

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

WRIT PETITION NO.14240 OF 2018

Mrs.Deepali Swaroop Lagare

.. Petitioner

Vs.

The Kalyan Janata Sahakari Bank Ltd.

.. Respondent

Mr. Niketan Nakhwa for the petitioner.

Mr. Milind Joglekar a/w Rahul D. Oak for respondent.

CORAM : A.K. MENON, J.

DATED : 10TH JANUARY, 2019.

P.C. :

1. By this writ petition, the petitioner challenges judgment dated 28th November, 2018 passed by the Industrial Court in Revision Application no.110 of 2018. The challenge of the petitioner is based on improper consideration of evidence by the Labour Court which was called into question under revision.

2. The impugned order after considering the rival pleadings framed the following point of determination which is answered in the negative;

“(i) Whether the impugned order passed by Labour Court no.1, Kolhapur in Complaint (ULP)no.53/2018 below Exhibit U-2 dated 21st September, 2018 exhibits legal error apparent on the face of record and/or perverse findings to

interfere in my supervisory jurisdiction under Section 44 of the MRTU and PULP Act, 1971?"

3. The order proceeds to record that the petitioner was charge-sheeted and after considering the reply an enquiry was conducted. The petitioner participated in the enquiry. She appointed an Advocate as her defence representative. The respondent examined two witnesses who were cross examined by the petitioner. The petitioner was also given an opportunity to lead evidence however, she chose not to lead evidence and made only oral submissions.
4. On that basis, after considering the facts and the evidence as urged before the Industrial Court, the Industrial Court in the supervisory jurisdiction that it was exercising observed that nothing had been established so as to warrant interference in the revision which was therefore dismissed.
5. At the hearing today, the learned counsel for the petitioner has urged that sufficient opportunity was not given to present her case and that the material admissions made on behalf of the respondent in the cross examination on 19th March, 2018 had not been considered by the Labour Court and the Industrial court. He also submitted that the petitioner had been deprived of a proper hearing since the enquiry was closed on 30th May, 2018 on the basis of the defence representative telephonically informing the Enquiry Officer that he had been

informed that the petitioner had no further submissions to make and that she did not wish to lead any evidence. Thereupon the Enquiry Officer has directed the defence representative who was an Advocate to send a confirmatory communication to the Enquiry Officer by way of a whatsapp message. The Enquiry Officer has recorded in the minutes that a hard copy of the whatsapp message has been placed on record and having received such a communication from the defence representative who was admittedly acting on behalf of the petitioner, there was no scope for recording any further evidence or a further enquiry. Accordingly the enquiry was closed. This aspect which has not been challenged in the courts below.

6. In my view, it is not open for the petitioner to assail the order the basis that the enquiry was closed abruptly. Thus the petitioner had not availed of the opportunity for leading evidence to prove her innocence. Nothing has been shown to me perverse or illegal. In the circumstances, no interference is called for. I, therefore, pass the following order;
 - (i) Writ petition is dismissed.
 - (ii) No orders as to costs.

(A.K.MENON,J.)