

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

WRIT PETITION NO. 1702 OF 2019

- 1) Dr. G. M. Taori Central India Institute of Medical Sciences (earlier known as Central India Institute of Medical Sciences), 88/2, Bajaj Nagar, Nagpur – 10
Through its Dy. Administrative Officer
- 2) The Director,
Dr. G. M. Taori Central India Institute of Medical Sciences (earlier known as Central India Institute of Medical Sciences), 88/2, Bajaj Nagar, Nagpur – 10

.. PETITIONERS

...VERSUS...

Dilip Gajanan Khedikar
aged about 53 years, Occu.Service
R/o. Nayapura, Ward No.40,
Itwari Railway Station Road, Nagpur

.. RESPONDENT

Mr. N. S. Bhattad, counsel for petitioners.
Mr. V. D. Raut, counsel for sole respondent.

<u>CORAM</u>	<u>:-</u>	<u>MANISH PITALE J.</u>
<u>RESERVED ON</u>	<u>:-</u>	<u>07/12/2020</u>
<u>PRONOUNCED ON</u>	<u>:-</u>	<u>11/12/2020</u>

J U D G M E N T

Heard.

(2) **Rule.** Rule made returnable forthwith. The writ petition is heard finally with the consent of learned counsel for the rival parties.

(3) By this writ petition, the petitioners have approached this Court challenging judgment and order dated 02/01/2019 passed by the Industrial Court, Nagpur Bench, whereby revision petition filed by the sole respondent has been allowed. The judgment and order of the Labour Court has been set aside and the petitioners have been directed to reinstate the sole respondent with continuity of service and full back-wages, by quashing and setting aside order dated 04/06/1999 of dismissal from service passed by the petitioners against the sole respondent.

(4) The petitioner is a charitable trust, appearing through its Director, which runs an institute of specialized medical treatment in Neurology and other ailments in the city of Nagpur. The respondent was appointed as an attendant with the petitioner institute and later, in the year 1992, he was promoted as

Technician on an EEG Machine. The petitioners issued two charge-sheets against the respondent for misconducts, pursuant to which enquiry was conducted. One of the charges against the respondent was that on 16/07/1998 at about 04.00 p.m., he entered the office of the Administrative Officer of the petitioner institute/hospital and shouted, using abusive language in an aggressive manner, in respect of the Director of the petitioner institute, thereby disturbing the peace and tranquility of the petitioner institute.

(5) In the enquiry conducted against the respondent, oral and documentary evidence was led by the parties. While the petitioners examined members of the staff, as its witnesses to prove the charges against the respondent, he examined one witness i.e. a co-employee, in support of his defence. It was the case of the petitioner that the abusive behavior of the respondent clearly amounted to misconduct as defined in clauses 24(a), 24(k), and 24(l) of the Model Standing Orders, applicable to the petitioner institute. The respondent denied any wrong doing on his part.

(6) Upon evidence being led by the rival parties before the enquiry officer, the said enquiry culminated in report dated 20/03/1999. The enquiry officer arrived at findings against the respondent and it was specifically found that the respondent had indeed indulged in abusive behavior with use of filthy language against the Director of the petitioner institute, thereby committing misconduct as per the aforesaid clauses of the Model Standing Orders. On the basis of such findings, on 16/04/1999, a show-cause notice was issued to the respondent, as to why punishment of dismissal from service ought not to be imposed upon him. After the respondent submitted his reply, on 04/06/1999, the petitioners issued order against the respondent dismissing him from service.

(7) Aggrieved by the said action, the respondent filed complaint before the Labour Court at Nagpur on 10/05/1999, seeking a declaration that the charge-sheet issued against the respondent and the consequent order of dismissal from service dated 04/06/1999 amounted to an unfair labour practice under Item 1(a),(b),(d),(f) and (g) of Schedule – IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Act, 1971). On this basis it was

claimed that the charge-sheet as well as the order of dismissal from service deserved to be quashed and set aside. The petitioners filed their written statement opposing the contentions raised on behalf of the respondent. The Labour Court granted opportunity to the parties to lead evidence on the preliminary issues of fairness of enquiry and perversity of findings. Thereafter, on 11/01/2010, the Labour Court found that the enquiry was indeed fair and it was conducted in consonance with the principles of natural justice. On 29/11/2010, the Labour Court held that the finding in the enquiry report could not be said to be perverse. Thereafter, on 20/01/2010, the Labour Court passed its Judgment and order dismissing the complaint filed by the respondent.

(8) Aggrieved by the same, the respondent filed revision petition before the Industrial Court at Nagpur. By the impugned judgment and order dated 02/01/2019, the Industrial Court reversed the findings of the Labour Court. It was found that the orders passed by the Labour Court on the second preliminary issue regarding perversity and the final judgment and order dismissing the complaint of the respondent were unsustainable. Accordingly, the Industrial Court set aside the order, allowed the

complaint of the respondent, holding that the petitioners had engaged in unfair labour practice as per Item 1(a),(b) and (d) of Schedule – IV of the Act, 1971. Thereupon, the Industrial Court set aside the order of dismissal from service issued against the respondent and directed his reinstatement with continuity of service and full back-wages.

(9) Aggrieved by the said order of the Industrial Court, the petitioners approached this Court by filing the instant writ petition. On 05/03/2019, this Court issued notice and granted ad-interim stay of the impugned judgment and order of the Industrial Court, subject to the petitioners depositing amount of Rs.2 Lakhs in this Court. It is undisputed that the said amount was deposited by the petitioners in this Court. The respondent filed application for withdrawal of the said amount during pendency of the present writ petition. In this situation, this Court directed listing of the present writ petition for final disposal.

(10) Mr. S. N. Bhattad, learned counsel appearing for the petitioners submitted that the Industrial Court committed a grave error in passing the impugned judgment and order. It was submitted that the Industrial Court itself found that the findings

rendered by the Labour Court on the question of fairness of enquiry could not be interfered with, yet the said Court erroneously reversed the findings on the question of perversity of findings in the enquiry report, without appreciating the material on record in the correct perspective. It was submitted that on the charge against the respondent regarding abusive behavior and use of filthy language in the establishment of the petitioner institute, the Industrial Court did not specifically find that the charge was not proved and instead proceeded to hold that the words used by the respondent could not be said to be abusive, even if they were insulting and humiliating in nature. It was submitted that the Industrial Court committed a grave error in holding that the words used by the respondent in the context of Maharashtra, could not be said to be abusive. On this basis, the Industrial Court proceeded to hold that misconduct could not be said to have been committed by the respondent under clauses 24(k), and 24(l) of the Model Standing Orders. It was submitted that the exercise of the jurisdiction of the Industrial Court was absolutely unsustainable and that the reasoning in the impugned judgment and order did not justify interference with the findings rendered by the Labour Court against the respondent. The learned counsel for the petitioners placed reliance on judgments of this Court in

the case of **Balasaheb Ambadas vs. Indian Seamless**, 2014 (5) Mh.L.J. pg. 512 (Bombay SB), **Sahil Khan vs. Heshmat and Co.**, 2007 (1) Mh.L.J. pg. 249 (Bombay DB), **Premier Automobiles vs. HST Hedge**, 2006 (III) C.L.R. pg. 527 and judgment of Hon'ble Supreme Court in the case of **Bharat Forge vs. Uttam Manohar**, 2005 (2) S.C.C. pg. 489.

(11) On the other hand Mr. V. D. Raut, learned counsel appearing for the sole respondent submitted that a perusal of the impugned judgment and order of the Industrial Court would reveal that the Industrial Court in terms found that the Labour Court had failed to appreciate certain admissions on record and that the material on record was not appreciated in the correct perspective by the Labour Court while rendering findings in favour of the petitioners in respect of perversity of findings in the enquiry report. It was submitted that the material on record did indicate that the evidence was not sufficient to prove the charges levelled against the respondent and that therefore, the impugned judgment and order passed by the Industrial Court was justified. It was submitted that if the material on record was perused in the correct perspective, unfair labour practices as found in Item 1(a), (b) and (d) of Schedule – IV of the Act, 1971

was correctly found to be proved by the Industrial Court and that therefore, the present writ petition deserved to be dismissed.

(12) Heard learned counsel for the rival parties and perused the material on record. There is no dispute about the fact that the Model Standing Orders applied to the petitioner establishment. The relevant clauses of the Model Standing Orders for the present case in the context of misconduct are as follows :-

24(a) :- Willful insubordination or disobedience whether or not in combination with another of any lawful and reasonable order of a superior.

24(k) :- Riotous, disorderly or indecent behavior on the premises of the establishment.

24(l) :- Commission of any act subversive of discipline or good behavior on the premises of the establishment.

(13) It is claimed on behalf of the respondent that in the present case, the finding of the Industrial Court regarding unfair labour practices on the part of the petitioners under Item 1(a), (b) and (d) of Schedule – IV of the Act, 1971, was justified. Relevant portion of the aforesaid provision reads as follow :-

- “1. To discharge or dismiss employees –**
- (a) by way of victimization;**
 - (b) not in good faith, but in colourable exercise of employer’s rights;**
 - (d) for patently false reasons; ”**

(14) The material on record shows that the Labour Court gave a favourable finding in favour of the petitioners in respect of preliminary issue pertaining to the enquiry being fair and in consonance with the principles of natural justice. The impugned judgment and order passed by the Industrial Court has not interfered with the said finding and therefore, it becomes clear that the enquiry conducted against the respondent was fair and by following the principles of natural justice. In fact, the nature of evidence brought on record before the Labour Court clearly shows admissions on the part of the respondent that documents were served, opportunities were granted for leading oral and documentary evidence and that the enquiry officer proceeded in a manner that could certainly be said to be fair and proper. Therefore, there could not be any dispute about the said aspect of the matter.

(15) Since the Industrial Court in the impugned judgment and order has reached a finding that the Labour Court ought not to have held in favour of the petitioners regarding perversity of findings in the enquiry report, it becomes necessary to peruse the enquiry report and in that context, the nature of evidence placed on record by the rival parties during the course of the enquiry.

(16) In respect of the specific charge against the respondent regarding the incident dated 16/07/1998, the petitioners examined three witnesses i.e. Mr. Pendharkar, Administrative Officer in whose presence the respondent was alleged to have shouted in abusive and filthy language in respect of the Director of the petitioner institute, Mr. A. M. Munje and Smt. Uma Ramesh, members of the staff of the petitioner institute. The respondent on the other hand, examined only one witness i.e. co-employee Mr. Ravi Wankhede in support of his defence. According to the aforesaid witnesses who deposed in favour of the petitioners, the respondent specifically shouted in an aggressive and violent manner in the premises of the petitioner establishment that the Director was *Nalayak* and that he was a third class person who should be sacked from the institute immediately. It was

deposed by the said witnesses that despite the fact that one of them, the Administrative Officer, tried to pacify the respondent, he became aggressive while using the aforesaid filthy language, thereby, disturbing peace and tranquility of the petitioner institute/hospital. The said witnesses stuck to their version in the face of cross-examination. The record shows that the lone witness who appeared in support of the defence of the respondent stated in his evidence in cross-examination that he was not accompanying the respondent when the incident took place in the office of the Administrative Officer of the petitioner institute. He further admitted that it was not correct to say that the Director of the petitioner institute had misbehaved with the respondent, creating a situation of strike in the establishment. He further admitted and specifically deposed that the incident as mentioned in the charge-sheet was narrated by the respondent himself to the said witness. This was the nature of evidence on record with regard to the aforesaid specific incident regarding the behavior of the respondent.

(17) A perusal of the enquiry report dated 20/03/1999 would show that the aforesaid evidence has been examined in detail by the enquiry officer and findings have been

rendered against the respondent. The enquiry officer has found the evidence of the three witnesses of the petitioner institute as believable and it is found that the evidence of the lone witness of the respondent did not carry much substance, primarily for the reason that the said witness specifically admitted in cross-examination that he was not present with the respondent when the aforesaid incident dated 16/07/1998 took place. On this basis, the enquiry officer found that the incident dated 16/07/1998 stood proved, which amounted to misconduct under the above quoted Model Standing Orders.

(18) The Labour Court took into consideration the nature of evidence led by the rival parties before the enquiry officer and the findings rendered in the enquiry report in that context. The Labour Court found that sufficient evidence was indeed available on record to support the findings rendered in the enquiry report and therefore, it could not be said that such findings were perverse.

(19) The Industrial Court in the impugned judgment and order has reversed the aforesaid findings of the Labour Court and it has been held that the findings in the enquiry report against

the respondent ought to have been held to be perverse. A perusal of the impugned judgment and order shows that, according to the Industrial Court, the Labour Court had failed to consider material admissions and undisputed facts on record. A reference is made in paragraph 13 of the judgment and order that the Labour Court failed to take into consideration the material demonstrating there were certain complaints by lady employees against the Director of the petitioner institute, that one of the witnesses of the petitioner institute admitted that the respondent was working as a Technician, and that one Doctor examined by the petitioners had deposed against the petitioners during cross-examination. At another place in the impugned judgment and order, the Industrial Court found that a witness of the petitioners had stated in cross-examination that the respondent had not misbehaved with him. It is further recorded that there were admissions on record and material to indicate that while respondent was not being paid increased salary, another employee handling similar work was being given higher salary. It was also recorded that the behavior of the respondent and use of abusive language on 16/07/1998 was not in the presence of the Director of the petitioner institute, therefore, it was also a fact which ought to have been taken into consideration. Thus, from the reasons adopted by the Industrial

Court in the impugned judgment and order, it becomes clear that much emphasis has been placed by the Industrial Court erroneously on certain material on record, indicating that some witnesses did refer to alleged wrong doing by the Director of the petitioner institute.

(20) It also transpires from such material highlighted by the Industrial Court that there could have been certain grievances of some employees in respect of the functioning of the Director of the petitioner institute. But, there is not an iota of material referred to by the Industrial Court while holding that there was perversity in the finding rendered by the enquiry officer that incident dated 16/07/1998 indeed took place, in which the respondent did use the aforesaid filthy language in an aggressive manner in respect of the Director of the petitioner institute. There is no analysis in the impugned judgment and order of the Industrial Court in respect of the findings given by the Labour Court in this respect. Therefore, there was no substratum for the Industrial Court to have reached findings against conclusions rendered by the Labour Court and the findings on record in the enquiry report.

(21) In fact, the impugned judgment and order proceeds on the basis that such language was indeed used by the respondent in the incident that occurred on 16/07/1998. Thereupon, the Industrial Court seems to have found that in view of the manner in which the affairs of the petitioner institute were being conducted by the Director, such language could have been used and that in any case, it could not be said to be abusive even if it was insulting and humiliating. The Industrial Court in the impugned judgment and order has surprisingly held that the words used by the respondent could not be said to be abuses in Maharashtra. It is categorically held that since the respondent had not abused the Administrative Officer in whose presence such language was used, it could not amount to misconduct. It is further held that even if the respondent had uttered strong words in an aggressive manner, they did not amount to abuses and therefore, misconduct as defined in clauses 24(k) and 24(l) of the Model Standing Orders could not be said to have been committed by the respondent. The Industrial Court has rendered a positive finding that the respondent cannot be said to have acted in a manner subversive of good behavior. It is on this basis that the Industrial Court has held that the respondent was victimized, that the action of the petitioners was not in good faith and that the

respondent was dismissed for patently false reasons, thereby showing that unfair labour practice had been committed by the petitioners under Item 1(a), (b) and (d) of Schedule – IV of the Act, 1971.

(22) This Court is unable to appreciate the approach adopted by the Industrial Court in the impugned judgment and order. A perusal of clauses 24(k) and 24(l) of the Model Standing Orders would show that it would amount to misconduct if an employee indulged in disorderly or indecent behavior on the premises of the establishment and if he committed any act subversive of discipline or good behavior on the premises of the petitioner establishment. This Court finds that ample evidence was on record proving the incident that occurred on 16/07/1998 in the office of the Administrative Officer of the petitioner institute/establishment. The same was amply proved by the evidence on record and the respondent could not place on record any material to successfully deny the same. In fact, the enquiry officer analyzed the evidence in detail while reaching findings against the respondent on this aspect. The Labour Court also found that the respondent had indeed indulged in such behaviour. As noted above, the Industrial Court in the impugned judgment

and order has not dislodged the finding that the incident indeed occurred on 16/07/1998 in the manner as stated by the petitioners. The kind of words used by the respondent have been already noted by this Court. Therefore, the only question that remains is, as to whether use of such words would amount to misconduct under clauses 24(k) and 24(l) of the Model Standing Orders.

(23) In this regard the learned counsel for the petitioners is justified in relying upon judgments of this Court in the case of Balasaheb Ambadas vs. Indian Seamless (supra), Sahil Khan vs. Heshmat and Co. (supra), and Premier Automobiles vs. HST Hedge (supra). In these judgments, this Court had occasion to consider cases where foul language was used and employees had indulged in misbehavior similar to the one found to have been proved against the respondent in the present case. This Court has found that in such situations, misconduct was certainly proved under the aforesaid clauses 24(k) and 24(l) of the Model Standing Orders, amounting to serious misconduct, thereby inviting punishment of dismissal from service. In fact, this Court has specifically held that dismissal of an employee who is found to have indulged in such misconduct cannot be said to be a

disproportionate punishment. This Court finds that the ratio of the aforesaid judgments squarely applies to the facts of the present case, indicating the grave error committed by the Industrial Court in the impugned judgment and order, while holding in favour of the respondent.

(24) In fact, the learned counsel for the petitioners was justified in relying upon the judgment of Hon'ble Supreme Court in the case of *Bharat Forge vs. Uttam Manohar* (supra), wherein the extent of jurisdiction to be exercised by the Courts under the provisions of the Act of 1971, has been delineated. It is specifically laid down that jurisdiction is required to be exercised by the Courts under the Act of 1971 in terms of the provisions of the said statute and within four corners of the same. It is specifically held that compassion cannot be a ground for interfering with punishment imposed on an employee, who is found guilty of having committed serious misconduct. It is laid down that once the misconduct is found to be proved, the consequences must follow.

(25) A perusal of the impugned judgment and order shows that the Industrial Court completely misconstrued its

jurisdiction under the provisions of the Act, 1971, while interfering with the findings of the Labour Court. In fact, as noted above, the Industrial Court could not have held that despite the incident dated 16/07/1998 proved against the respondent, it did not amount to use of abusive language by him and that therefore, misconduct could not be said to have been committed under clauses 24(k) and 24(l) of the Model Standing Orders. It is surprising that the Industrial Court held that use of the aforesaid words by the respondent did not amount to abuses in Maharashtra. The Industrial Court was expected to analyze as to whether the use of the aforesaid words amounted to an act subversive of discipline or good behavior, as also disorderly or indecent behavior on the part of the respondent in the premises of the petitioner institute/establishment. The aforesaid clauses of the Model Standing Orders do not require use of abuses on the part of the employee to conclude that a misconduct was committed. The Industrial Court itself found that the words used by the respondent could be treated as insulting and humiliating and yet gave findings in favour of the respondent. The entire approach of the Industrial Court was vitiated and reference to some material on record regarding dissatisfaction of some employees in the petitioner institute against its Director, were

wholly irrelevant to the question of misconduct on the part of the respondent, as defined under the aforesaid clauses of the Model Standing Orders. Therefore, it is found that the impugned judgment and order is wholly unsustainable and it deserves to be set aside.

(26) In view of the above, the writ petition is allowed.

(27) The impugned judgment and order passed by the Industrial Court is quashed and set aside. Consequently, the order of the Labour Court dismissing the complaint of the respondent is upheld. As a result, the petitioners are permitted to withdraw the amount of Rs.2 Lakhs deposited in this Court along with accrued interest.

(28) Rule is made absolute in above terms.

JUDGE

KOLHE/PA.