

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3545/2019

Dhanraj M. Sarode & ors.

..VS..

Member, Industrial Court, Nagpur & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.V. Mohokar, Advocate for the petitioner(s)
Shri N.R. Patil, AGP for the respondent/State
Shri D.M. Kakani, Advocate for the respondent no. 3

CORAM : Z.A.HAQ, J.
DATED : 30/07/2019

Heard.

In the proceedings under Section 101 (2A) of the Maharashtra Industrial Relations Act, 1946 initiated on the application filed by the respondent no. 3 – employer, seeking permission to dismiss the petitioners – employees, after recording of evidence of two witnesses was over, the petitioners had filed the applications praying that Issue Nos. 1 and 2 be decided as preliminary issues. Issue Nos. 1 and 2 are as follows:-

“Issue No. 1 : Does applicant prove that enquiry conducted against the NA is legal, proper and in conformity with the provisions of Model Standing Order ?

Issue No. 2 : Does applicant prove that, the finding of enquiry officer are based on the material available in the enquiry and are not perverse ?”

The applications filed by the petitioners praying that Issue Nos. 1 and 2 be decided as preliminary issues came to be dismissed by the Labour Court. The petitioners had challenged the orders passed by the Labour Court before the Industrial Court in revision applications which are also dismissed by the impugned order.

Relying on the judgment given in the case of Delhi Cloth and General Mills Co. Ltd. vs. Ludh Budh Singh reported in AIR 1972 SC at page 1031 and the judgment given by the Division Bench of this Court in the case of Omkar Sitaram Rane vs. Maharashtra State Khadi and Village Industries Board, Bombay and others reported in 2003 (I) CLR 560 at page 560, it is argued that the procedure laid down for conducting the proceedings under the Industrial Disputes Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act is required to be followed for conducting the proceedings under the Maharashtra Industrial Relations Act.

The learned advocate for the respondent no. 3 – employer submitted that while considering the application filed by the employer under Section 101 (2A) of the Act of 1946, the Labour Court has to examine whether prima facie case is made out by the employer for terminating the services of the employee. To support the submission, reliance is placed on the judgment given by the learned Single Judge of this Court in the case of Bruhanmumbai Municipal Corporation vs. Hargovind G. Singh reported in 2004 LAB. I.C. at page 262, particularly para no. 6.

After going through the judgments cited by the advocate for the petitioners, I find that they are not directly on the issue which falls for consideration in this petition, and therefore they are not of any assistance to the petitioners. The

judgment relied upon by the advocate for the respondent no. 3 is directly on the point, and considering the proposition laid down in this judgment, I hold that the Labour Court, at this stage, is required to examine only prima facie, whether the employer has made out case for grant of permission to terminate the services of the employee/employees or not ? Even the advocate for the petitioners has not disputed that in case the application filed by the respondent no. 3 – employer under Section 101 (2A) of the Act of 1946 is allowed and the respondent no. 3 – employer is granted permission to terminate the services of the petitioners – employees, the petitioners – employees will be entitled to challenge the termination order before appropriate forum. It is further not disputed that in those subsequent proceedings, the petitioners – employees will have the opportunity to agitate the issue of legality and fairness of the enquiry. Examined from this angle also, it would not be proper to hold that at this stage, the Labour Court is required to examine in details the legality and fairness of the enquiry.

In view of the above, it cannot be said that the impugned orders suffer from any illegality or perversity or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE