

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

WRIT PETITION NO. 3000 OF 2019

Ganesh Prakashrao Kshirsagar, .. Petitioner
Age.35 years, Occ. Service,
R/o. Mukteshwar Shivappa Chavale Niwas,
subhash Nagar, Latur, Tq. & Dist. Latur.

Versus

ADM Agro Industries Latur & Vizag Pvt.Ltd.. Respondent
Gut No.75-86, MIDC Industrial Area,
Latur 43153.
(Through its Factory Manager)

WITH

WRIT PETITION NO. 3001 OF 2019

Achyut Baburao Pawar .. Petitioner
Age. 42 years, Occ. Service,
R/o. Vikas Nagar, Kallam Road,
Beside Railway Gate, Harangul (Bu)
Latur, Tq. & Dist. Latur.

Versus

ADM Agro Industries Latur & Vizag Pvt.Ltd.. Respondent
Gut No.75-86, MIDC Industrial Area,
Latur 43153.
(Through its Factory Manager)

Mr.Nitin L. Dhobale, Advocate for the petitioners.
Mr.Y.R. Marlapalle, Advocate for the respondent.

CORAM : N.J.JAMADAR, J.
DATED : 08.04.2021

ORAL JUDGMENT :-

01. Having regard to the limited issue involved in these petitions, which is of an identical nature, these petitions can be disposed of by a common order.

02. Rule. Rule made returnable forthwith and, with the consent of the learned Counsels for the parties, heard finally at the stage of admission.

03. Heard learned Counsel for the petitioners and learned Counsel for the respondent.

04. The facts in Writ Petition No.3000 of 2019 are taken as the representative facts.

05. The petitioner preferred a complaint before the Judge, Labour Court, Latur, being Complaint ULP No.45 of 2018 with an allegation that the respondent/employer is bent upon dismissing the petitioner from employment by

resorting to a disciplinary proceedings, which is conducted in gross violation of the principles of natural justice. The Enquiry Officer has not provided an effective opportunity of hearing. It is held that the petitioner is found guilty of the charges of misconduct, framed against the petitioner, without justifiable material. A second show cause notice came to be issued without proposing any punishment. The petitioner, thus, apprehended that the petitioner would be dismissed from service, the moment the petitioner gives reply to the second show cause notice.

06. The petitioner preferred an application for interim relief vide Exh.U-2. By an order dated 01.12.2018, the learned Judge, Labour Court was persuaded to temporarily restrain the respondent from terminating the services of the petitioner/complainant till further orders. From the perusal of the order passed by the learned Judge, it seems that the fact that the respondent employer has not proposed punishment in second show cause

notice weighed with the learned Judge in passing the interim order.

07. The respondent assailed the said order before the Industrial Court by preferring Revision Application No. 3 of 2019. By the impugned order, the learned Member, Industrial Court, Latur was persuaded to allow the revision and set aside the order passed by the Labour Court on 01.12.2018. The petitioner/complainant was directed to submit reply to the second show cause notice and the respondent/employer was directed to take a decision within a period of seven days of the receipt of the reply. Being aggrieved the petitioner is before this Court.

08. The learned Counsel for the petitioners would urge that there is material which justified the apprehension on the part of the petitioners herein that the respondent would terminate services of the petitioners by imposing major penalty though the charges

have not been duly proved by the legal evidence and the enquiry is not fair.

09. In the light of the view, which this Court is persuaded to take, it may not be appropriate to deal with aforesaid submissions. It would be suffice to note that a perusal of the order passed by the Labour Court would indicate that the fact that the second show cause notice did not contain the punishment proposed to be imposed primarily weighed with the Labour Judge. The Industrial Court, it seems, was justified in setting aside the order impugned before him as it is not the requirement of law that the employer is enjoined to propose the punishment in the second show cause notice.

10. Indisputably, pursuant to impugned order passed by the Industrial Court, the petitioners, in both the petitions, have submitted reply to the second show cause notice. It would, therefore, be in the fitness of things that the disciplinary authority considers the reply and

passes an appropriate order in the proceedings initiated against the petitioners.

11. In the aforesaid view of the matter, in my considered view, the interest of the petitioners can be adequately protected by directing the respondent not to give effect to the punishment, in case the respondent, after considering the reply to second show cause notice, decides to impose punishment on the petitioners, for a period of two weeks of the communication of such order, so as to facilitate the petitioners/complainants to assail the said order before the appropriate forum.

12. The learned Counsel for the respondent is not averse to the aforesaid proposition.

13. Hence, the petitions stand disposed of with the following directions :-

The respondent shall pass an appropriate order

after considering the replies filed by the petitioners to the second show cause notice.

In the event, the respondent imposes any penalty upon the petitioner(s), the same shall not be given effect to for a period of two weeks from the date of communication of said order(s) to the petitioner(s), to facilitate the petitioners to assail the same before the appropriate forum.

Rule made absolute in aforesaid terms.

No costs.

[N. J. JAMADAR, J.]