

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

WRIT PETITION NO.1334/2020

PETITIONERS : 1. AMCL Machinery Limited
ORIGINAL A-1/1, MIDC Industrial Area, Village
RESPONDENTS Ruikhairi, Butibori, Nagpur – 441122
Through its Managing Director.

2. Sr. General Manager-Technical
AMCL Machinery Limited
A-1/1, MIDC Industrial Area,
Village Ruikhairi, Butibori,
Nagpur – 441122.

...VERSUS...

RESPONDENT : Prakash s/o Shivdas Waghmare
REVISION Aged about 46 years, Occ. Service,
APPLICANT R/o House No.13/22, Shrawasti Nagar,
ORIGINAL Nara Road, Nagpur 440014.
COMPLAINANT

Shri S.G. Zinjarde, Advocate for petitioners
Shri P.D. Meghe, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 12/08/2021

ORAL JUDGMENT

1. Heard Shri S.G. Zinjarde, learned Counsel for the petitioners and Shri P.D. Meghe, learned Counsel for the respondent. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

2. The undisputed facts in the matter are that the respondent was appointed as a Welder on 15/5/1997 and was confirmed as a Technician on 9/2/1998. His services came to be terminated on 6/2/2015, prior to which, a first show-cause-notice was given to him on 24/1/2015 and the second show-cause-notice on 29/1/2015, both of which were replied on 31/1/2015. The charges levelled against the respondent were (a) regarding theft of the mobile of Shri Girade, Junior Engineer (Production) (b) excess material found in his locker, which was not related to his day-to-day activity/nature of work.

3. Considering the reply given by the respondent, the said order of dismissal, came to be passed on 6/2/2015, holding that the respondent had admitted his guilt in the matter of theft of a mobile phone belonging to one Shri Girade, the Junior Engineer (Production). The explanation tendered by the respondent in so far as the excess tools found in his locker, that his colleagues had handed them to him to keep in his locker, was not accepted.

4. Upon a challenge being raised before the learned Labour court, it was found that the mobile was returned by the

respondent, to Shri Rakesh Girade, Junior Engineer (Production) on the same day and therefore, there was no intention found to steal the mobile. In so far as the excess tools found in his locker, it was found that they were of daily use and were not brought outside the Company. It was further found that there was no departmental enquiry against the complainant. If at all there was a contention, that the respondent had admitted his guilt, the same ought to have been before the Enquiry Officer. It was found that the so-called admission was under pressure of the Management and therefore lacked his consent. Even otherwise, it was found that the loss of the mobile had taken place outside the Company premises. The learned Labour Court therefore by its judgment dated 29/8/2019, quashed the termination dated 6/2/2015 and directed reinstatement with 50% back wages. A challenge raised before the learned Industrial Court by way of revision, met with a dismissal on 6/1/2020, which is how, the matter is before this Court.

5. Shri Zinjarde, learned Counsel for the petitioners submits that once the respondent had admitted his guilt, it was not necessary to have conducted an enquiry and it is in view of this admission, that the Manager of the petitioner, had issued the

termination order dated 6/2/2015. He further submits that in case the learned Labour Court, had arrived at a finding, that there was no departmental enquiry, it ought to have framed an issue as to fairness of enquiry and perversity of finding and permitted the petitioner to lead evidence on that count. He submits that failure to do so vitiates the impugned judgment. Learned Counsel places his reliance on ***AIR 1975 SC 1900 [The Cooper Engineering Ltd. Vs. PP Mundhe]*** (para 22) to submit that opportunity to lead evidence has to be given; ***AIR 1968 SC 266 [The Central Bank of India Ltd. Vs. Karunamoy Banerjee]*** (para 18); ***AIR 1972 SC 32 [Channabasappa Basappa Happali Vs. The State of Mysore]*** (para 4); ***(2006) 6 SCC 325 [Amrit Vanaspati Co. Ltd. Vs. Khem Chand and another]*** (para 8); ***2018 (5) Mh.L.J. 936 [Divisional Controller, Maharashtra State Road Transport Corporation, Latur Vs. Bhushan Jagannathrao Bulbule]*** (paras 9 and 17) and ***(1996) (72) I FLR 1 : (1995) 6 SCC 279, [State Bank of Bikaner & Jaipur and others Vs. Prabhu Dayal Grover]***.

6. Shri Meghe, learned Counsel for the respondent sole submits that the reply of the respondent dated 31/1/2015, is self speaking in as much as, it would indicate that there was never any

intention to commit any theft, and the retention of the mobile was on account of a jest, with an intention, to make Shri Girade, realize his callousness in handling the mobile. In so far as the excess tools in the locker of the respondent are concerned, an explanation was given that his colleagues used to ask him to store their tools in his locker, which was the reason why they were there, apart from which, they were within the premises and not taken out. He submits that in case, this was the charge, an enquiry ought to have been held, which having not been so done, vitiates the termination of the respondent.

7. It is an admitted position, that in spite of the show-cause-notice dated 24/1/2015 and 29/1/2015, and the reply dated 31/1/2015 tendered in response to the same, and the nature of allegation, namely that of theft, no enquiry was conducted. A perusal of the explanation dated 31/1/2015 by the employee, would demonstrate that the retention of the mobile, by the respondent, was with an intention to make Shri Girade realize his negligence and there was no intention of theft or illegal retention. The expression used, which is construed as an admission, is

“गैर वागनुकीला” (*improper behaviour*), which would substantiate the submission, that there was never any intention on part of the respondent to illegally retain the mobile. This is further confirmed from the finding of the Courts below that the said mobile was returned back to Shri Girade, on the same day.

8. In so far as the question about finding excess tools in the locker of the respondent is concerned, the explanation given as is apparent, from Exh.C-15 (pg. 21), indicates that some of the employees due to the nature of their work used to work for 16 hours to two days without visiting their residence during which period, since the store was closed, they used to take the equipment in advance and used to keep the equipment in the locker of the respondent. This being the case, an enquiry, in my considered opinion, ought to have conducted in order to establish the allegation of theft being made against the respondent/employee. This was however never done. Not only this, the petitioners, did not even record the statement of said Shri Girade, as to whether he had received back his mobile, as contended by the respondent. Even during the course of enquiry before the learned Labour Court, when an opportunity of evidence was granted, the petitioners examined

one Mridul Kumar Das at Ex.C-18, but chose not to examine said Shri Rakesh Girade, which was open to it, due to which the contention of Shri Zinjarde, learned Counsel for the petitioners that there was no opportunity at all to lead evidence, is clearly unacceptable. The learned Industrial Court in para 15 of its judgment has also noted with approval the finding rendered by the learned Labour Court that neither the charge-sheet is served to the complainant nor any departmental enquiry was conducted and therefore, the question of the learned Labour Court, not framing the issue of fairness of enquiry and perversity of finding was not germane.

9. ***The Cooper Engineering Ltd. (AIR 1975 SC 1900)***, upon which reliance is placed by Shri Zinjarde, learned Counsel for the petitioners, which holds as under :

“22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no

difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence. It will not be thereafter permissible in any proceeding to raise line issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

In the present case, admittedly, there was no domestic enquiry whatsoever, in view of which, what has been held, in ***The Cooper Engineering Ltd.*** (supra) itself would indicate, that there is no necessity to frame a preliminary issue.

10. ***The Central Bank of India Ltd. (AIR 1968 SC 266)*** was a case where the employee had admitted his guilt. In view of what has been held above, that the reply dated 31/1/2015 did not

indicate the admission of a theft, the same is clearly not attracted. What has been admitted, is only possession of the tools in excess. However, in order to establish theft, something more is required, than mere possession, namely, the intention to dishonestly retain the same, which has not been established in this case. ***Channabasappa Basappa Happali*** (supra) is also on the same proposition and therefore is also not applicable. ***Amrit Vanaspati Co. Ltd.*** (supra) lays down the principles governing the jurisdiction of the Tribunal while adjudicating the disputes relating to dismissal or discharge, which amongst others holds that even if no enquiry has been held by employer or the enquiry held is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order had to give an opportunity to the employer and employee to adduce evidence before it, which opportunity admittedly has been afforded to the petitioners. Same is the proposition laid down in ***Bhushan Jagannathrao Bulbule*** (supra). In ***Prabhu Dayal Grover*** (supra), it has been held that a formal charge-sheet is the letter communicating the accusation and not answering description of a 'formal charge-sheet' but if its contents disclose specifically that the charge levelled, the same would indicate that the delinquent employee stood fully

apprised of the accusation levelled and was able to effectively reply. In the instant case, presuming that the show-cause-notice would be construed as a charge-sheet, indicating that the respondent was aware of the nature of the charges levelled against him, the reply given at Exh.C-12 and so also below Exh.C-15, would indicate that there was no admission of any guilt of theft, which then necessarily required an enquiry.

11. Shri Zinjarde, learned Counsel for the petitioners has also placed reliance upon the Model Standing Orders for workmen doing manual or technical work, as contained in Schedule-1 of the Bombay Industrial Employment (Standing Orders) Rules, 1959, to contend, that the opportunity to lead evidence is necessary. This however, applies to a domestic enquiry against a delinquent employee, however, as in the present case, no domestic enquiry whatsoever is conducted, the provisions of Rule 25 (4) of the Rules of 1959, would not come to his rescue.

12. That being the case, I do not see any reason to interfere with the judgments of the Courts below. The writ petition therefore

fails and is dismissed. Rule stands discharged. There shall be no order as to costs.

13. In view of the dismissal of the petition, it is expected that the petitioners shall comply with the order of the learned Labour Court within a reasonable time from the date of this judgment and positively within a period of two weeks from today.

(AVINASH G. GHAROTE, J.)

Wadkar