

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

WRIT PETITION NO. 9888 OF 2017

M/s Rubicon Formulations Pvt.Ltd.
Plot no.M-162/163, M.I.D.C. Waluj,
Aurangabad.
Through : Shri Ramswarup S/o Sriram Rajoria
Age 68 yrs, Occ : Business
R/o Aurangabad

.. PETITIONER

VERSUS

Sjri Raju Audumbar Lokhande
Age 38 years, Occ:Nil
R/o H.No.4250, Namdevnagar
Near Managalmurti Colony
Ranjangaon Fata, Po:Ghanegaon
MIDC, Waluj Aurangabad

.. RESPONDENT

....

Mr.S.S.Vidwauns ,Advocate for the petitioner
Mr. S.A.Ambad h/f PN.Muley, Advocate for respondent.

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CORAM : MANGESH S. PATIL, J.

**JUDGMENT RESERVED ON : 08.09.2021
JUDGMENT PRONOUNCED ON : 01.10.2021**

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocates for the respondents waive service. With the consent of both the

sides the matter is heard finally at the stage of admission.

2] Shortly stated the facts leading to the filing of this Writ Petition are as under :

The petitioner is a company having its factory at M.I.D.C. Waluj, Aurangabad and engages itself in manufacturing medicines and toilet preparations. The respondent was employed in the establishment in March 2001. Alleging that he had engaged in certain grave and serious misconduct the charge sheet (Exh.A) was served to him on 9/2/2012 and the Departmental Enquiry was initiated. He made several applications for appointment of his defence representative (Exh.B). His request to appoint one Shri Patil and Shri Hivrale as his defence representative was turned down by Enquiry Officer. He challenged that order by filing a complaint on 3/5/2012 bearing Complaint ULP No.37/2012. His application for interim relief was rejected by order dated 2/8/2012, however, he was permitted to engage any other office bearer of the Union of which he was a member other than Shri Patil and Shri Hivrale. Accordingly, he made such attempts by moving different applications on different dates and finally decided to defend his own cause by submitting an application dated 30/5/2012.

3] The Domestic Enquiry was completed. The Enquiry Officer submitted his report holding him guilty of all the charges of misconduct (Exh.D). The petitioner thereafter by order dated 10/09/2012 (Exh.E) dismissed him from the employment.

4] The respondent then questioned his dismissal by filing a Complaint (ULP No.85/2012) but the Labour Court refused him any interim relief by order dated 17/5/2013 (Exh.F).

5] The respondent then approached the Deputy Commissioner of Labour and raised an Industrial Dispute regarding his dismissal order. The Deputy Commissioner referred the Industrial Dispute to the Labour Court where it was registered as Reference (IDA No.01/2013). Both the sides filed their statements. The Labour Court framed issues and couple of those were tried as preliminary issues. By the impugned order it held that the Domestic Enquiry was not conducted by following the principles of natural justice on the ground, firstly, that the Enquiry Officer had not allowed the respondent to appoint Shri Hivrale as his defence representative and, secondly, he was not paid suspension allowance and both these facts had caused prejudice to him. Hence this Writ Petition.

6] The learned Advocate for the petitioner would submit that the record *ex facie* demonstrates as to how an opportunity to defend the cause was extended to the respondent. His request for appointment of Shri Hivrale was rejected on the ground that Shri Hivrale himself had indulged in misconduct. Charge No.11 was specific wherein the respondent alongwith Shri Hivrale had

allegedly assaulted petitioner's employee. He had also made an attempt by filing a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU and PULP Act, for short) by questioning the order of the Enquiry Officer refusing to grant him permission to appoint Shri Hivrale. The Labour Court permitted him to engage some other office bearer of the Union. Pursuant to such a direction he sought adjournments. He even decided to change the Union and appoint one Shri Jabhade of the other Union but again he failed to keep him present and finally by submitting application (Exh.52) he chose to defend his own cause and only solicited assistance during the course of the enquiry. He would therefore submit that the facts clearly reveal that sufficient opportunity was extended to him to defend his cause still, in the impugned order the learned Judge of the Labour Court has drawn inference about a prejudice having been caused to him without there being any material.

7] The learned Advocate for the petitioner would then submit that even the observation and conclusion drawn by the learned Judge of the Labour Court of reduction in subsistence allowance is perverse and arbitrary. In fact the Enquiry Officer had enhanced the subsistence allowance by resorting to the Model Standing Order No.25(5)(3). The Enquiry was not being completed within 90 days. He had specifically applied his mind and assigned reason as to why the respondent was entitled to 75% of the pay as subsistence allowance by pointing out that the respondent himself was at times responsible for adjournments. Further, assuming that the respondent was not paid subsistence allowance equivalent to his full salary, there was no reason for the learned Judge of the Labour Court to reach to a conclusion that it has caused serious prejudice to the respondent affecting the fate of the Domestic Enquiry. The

learned Advocate therefore, submits that the impugned judgment and order is perverse, arbitrary and capricious and needs to be interfered with by invoking the writ jurisdiction of this Court.

8] The learned Advocate for the respondent would submit that as has been pointed out in the impugned order, since the petitioner company is in a dominant position, it has played mischief by opposing appointment of Shri Hivrale as a Defence Representative. Since it was a serious matter involving bread and butter of the respondent, a fair opportunity ought to have been extended to him to defend his cause by engaging Shri Hivrale and no prejudice would have been caused to the petitioner. He is merely a Fitter who was made to defend his own cause whereas a Senior Officer of the petitioner was representing it during the Domestic Enquiry as a Management Representative. It was indeed a battle between a mighty company like the petitioner against a poor workman. Therefore, the learned Judge has taken a plausible view about a serious prejudice having been caused to the respondent because of refusal of permission to engage Shri Hivrale as his Defence Representative which has clearly breached the principles of natural justice.

9] The learned Advocate would then submit that since the Domestic Enquiry was not getting over within 90 days, the petitioner ought to have paid the respondent the entire salary and other allowance as a subsistence allowance as per the Model Standing Order No.25(5)(3). Failure to pay him such subsistence allowance has also been rightly held by the impugned order to have caused serious prejudice to him. There is no error or illegality in the impugned order.

10] I have carefully gone through the papers and considered the reasoning given in the impugned order as also the rival submissions.

11] Needless to state that at this juncture one need not enter into the dispute as regards the facts involving the charges which are 11 in number. Since it is an Industrial Dispute referred to the Labour Court for adjudication, suffice for the purpose to restrict the enquiry in respect of the grounds being upheld in the impugned order as demonstrating failure of principles of natural justice during the Domestic Enquiry.

12] The first ground which has found favour with the Labour Court is regarding refusal of permission to engage Shri Hivrale as a Defence Representative. At the cost of repetition it is necessary to observe that the Enquiry Officer had refused such permission for the specific reason that Shri Hivrale himself had indulged in misconduct. Charge No.11 specifically reads that on 8/2/2012 the respondent alongwith the Union representative Shri Patil and Shri Hivrale had assaulted Senior Officer of the company Shri Ravindra Deshmukh within the factory premises.

13] The matter had not ended there. The respondent had carried that issue before the Labour Court by filing a Complaint under the MRTU and PULP Act i.e. Complaint (ULP No.37/2012). By the order dated 3/5/2012, his application for interim relief was rejected and he was given an option to apply for engaging some other Defence Representative other than Shri Patil and Shri Hivrale. The record further reveals that pursuant to such opportunity he initially sought adjournment during the enquiry, then attempted to switch over to another Union and even proposed to engage the office bearer of that

Union. As can be seen from his several applications filed before the Enquiry Officer (Exhs.38,50 and 51) and Roznama of the relevant dates, no office bearer of his erstwhile Union was ready to come forward to defend him. Even his attempt to switch over to the other Union and engage an office bearer of that Union viz. Shri Jabhade did not bear fruits and ultimately he submitted application (Exh.52) and under his own hand informed that he would defend his own cause. It is pertinent to note in this respect that all such events had occurred over a span of 2 to 3 months which clearly demonstrates that he was given ample opportunity either to engage some different office bearer of his Union or to switch over to the other Union and engage office bearer of that Union and still he could not avail the opportunity. If such is the state of affairs, it cannot be said that no opportunity was extended to him to engage a Defence Representative.

14] Besides, neither before the Labour Court which passed the impugned order nor before me the respondent could demonstrate as to what prejudice, even otherwise, can be said to have been caused to him on refusal of permission to engage Shri Hivrale as his Defence Representative. Merely demonstrating that a permission was refused would not be sufficient. Unless such refusal has resulted in causing some prejudice to the respondent, no inference as regards failure of the principles of natural justice is deducible. In fact the learned Judge of the Labour Court in the impugned order also seems to be alive to such a legal position when he specifically observes in paragraph No.18 that there is no direct evidence as to what prejudice could be said to have been caused to the respondent and still has taken a frog's leap in the realm of conclusions in holding that such refusal has resulted in causing prejudice. The observation and the conclusion is clearly perverse, arbitrary

and illegal.

15] So far as failure to pay the subsistence allowance, as can be seen from the observation in impugned order in paragraph No.19, the observation is clearly perverse in holding that the subsistence allowance was reduced. In fact he has reproduced the entire note of the Enquiry Officer in Paragraph No.19 which clearly demonstrates that the Enquiry Officer specifically noted that inquiry was conducted on 22 days out of which 15 times the respondent had sought adjournment whereas the Management Representative had got the enquiry adjourned on 5 occasions. It was further observed that the respondent alone was not to be blamed for such adjournments which had resulted in extending the Domestic Enquiry beyond 90 days and consequently he was held to be entitled to get 75% of his salary including Dearness Allowance as subsistence allowance. One cannot comprehend as to how the learned Judge could infer that the subsistence allowance was reduced when in fact the respondent was found entitled to receive 75% of the total emoluments instead of 50% as subsistence allowance.

16] Surprisingly even in this respect i.e. issue regarding payment of subsistence allowance the learned Judge in paragraph No.21 was clearly alive to the fact that non payment of such subsistence allowance was not demonstrable to have resulted in causing any prejudice and still has jumped to the conclusion that he did.

17] To sum up, the observations and conclusions in the impugned order holding that the Domestic Enquiry was not conducted fairly and by adhering to the principles of natural justice is clearly perverse, arbitrary and capricious

and needs to be interfered with under the writ jurisdiction.

18] The Writ Petition is allowed. The impugned order is quashed and set aside. The Rule is made absolute in above terms.

[MANGESH S. PATIL, J.]

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