

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3350 OF 2013

Godavari Khore Namdeoraoji Parjane
Patil Taluka Sahakari Doodh Utpadak
Sanstha Ltd., Kopargaon,
District Ahmednagar.
Through its Managing Director.

...PETITIONER

-VERSUS-

Arun Dada Tribhuwan,
Age : 42 years, Occupation : Labour,
R/o Yesgaon, Taluka: Kopargaon,
District Ahmednagar.

...RESPONDENT

WITH
CIVIL APPLICATION NO.1165 OF 2019
IN WP/3350/2013
WITH
CIVIL APPLICATION NO.8464 OF 2015
IN WP/3350/2013

Arun Dada Tribhuwan,
Age : 46 years, Occupation : Labour,
R/o Yesgaon, Taluka: Kopargaon,
District Ahmednagar.

...APPLICANT

-VERSUS-

Godavari Khore Namdeoraoji Parjane
Patil Taluka Sahakari Doodh Utpadak
Sanstha Ltd., Kopargaon,
District Ahmednagar.
Through its Managing Director.

...NON APPLICANT

WITH
WRIT PETITION NO.9058 OF 2013

Arun Dada Tribhuwan,
Age : 46 years, Occupation : Labour,
R/o Yesgaon, Taluka: Kopargaon,
District Ahmednagar.

...PETITIONER

-VERSUS-

Godavari Khore Namdeoraoji Parjane
Patil Taluka Sahakari Doodh Utpadak
Sanstha Ltd., Kopargaon,
District Ahmednagar.
Through its Managing Director.

...RESPONDENT

...
Advocate for the Employer/ Management : Shri Parag V. Barde
Advocate for the Employee : Shri V.P.Golewar h/f Shri A.R.Joshi
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th March, 2020

Oral Judgment :

1 Both these Writ Petitions have been taken up together as they take exception to the same judgment of the Industrial Court dated 14.03.2013 by which, the Industrial Court has partly allowed the Revision (ULP) No.86/2012 filed by the employer and has granted reinstatement with continuity and 50% back wages.

2 The undisputed factors in this case are as under :-

- (a) The employee was charge-sheeted and subjected to disciplinary proceeding.
- (b) Considering the charges proved against the employee, he was awarded the punishment of dismissal from service w.e.f. 10.03.2004.
- (c) The Labour Court dismissed Complaint (ULP) No.74/2004 by the judgment dated 10.08.2012.
- (d) The Labour Court concluded that the enquiry is fair and proper and the findings of the Enquiry Officer are fair and the punishment awarded is commensurate to the gravity and seriousness of the misconduct proved against the employee.
- (e) In the Revision (ULP) No.86/2012 filed by the employee, the Industrial Court sustained the part-1 order of the Labour Court dated 27.12.2010 by which, the enquiry was sustained and the findings of the Enquiry Officer were upheld.
- (f) However, without assigning reasons and without considering the law laid down by the Honourable Supreme Court in the matters of *Kumaon Mandal Vikas Nigam Ltd.. vs. Girja Shankar Pant and others*, 2001 (I) CLR 12 : (2001) 1 SCC 182 : AIR 2001 SC 24 and *Colour Chem Limited and others vs. A.L. Alaspurkar and others*, (Supreme Court) 1998 (I)

CLR 638, the Industrial Court interfered with the quantum of punishment and granted reinstatement with continuity of service and 50% back wages to the employee.

3 It is well settled that a court does not have jurisdiction to interfere with the quantum of punishment if it merely appears to be disproportionate. The crystallized position of law is that the judicial conscience of the court must be shocked and the punishment awarded must be shockingly disproportionate to the gravity and seriousness of the misconduct.

4 The charges proved against the employee were as regards allowing milk suppliers to supply inferior quality milk by disregarding the electronic milk test reports and thereby, indulging in dishonesty with the business of the employer. Consequentially, such inferior quality milk was supplied to the consumers and the employer noticed that 753 litres of milk was of inferior quality.

5 I have perused the Enquiry Officer's report in which, he has dealt with the available evidence and has considered various components that are to be considered as standard parameters while deciding the quality of milk and found that the employee had indulged in grave and serious acts.

6 Considering the law laid down by the learned Division Bench

of this Court, earlier, in *Colour Chem Limited and others vs. A.L. Alaspurkar and others, 1993 (III) LLJ 838* and the judgment of the Honourable Supreme Court in *Colour Chem (supra)*, unless the charge levelled upon an employee appears to be of a minor or technical character, item 1(g) of Schedule IV of the MRTU & PULP Act, 1971, would not be attracted. Needless to state, in the light of the crystallized position of law, the impugned judgment of the Industrial Court to the extent of granting reinstatement with continuity of service and 50% back wages, would not be sustainable.

7 I am, however, considering the subsequent events that have occurred by which, the employee has been reinstated in service under the orders of this Court. The payment of back wages has been stayed by this Court on the condition that the amount would be deposited in this Court. Rs.1,30,000/- have been deposited by the employer in this Court and the employee has been permitted to withdraw Rs.60,000/-. The employee is about 47 years of age.

8 The learned advocate for the management submits, on the basis of the evidence recorded in the proceedings below, that the employee has a grocery store in Yesgaon village, Taluka Kopargaon. It is further stated that he is busy in his shop and frequently remains absent.

9 The learned advocate for the employee submits that he is in dire need of regular employment and the shop that he was operating was

merely to support the family as his earnings were a meager Rs.2,300/- per month inclusive of HRA as in 2004.

10 Considering the above and the length of the litigation coupled with the age of the employee and the conclusion that I was arriving at in the light of the foregoing paragraphs, I called upon the learned advocates for the respective sides as to whether, they would agree to render a "quietus" to this litigation by permitting the employee to retain Rs.60,000/-, which is already withdrawn and continue in employment. The learned advocates for both the sides submit, on instructions from their respective clients present in the Court, that they are agreeable.

11 In view of the above, Writ Petition No.3350/2013 is partly allowed. The impugned judgment of the Industrial Court shall stand modified and the order of back wages shall be reduced only to the amount of Rs.60,000/- (Rupees Sixty Thousand) that the employee has already withdrawn. The employee would continue in employment in view of the impugned order. The residual amount of Rs.67170/- with accrued interest would be payable/refundable to the employer.

12 Shri Barde, learned advocate for the employer, submits on instructions that the employer would withdraw Rs.50,000/- (Rupees Fifty Thousand) and the residual amount of Rs.17170/- with accrued interest may be donated for a public cause like an orphanage.

13 In view of the above, the employer management would be at

liberty to withdraw the amount of Rs.50,000/- (Rupees Fifty Thousand) through an authorized representative under identification from the learned advocate. The residual amount of Rs.17170/- (Rupees Seventeen Thousand One Hundred Seventy) with accrued interest would be transmitted by the Registry of this Court to the orphanage home i.e. “Shantivan”, Arvi, Tq.Shirur Kasar, District Beed, in the name of “**Bhavani Vidhyarthi Kalyan Pratishthan, Arvi**” by way of electronic transfer (State Bank of India, Branch Shirur (Kasar), Account No.33446000963, IFSC Code : SBIN0005995) and shall report compliance.

14 Rule is partly made absolute in the above terms.

15 Consequentially, Writ Petition No.9058/2013 filed by the employee, would not survive and stands disposed off. Rule is discharged.

16 All the pending Civil Applications do not survive and stand disposed off.

17 It is made clear that the employee is now expected to be punctual and honest in his duties and in the event, the management notices any further misconduct committed by him, it shall be at liberty to resort to disciplinary proceedings and take a strict view in the matter.