

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

WRIT PETITION NO.5150/2016

Vardhan Syntax - presently Birla Cotsyn (India Ltd.), Khamgaon
..V/s..

Madhukar Ramchandra Badgular

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

Court's or Judge's orders

Shri M.I. Dhatriak, Advocate for the petitioner.
Shri A.A. Syed, Advocate for the respondent.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 6.1.2020.

1] The petitioner - management is aggrieved by the judgment and order dated 17.11.2015 delivered by the Industrial Court, Akola vide which the Revision ULP No.37/2008 filed by the original complainant workman has been allowed. The judgment of the Labour Court was quashed and set aside with a direction to frame two issues to be decided by a part I award of the Labour Court.

2] The learned Advocate for the petitioner has strenuously criticized the impugned judgment. He has drawn my attention to the three grounds formulated in the memo of the petition. Submission is that though the Labour Court did not specifically frame the issue as regards the fairness of the enquiry and the findings of the Enquiry Officer, they were dealt with by the Labour Court in the final judgment dated 18.8.2008.

Consequently, once the Labour Court has dealt with the two aspects, further remand for framing of two issues, is not necessary and is a futile exercise of seeking answers which are already available.

3] The learned Advocate for the original complainant has strenuously supported the impugned judgment.

4] It is informed that the petitioner factory is in liquidation from 2015. A Liquidator is, however, appointed on 24.9.2019. It is contended that due to the appointment of the Liquidator and the factory going into liquidation, there are no manufacturing activities and there is no question of reinstatement of the complainant in service.

5] The law of framing the following two issues is settled for the past more than 55 years; (i) does the workman prove that the enquiry is vitiated and (ii) does the workman prove that the findings of the Enquiry Officer are perverse.

6] The Hon'ble Apex Court, in the matter of *Workmen of Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Limited* [AIR 1965 SC 1803] held that once a challenge to the enquiry is posed, the above mentioned two issues have to be framed and the Court has to deal with the said issues by delivering

part I award. This law has been followed subsequently in the matters of the *Workmen of M/s Fire Stone Tyre and Rubber of India Private Ltd. Vs. the Management and others* [AIR 1973 SC 1227], *Bharat Forge Company Ltd. Vs. A.B.Zodge and another* [AIR 1996 SC 1556], *Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh* [1972 (1) SCC 595] and *Karnataka Road Transport Corporation Vs. Lakshmiddevamma* [AIR 2001 SC 2090].

7] It appears from the record that the Labour Court sustained the enquiry and has also upheld the findings of Enquiry Officer. This view, though should have been taken while delivering the part I order in Complaint ULP No.380/2004 (Old No.47/2000), the fact remains that the original complainant workman has not challenged the said conclusion. The Industrial Court has remitted the matter for framing of two issues. As the said two aspects have already been decided by the Labour Court and the complainant has not challenged the said two conclusions, it would be a futile exercise to direct the Labour Court to frame two issues when specifically answers to the said issues have already been delivered in the judgment of the Labour Court.

8] In the above backdrop, once the enquiry is sustained and the findings of the Enquiry Officer are upheld, only issue is as regards the proportionality of the punishment.

9] I called upon the learned Advocates representing the litigating sides as to whether this Court can proceed to resolve this dispute between the parties and put the litigation to an end by dealing with the issue of proportionality of the punishment awarded to the delinquent employee. As the learned Advocates stated that the petition may be considered on that aspect as well so as to bring the litigation to an end, I have perused the record available. The employee was proved to have remained unauthorizedly absent for 13 days in August 1999, for 14 days in December 1999, 8 days in October 1999 and 24 days in November 1999. It is proved that he had admitted that he was absent for the said period. The employee, however, submits that he is a T.B. patient and was unwell owing to which he could not attend duties.

10] In my view, the above period of absenteeism cannot be said to be so grave and serious so as to warrant the punishment of discharge from employment which is practically awarding the punishment of civil death to the employee. No doubt, the findings of the Enquiry Officer have been sustained and his absence for a period of 59 days, has been held to be unauthorized. However, an appropriate punishment can be awarded since punishment of discharge from service is shockingly disproportionate to the gravity and seriousness of the misconduct proved.

11] In view of the above, the order dated 17.11.2105 passed by the Industrial Court is modified. Revision ULP No.37/2008 stands partly allowed. Consequently, the original complainant workman shall be deprived of the back-wages from the date of discharge till the judgment of the Labour Court which is 18.8.2008. He would be entitled for reinstatement with continuity of service from 18.8.2008 without back-wages for the said period.

12] Since the learned Advocate for the management submits that a Liquidator has now been appointed on 24.9.2009 and considering the submission of the learned Advocate for the employee that he is about 59 years of age, the employer would consider the payment of wages from the date of the reinstatement.

13] If the employee has any grievance on this count, the remedy in law is left open.

(RAVINDRA V. GHUGE, J.)