

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2215 OF 2019

Garware Marine Industries Limited
and another

... PETITIONERS

VERSUS

Ramchandra Vasantrao Aadkar

... RESPONDENT

.....
Shri Parag V. Barde, Advocate for petitioners
Shri S.R. Choukidar, Advocate for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 8th March, 2021

Date of pronouncing order : 10th June, 2021

ORDER :

The challenge in this Writ Petition is to the judgment and order on preliminary issue, dated 25/7/2018, passed by the Judge, IInd Labour Court, Ahmednagar in Reference (IDA) No.17/2015.

2. The petitioner No.2 is a Company incorporated under the Companies Act. The petitioner No.1 is a

manufacturing unit situated at Ahmednagar. The petitioners are hereinafter referred to as the Company. The respondent was a workman of the Company – employer. As such, there was employer – employee relationship between them. The respondent employee joined the service with the petitioner Company in November 1978. He was permanent employee on the post of Operator. In October 1996, the respondent was served with a charge sheet on account of his absence from duties for about 113 days in the year 1995-1996. A domestic enquiry was held against the respondent. The charge was proved against him and therefore, he came to be terminated from service on 27/12/1996. Aggrieved by his termination, the respondent raised a reference after 18 years. The conciliation proceedings failed. The Conciliation Officer, therefore, submitted his report to the Government, which in turn referred the dispute to the Labour Court. The petitioner Company appeared in the proceedings before the Labour Court. On hearing the petitioner and the respondent, the Learned Judge, Labour Court gave a finding on the preliminary issue, holding the enquiry conducted against the respondent to have been illegal, improper and against the principles of natural justice. The Labour Court also found the findings recorded by the enquiry officer to be perverse. The

petitioner Company has, therefore, preferred this Writ Petition.

3. Heard. Shri Parag V. Barde, learned counsel for the petitioner Company would submit that, the claim raised by the respondent employee was stale as he raised the reference 18 years after his termination from service. The charge sheet had in fact been served on the respondent employee. He has admitted the same in his statement of claim before the Labour Court. Still, the Labour Court has found the charge sheet to have not been served on the respondent employee. These observations are ex facie perverse. The respondent employee had appeared before the enquiry officer and admitted the charge. There was, therefore, no necessity to proceed with the enquiry. The petitioner Company, however, to be on safer side, went ahead with the enquiry. The respondent did not appear before the enquiry officer. The petitioner Company proved the charge against the respondent employee by producing necessary evidence. The learned counsel took me through the enquiry proceedings to ultimately submit that the finding recorded by the Labour Court do need to be interfered with.

4. Shri S.R. Choukidar, learned counsel for the respondent would, on the other hand, submit that, the respondent employee had never been served with the charge sheet. The petitioner Company was bent upon to ensure that the respondent employee was terminated from service. A fake enquiry was, therefore, conducted. The learned counsel took me through the reasons given by the Labour Court in support of the impugned order. According to the learned counsel, no interference is called for with the impugned judgment and order.

5. Admittedly, the respondent employee had joined the service with the petitioner Company way back in November 1978. He appears to have continuously served with the petitioner Company until 1996. There is prima facie nothing to indicate that his service record except one enquiry, was blemished. The respondent employee allegedly remained absent from duty for about 113 days during the year 1995-1996. He was, therefore, issued a charge sheet with a view to initiate a domestic enquiry against him. The respondent employee, in his statement of claim before the Labour Court, has specifically denied to have ever been served with the charge sheet. He also denied to have appeared before the

enquiry officer on 18/10/1996 and admitted the statement of imputation. The Labour Court, after having gone through the enquiry proceedings, found that the enquiry was not posted for 18/10/1996. The learned counsel for the petitioner Company also could not point out roznama of the proceedings to suggest that some proceedings did take place on 18/10/1996 before the enquiry officer.

6. I have gone through the enquiry proceedings to find that on 22/11/1996, the representative of the petitioner Company was present before the enquiry officer. His evidence was recorded. The same day he produced before the enquiry officer the record regarding absenteeism of the respondent employee. On the said date, the respondent employee was reported to be absent. The enquiry officer, therefore, concluded the enquiry and reserved the matter for his enquiry report. As such, it does appear that the enquiry officer did not offer the respondent employee a reasonable opportunity of hearing. The respondent employee was, therefore, justified in contending that the principles of natural justice have not been followed. The enquiry, therefore, vitiates.

7. It has also been averred by the respondent

employee that the enquiry officer was none other than a person of the petitioner Company. This statement appears to have not been traversed or proved to be wrong. The respondent has specifically denied to have ever appeared before the enquiry officer on 28/10/1996 and admitted the statement of charge. If this was the fact, the petitioner Company had no reason to proceed with the enquiry. Be that as it may, since the enquiry officer concluded the enquiry without giving the respondent employee a reasonable opportunity of hearing, the learned Judge of the Labour Court was justified in observing the finding recorded by the enquiry officer to be perverse.

8. The learned counsel for the petitioner Company has relied on the following two authorities :-

- (1) North West Karnataka Road Transport Corpn. Vs. H.H. Pujar [AIR 2008 SC 3060]
- (2) Divisional Controller, Maharashtra State Road Transport Corporation Vs. Bhushan Jagannathrao Bulbule [2018 (4) Bom.C.R. 497]

9. In case of H.H. Pujar (supra), a Conductor was found guilty of carrying ticketless passengers. Punishment of dismissal was, therefore, imposed. The delinquent therein

had conceded to the fairness of domestic enquiry. He had also admitted to have had not issued tickets to some of the passengers. The Hon'ble Apex Court refused to interfere with the punishment on the ground that the ticketless passengers were not examined. The petitioner Company would not be benefited by relying on the judgment in case of H.H. Pujar (supra) since the same is based on peculiar facts and circumstances of that case.

10. Same is the case as regards reliance on the judgment in Bhushan Bulbule's case (supra). In the said case, the judgment of the Labour Court was set aside on account of non framing of the issues regarding compliance of principles of natural justice or as to perversity of finding of the enquiry officer. I am afraid as to how the petitioner Company would be benefited by relying on the judgment since in the case in hand, the Labour Court framed the following two preliminary issues :-

- (1) Does the complainant prove that the enquiry conducted against him is illegal, improper and against the principles of natural justice ?
- (2) Does he further prove that the findings of Enquiry Officer are perverse ?

11. It is reiterated that, the Labour Court, after having gone through the papers of enquiry, came to the conclusion that the principles of natural justice had not been followed. On appreciating the material on record, I do not find any reason to take a different view. The Writ Petition, therefore, fails and is thus, dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-