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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 656 OF 2018**

Ganesh Ramchandra Pimparikar

.....Petitioner

V/s.

The Indian Card Clothing Co. Ltd.

.....Respondent

Mr. Dilip. B. Shinde for the Petitioner

Mr. Varun Joshi i/b Mr. Chetan Alai for respondent no. 1

CORAM : NITIN W. SAMBRE, J.**DATE : JULY 23, 2019.****P.C.**

Heard respective learned counsel. As prayed for by the respective learned counsel for the parties, petition is taken up for final disposal at admission stage.

2 Case of the petitioner is, he having been appointed with respondent in 1974, pursuant to disciplinary proceedings, his services were terminated which order was subject matter of

challenge in Complaint (ULP) No. 5 of 2001, which came to be dismissed by the learned Labour Court, Pune on 22/09/2008. Said order was confirmed in Revision Application No. 84 of 2008 by the Industrial Court vide order dated 09/06/2015. As such, this petition.

3 The submissions of the learned counsel for the petitioner are, orders impugned including that of disciplinary inquiry against the petitioner are not sustainable, particularly when same are contrary to evidence which was placed on record by the petitioner. The petitioner so as to substantiate his contention has invited attention of this Court to various complaints which are preferred against him by the Competent Authority. According to him, in all these complaints, nature of allegations are, petitioner has refused to operate the second machine inspite of instructions to that effect given to him and same was taken to be as insubordination.

4 He submits that complaints moved by the petitioner to his superiors about his victimization by the supervisor and other officers

who are members of the recognized Union about not permitting him to work on second machine was not taken cognizance of. The learned counsel then would invite attention of this Court to the fact that in 1995, a settlement was entered into between recognized Union and the Management in respect of production and by virtue of said settlement, each operator like the petitioner was required to operate two machines. According to him, petitioner was not a member of said recognized Union and that being so, respondent-Management and the recognized Union had victimized him. According to him, complaint (ULP) No. 535 of 1996 preferred by the petitioner against the respondent-employer and the recognized Union questioning action of recognized Union has prompted the Union and the respondent-employer to victimize him. He would then urge that two of the employees of the company are granted benefit of promotion so as to victimize the petitioner which fact was also ignored by all the Authorities.

5 Considering the complaints which were made by these two employees, according to him, petitioner was charge-sheeted after

having resisted show cause notice dated 23/04/1997. An inquiry was conducted and before Inquiry Officer, an application was moved by the petitioner for issuance of witness summons to certain employees so as to examine them as witness of the petitioner which application according to petitioner was not decided.

6 The learned counsel submits that during inquiry, charges against the petitioner were claimed to have been proved and accordingly, order of dismissal came to be passed on 14/10/2000. In the aforesaid background, submissions of the learned counsel for the petitioner are, the orders impugned are not sustainable and are liable to be quashed and set aside.

7 While resisting the above submissions, the learned counsel for the respondent-employer would invite attention of this Court to the service record of the present petitioner which reads thus:

Date	Charges	Type of Punishment
May 1989	1. Wilful subordination	Severely warned
	2. Going on illegal strike	
	3. Acts subversive of discipline	

July 1989	1. Wilful insubordination	2 days suspension
	2. Going on illegal strike, instigation thereof acts subversive of discipline	
	3. Habitual neglect of work or Gross negligence	
September 1989	1. Going on illegal strike	Severely warned
	2. Acts subversive of discipline	
July 1990	1. Habitual Absenteeism	Severely warned
	2. Acts subversive of discipline.	
February 90	1. Habitual absence without leave	Warned
May 1993	1. Negligence of work	Warned
May 1994	1. Non achievement of MGP	Advisory Note
	2. Habitual negligence of work	
	3. Missing from work place	
	4. Disobedience	
October 1996	1. Wilful showing down in performance of work	2 days suspension
	2. Act subversive of discipline	
December 96	1. Wilful insubordination	Warned
	2. Act subversive of discipline	

8 According to him, the learned Court framed issues at Exhibit 'O-8' out of issue no. 2 as regards fairness of inquiry was heard and decided as preliminary issue and vide order dated 11/10/2007, it

was declared by the learned Labour Court that inquiry was fair and proper. According to him, against the said order dated 11/10/2017, petitioner has not raised any challenge at the relevant time and that being so, challenge in the petition cannot be raised to the inquiry proceedings being unfair. The learned counsel then would urge that after charge-sheet was served on the petitioner on 19/04/1997, petitioner was suspended and he was charged with insubordination and serious misconduct. According to him, Labour Court and Industrial Court have appreciated the nature of inquiry charged against the petitioner and rejected the complaint preferred by the petitioner of unfair labour practices. In the wake of above, according to learned counsel for respondent-employer, as concurrent findings are recorded against the petitioner, this Court should be slow in causing interference. As such, dismissal is sought.

9 Considered rival submissions.

10 After petitioner was suspended on 19/04/1997, he was charged with misconduct under clauses 24(a) 24(c) 24(k) & 24(l) of

the Model Standing Orders, as, on 13th April 1997, 14th April 1997 and 15th April 1997, petitioner has refused to obey the orders of superiors to work on machine nos. F-1, F-2 & F-3.

11 According to petitioner, inquiry held against the petitioner was not fair and proper as Management i.e. Union members namely D.L. More & K. S. Salgarkar has victimized the petitioner. If the Judgments of both the Courts below is appreciated, it is noticed that said issues are concurrently held against the petitioner, as he has failed to discharge the burden.

12 The aforesaid contentions and the submission that witnesses of the petitioner were not summoned for recording evidence is concerned, once the Labour Court has recorded finding on the preliminary issue as regards fairness and properness of the inquiry on 11/10/2007. It was incumbent on the petitioner to raise the challenge to the same. As a consequence of not raising a challenge to the order dated 11/10/2007 in this petition, it has to be inferred that the petitioner has given up the said issue. Hence, in my

opinion, the said issue is not open for challenge to the petitioner in the present petition.

13 Apart from above, the learned Labour Court and Industrial Court, both have appreciated all the contentions raised by the petitioner. It was noticed that the petitioner, even if is not member of the recognized Union, still it is brought on record that the petitioner has intentionally disobeyed the orders of the superior officers and his go-slow attitude has resulted into less production and financial loss to the respondent. The said fact is specifically proved by the respondent-employer through documentary evidence. It is also required to be noted that production given by the petitioner at same salary, as that of other employees is almost 1/3rd of production by that of other employees who were drawing similar salary.

14 The learned Industrial Court in its Revisional Jurisdiction has reconsidered the entire issue and noticed that the order passed by the Labour Court is after considering all the facets and that being so, dismissed the Revision of the petitioner.

15 In the wake of aforesaid findings and the fact that there are concurrent view expressed against the petitioner by the Labour Court and Industrial Court, no interference is warranted.

16 Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]