluntary retirement cannot question the penalty imposed on the ground that some were permitted to be voluntarily retired.

6. The second contention advanced is that two other similarly situated employees were permitted to be voluntarily retired post penalty levied.

7. The Appellant did not make any such offer, meaning thereby, the Appellant wanted to litigate.

8. We find no infirmity in the impugned order.

9. The Appeal is dismissed.”

2. Challenge in the instant Appeal to an order dated 27.08.2007 passed by the learned Single Judge which reads as under:

“1. This petition challenges the Award Part-I passed by the Labour Court in Complaint (ULP) No. 511 of 1994. The Labour Court had, by a common order passed on 24.4.2001 decided Complaint (ULP) Nos. 287 of 1994, 511 of 1994 and 165 of 1995 and held that the enquiry held against the complainants was fair and proper and the findings recorded were not perverse. Revision applications filed by the petitioner and the other workmen were dismissed. The petitioner did not challenge these orders i.e. of the Labour Court dated 24.4.2001 and the Industrial Court dated 23.7.2002 when she challenged the final order in the complaint. The final order was challenged by filing Writ Petition No. 6986 of 2006. The writ petition was rejected on 18.10.2006. The petitioner has now sought to challenge

the orders concluding that the enquiry was fair and proper and that the findings were not perverse.

2. In my opinion, the petitioner cannot challenge these orders of the Labour Court and the Industrial Court when the final orders have already been passed in the complaint and the challenge to the final order has been rejected. Although in Writ Petition Nos. 2689 of 2002 and 1172 of 2002 this Court had given liberty to the petitioner to challenge the preliminary orders when final orders were passed, the petitioner chose not to do so when Writ Petition No. 6986 of 2006 was filed.

3. In such circumstances, no relief can be granted to the petitioner.

4. Petition rejected.”

3. Suffice it to state the Appellant is indulging in voyagerism. She could not have challenged the interim orders passed by the Industrial Fora by a separate Writ Petition. She has to challenge the same in the Writ Petition filed challenging her service being terminated. The second Writ Petition, order whereof has been challenged in the instant Appeal, has rightly held the Writ Petition to be not maintainable.

4. The Appeal is accordingly dismissed.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

Digitally signed
by Arjun M.
Kadam
Date:
2019.11.13
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