

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

Writ Petition No.222 of 2019
Ashok Kalmegh Vs. Maharashtra State Power

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

Court's or Judge's orders

Mr. M.V. Mohokar, Advocate for the petitioner
Mr. R.E. Moharir, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JANUARY 22, 2020

By this writ petition, the petitioner has challenged order dated 28/05/2018, passed by the Labour Court, Nagpur under reference proceedings initiated at the behest of the petitioner.

2. The petitioner was appointed as Artisan-C with the respondent company. After about one year and four months of his appointment, on 20th July, 2011, order was passed terminating service of the petitioner. It was stated by the respondent that the company would be terminating service of the petitioner since it was found that ITI certificate on the basis of which the petitioner had claimed appointment, was found to be invalid. It was stated that process of verification was undertaken from the office of the Joint Director of the concerned regional office and it was reported that the said certificate was found to be invalid. On this basis, it was stated that since the petitioner had violated the declaration given by him in his application

seeking appointment that he would place on record correct information and in case the information was found to be incorrect, he will stand disqualified, the respondent company proceeded to terminate the service of the petitioner.

3. The petitioner applied under the provisions of the Industrial Disputes Act, 1947, for reference of the dispute that he sought to raise in respect of the said order issued by the respondent. Upon such application being made, the competent authority referred the dispute to the Labour Court. The petitioner filed his statement of claim, in response to which the respondent company filed its reply before the Labour Court. At this stage, the respondent moved an application before the Labour Court, seeking permission to lead evidence to support the facts and stand taken on their behalf in the reply, which led to termination of service of the petitioner.

4. By the impugned order the Labour Court allowed the said application and specifically directed that the respondent would be permitted to lead evidence to justify the order of termination of service dated 20th July, 2011.

5. Aggrieved by the said order, the petitioner filed the instant writ petition wherein notice was issued on 18/01/2019 and ad-interim stay was granted.

6. The learned counsel for the petitioner submitted that the impugned order deserved to be set aside because the respondents had not conducted any enquiry prior to issuing the said order of termination of service. It is submitted that in such a situation, the respondent should not be permitted to prove misconduct for the first time before the Labour Court. It was submitted that in reference proceedings before the Labour Court, the respondent could not be permitted to lead evidence in this manner because admittedly neither the petitioner was served with any show cause notice nor was he served with any chargesheet and admittedly, no enquiry was conducted prior to issuance of order of termination of service upon the respondent.

7. On the other hand, the learned counsel appearing for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in the case of **The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and others (1973) 1 SCC 813**, which is also mentioned in the impugned order passed by the Labour Court. It was submitted that as per settled law, which has been consistently followed, even in the case of no enquiry, opportunity is granted to employer to place on record material to justify the order of termination of service. On this basis, it was submitted that the writ petition deserved to be dismissed.

8. Heard the learned counsel for rival parties and perused the material on record. The only short question

that arises for consideration is, as to whether in the admitted position on facts that no enquiry was conducted by the respondent in the present case, it could be granted an opportunity to lead evidence and place on record material before the Labour Court for the first time to justify the reason for issuing order of termination of service.

9. The said question needs to be decided in the background of the admitted facts in the present case. The petitioner was appointed on the basis of his qualification manifested in the form of ITI certificate. It is the case of the respondent that when it verified from the concerned authority regarding genuineness of the said certificate, it was recorded that the said certificate was invalid. On this basis, the respondent proceeded to terminate the service of the petitioner by stating that he had violated the solemn declaration given in his application form that he would place on record correct information.

10. It is also an admitted position that no enquiry was conducted by the respondent before issuing the said order of termination of service. The law in this regard, which has been consistently followed states that in the case of defective enquiry or no enquiry prior to issuance of such orders of termination of service, the employer would have to satisfy the concerned Court or Tribunal on facts regarding the order of termination of service. In fact, defective enquiry has been equated with no enquiry and it has been held that in either case the Court can give

opportunity to the employer to place on record evidence and material to support the order of termination of service.

11. In the light of said settled position of law, when the impugned order is perused, it becomes clear that the Labour Court in the present case has not committed any error in allowing the application filed by the respondent. In fact, operative part of the impugned order reads as follows :

- “1. Application is hereby allowed.
2. Party no.1 is hereby permitted to lead evidence to justify termination order dated 20/07/2011.
3. Costs in cause.”

12. The manner in which the impugned order is passed clearly shows that the Labour Court is conscious of the position of law while permitting the respondent to lead evidence to justify the order of termination of service dated 20th July, 2011. Therefore, this Court finds that there is no substance in the contention raised on behalf of the petitioner that the respondent could not be permitted to lead evidence or place material before the Labour Court because no enquiry was conducted by the respondent before issuing order of termination of service. The contentions raised on behalf of the petitioner are in the teeth of the settled position of law and, therefore, they cannot be accepted.

13. In view of above, there is no merit in the present writ petition. Accordingly, it is dismissed.

14. Needless to say, any observations made by this Court while confirming the impugned order passed by the Labour Court shall not influence the said Court while considering the reference on merits.

JUDGE

MP Deshpande