

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3977 OF 2017

Ramchandra Bapurao Salave ..Petitioner
vs.
M/s. Rathi Transpower Pvt. Ltd. ..Respondent

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Shri Vaibhav R. Gaikwad I/b. Shri K.D. Bhosale for petitioner.
Shri Mayur Joglekar I/b. D.H. Bhanage for respondent.

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CORAM : M.S.KARNIK, J.

DATE : 3rd APRIL, 2019

P.C. :

Rule. Rule is made returnable forthwith by consent of the parties and heard finally.

2. The petitioner – an employee of the respondent who was dismissed from service by order dated 9th March, 2011 has moved before this Court under Article 226 and 227 of the Constitution of India, challenging the order dated 7th September, 2016 passed by the Labour Court, Pune.

3. Learned Counsel for the petitioner invited my attention to the statement of claim which is at page 19 of the

paper-book. In the statement of claim, in paragraph 4, it is stated by the employee that the dismissal order is completely illegal. He would submit that the enquiry conducted is not in accordance with the procedure established and no effective opportunity has been given to the petitioner during the course of the enquiry. According learned Counsel for the petitioner, enquiry proceeded ex parte and the dismissal order is completely in breach of the principles of natural justice.

4. Learned Counsel for the petitioner pointed out that initially the respondent did not file an appearance before the Labour Court despite service of notice of the Reference. However, later on they appeared on an application made, 'no written statement' order came to be set aside. Thereafter, written statement was filed by the respondent. Learned Counsel for the respondent invited my attention to the relevant portion of the written statement in paragraph 2(c) where the stand is taken by the respondent that though the enquiry was started, due to non co-operation of employee, it was impossible to

conduct the enquiry. The respondent therefore issued the punishment of dismissal by letter dated 9th March, 2011.

5. Relying on this plea of the respondent, learned Counsel for the petitioner would contend that having taken a stand in the written statement that there was an enquiry, which enquiry could not be completed due to non co-operation of the petitioner, the burden to prove that it was impossible to conduct the enquiry would shift on the respondent. He would submit that the issues which were recasted are not proper. Learned Counsel for the petitioner has objection to issue Nos. 1 and 4. He would submit that as the respondent had not filed written statement, the petitioner had already stepped into the witness box and completed his examination-in-chief. Now that the stand has been taken by respondent in written statement that there was no enquiry, therefore, it is necessary for the respondent to first lead the evidence.

6. On the other hand learned Counsel for the respondent invited my attention to the impugned order and

submitted that burden would always be on the petitioner as the Reference was at his instance. According to him, the respondent though had started the enquiry, but the enquiry could not be proceeded and it was impossible for them to complete the enquiry, therefore, the order of dismissal was passed. In this view of the matter, he would submit that the petitioner having been taken a stand in the statement of claim that the enquiry conducted is not fair, legal and proper and the burden to prove this will be on the petitioner.

7. Learned Counsel for the petitioner in support of his contention placed reliance on the decision of the Division Bench of this Court in the case of **Narang Latex and Dispersions Pvt. Ltd. vs. S.V. Suvarna & anr.** reported in **1995(1) LLJ 113.**

8. Heard learned Counsel for the parties.

9. It is not in dispute that in the statement of claim, the stand is taken by the workman that the enquiry conducted is not in accordance with the principles of natural justice and the proceedings are not fair, legal and proper. By filing the written

statement the respondent has stated that though enquiry proceedings commenced against the petitioner, however, it was impossible to complete the enquiry as a result of non cooperation on the part of the petitioner, hence they had no option but to pass the order of dismissal. This being the position, the burden to prove that the enquiry held against the petitioner is unfair, illegal and improper and not in accordance with principles of natural justice would obviously be on the petitioner.

10. The issue Nos.1 and 4 in respect of which the petitioner objects read thus :

ISSUES

1. Does the Second party prove that the enquiry held against him is legal, fair, proper and in accordance with the principles of natural justice ?
4. Whether the Second party is illegally terminated from service by the First Party ?

11. In my opinion, no error has been committed by the Labour Court in framing these issues. As it is at the instance of the petitioner that the Reference is initiated before the Labour

Court, the burden to prove his case would obviously be on the petitioner.

12. I have gone through the impugned order passed by the Labour Court. I find no reason to interfere with the order.

13. The Writ Petition stands dismissed and disposed of accordingly with no order as to costs.

14. Considering the fact that the workman is out of the employment since the year 2011 and reference is made in the year 2011, the Labour Court is requested to decide the Reference as expeditiously as possible and preferably within a period of nine months from today.

15. The parties undertake to co-operate with the Labour Court and submit that they would not seek unnecessary adjournments.

16. Rule is discharged.

(M.S.KARNIK, J.)