

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

WRIT PETITION NO.696 OF 2019

(THE VIDARBHA PREMIER COOP. HSG. SOCIETY LTD....VS.. SAU. SUNITA DHANANJAY KATHIKAR
& OTH.)

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

Court's or Judge's orders

Shri R.B.Puranik, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 01, 2019.

Heard.

The respondent No.1/employee had filed complaint before the Labour Court under Section 28, Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 challenging the order by which she was dismissed from service. By order dated 15th February 2012, the Labour Court answered the preliminary issue regarding fairness of the departmental enquiry against the employer and granted opportunity to the employer to prove misconduct of the employee before the Court. After the trial, the Labour Court allowed the complaint filed by the employee holding that the employer had failed to prove the misconduct of the employee and that the punishment of dismissal was shockingly disproportionate. The Labour Court directed the employer to reinstate the employee with continuity of service and full back wages. This order was challenged by the employer before the Industrial Court in revision which is partly allowed by the impugned order. The Industrial Court has maintained the order passed by the Labour Court to the extent it directed

reinstatement of the employee with continuity of service, however, instead of full back wages the Industrial Court has directed the employer to pay 50% back wages. Being aggrieved in the matter, the employer has filed this petition.

With the assistance of the learned advocate for the petitioner, I have examined the record.

Various submissions are made on behalf of the petitioner. However, I find that the Labour Court as well as the Industrial Court have adverted to the relevant aspects. The Labour Court has summed up its conclusions in paragraph No.11 of its order as follows:

“11. The respondent failed to prove the misconduct and filed evidence closed pursis at Exh.207. Complainant filed the certified copy of judgment of Hon'ble Cooperative Court at Exh.146 and Hon'ble Cooperative Appellate Court at Exh.147. The judgment passed by both Courts in favour of complainant. I perused the record. It shows that the duty of Lower Division Clerk has no any power to pass the withdrawal of any account holder as per duty list at Exh.148 and 149. After verifying the ledger, if sufficient amount is available in the account then she used to forward the withdrawal slip and ledger to the passing officer. The Lower Division Clerk attested the thumb impression made by the account holders in her presence on withdrawal slip. From the evidence, it appears that, the specimen card of the account holder were in the custody of passing officer and that, the person carefully scrutinized and verified the thumb impression of account holder and compare with the specimen thumb impression/ signature and thereafter only remark 'pay cash' of withdrawal slip. Thereafter, the said ledger alongwith withdrawal slip directly forwarded to the Cashier and the Cashier called the said person and release the cash, hence the complainant only forward the withdrawal slip and

ledger book to the passing officer. The respondent has failed to prove the misconduct against the complainant. Counsel for complainant has placed reliance on the judgment in the case of *M/s. Glaxo Laboratories (I) Ltd., Vs. Presiding Officer, Labour Court, Meerut & Anr.* [(1984) Vo.1, SCC]. Hon'ble Lordship held that,

“Labour and services – Misconduct – One misconducts are specified in the standing orders, workmen cannot be punished on any other ground of misconduct – Industrial Employment (Standing Orders) Act, 1946, Section 3(2), Schedule, Item 9.”

With due respect, the present set of facts are applicable to this case.”

The Industrial Court has also examined the evidence/ material on record independently and has summed up its conclusion in paragraph No.7 of its order as follows:

“7. Considering the submissions, I perused the impugned judgment and order under challenge. The learned Labour Court on the issue No.1- whether the misconduct is proved has specifically held that the charge in respect of Mohd. Musheer is not proved. The learned Labour Court referred the admissions given by the witnesses of the respondent during their cross-examination. By admission it was brought on record that the withdrawal slip does not bear signature of the complainant as the person who obtained cash from Cashier as deposed by the witnesses i.e. the Cashier and the Assistant Manager. The Court has held that the Passing Officer was to verify the signature and order to pay cash to the Cashier. The complainant was not having power to pass or reject the withdrawal slip by verifying signature, thumb impression of the account holders. Thereupon the Court held that the respondent failed to prove that the complainant herself withdrawn amount as per the charges levelled against her. This finding can not be said to be perverse. This finding is based upon oral and documentary evidence. The oral evidence of the respondent's witness that the complainant herself

prepared withdrawal slip and told them that the respective customers are her relatives and on that basis she herself withdrew amount from Cashier seems to be after-thought story. It has no base in the charge-sheet or details of the charge-sheet attached with the charge-sheet. Signature of complainant is not on the withdrawal slip in the form that the Cashier paid amount to the complainant. The signature of the complainant appearing in the form of identification of thumb impression of the ladies who came at the counter. The complainant is with the case that there are about 5000 customers of the respondent. Therefore, she was not personally identifying the customers. As such it was duty of the Passing Officer to verify thumb impression or specimen signatures with the signature and thumb impression of the withdrawal slip and upon confirmation he was to direct to pay cash to the Cashier. The role of complainant seems to be to accept withdrawal slip, make entry in the register and forward to the Passing Officer. The statement of respondent's witness that they by believing words of the complainant paid her the amount on the basis of withdrawal slip is totally improved story. It is pertinent to note that the learned Labour Court has also taken cognizance of the dispute in the Co-operative Court against the complainant by respondent for recovery of the amount of Rs.1,17,700/-. The said dispute on merit stands dismissed. The appeal was filed. It was also dismissed. Thereafter, improved stand is taken during the de-nova trial. This Court is, therefore, of the view that the learned Labour Court has rightly held that the respondent failed to prove alleged misconduct.”

After examining the record, I find that the conclusions of the subordinate Courts are based on proper appreciation of the evidence on record. The petitioner/ employer has not been able to point out any perversity or illegality in the impugned order which necessitates interference by this Court in the extraordinary jurisdiction.

The writ petition is **dismissed**. No costs.

It is clarified that this order will not come in the way of the respondent No.1-employee in pursuing her claim for full back wages, if so advised.

JUDGE

RRaut..