

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2597 OF 2017

Gagadhar S/o Madhavrao Shewale
Age- 45 years, Occ- Nil,
At present R/o. Flat No. 11, R.B. Hills
Apartment, K- Building, Plot No. 66,
Garkheda Parisar, Dist. Aurangabad.

PETITIONER

VERSUS

1. The Factory Manager
Colgate Polmolive (India) Limited,
Plot B-14/10, M.I.D.C. Industrial Area,
Waluj, Aurangabad.
2. The Assistant Commissioner of Labour
Cum-Conciliation Officer, Beside Office
of Employment Exchange, Malijpura,
Central Bus Stand Road, Aurangabad.

RESPONDENTS

.....

Mr. Shailendra S. Kulkarni, Advocate for the petitioner.
Mr. Y.R Marlapalle, Advocate for respondent No. 1.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 4th JULY, 2022
PRONOUNCED ON: 26th JULY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of learned advocate for the parties.
2. This petition filed under Article 226 and 227 of Constitution of India takes exception to the order dated

11.03.2013, passed in IDA No. 01/2012 and dismissal order dated 17.9.2008.

3. The petitioner was permanent employee of respondent No. 1/Company. The petitioner was office bearer i.e. Secretary of Trade Union namely Colgate Palmolive Kamgar Sanghatana. The union had submitted charter of demand to the management of respondent No. 1. Since there was no response for settlement, the union submitted application to respondent No. 2/Assistant Labour Commissioner. Though, several notices were issued by respondent No. 2, authorized signatory of respondent No. 1 did not remain present. The charter of demand was admitted in conciliation proceeding.

4. Respondent No. 1 issued chargesheet cum suspension order to the petitioner alleging that he was seen urinating near corner of shutter, on the western side of raw material storage area, same is illogical and is in violation of hygiene G.M.P. practice and hence said act is serious and intentional and has potential of contaminating the produce, causing health related problems to consumer and thereby damaging the product as well as brand's name. On such

allegation chargesheet under section 24(a), 24(k), 24(l), 24(n) and 24(q) of the Model Standing Order Act, 1947, was issued and the petitioner was suspended.

5. The petitioner replied to the show cause notice and denied the charges. Thereafter, departmental inquiry was conducted. Inquiry officer submitted report that the petitioner is guilty of the charge of misconduct. On the basis of inquiry report dismissal show cause notice was issued to the petitioner.

6. The petitioner had filed complaint of unfair labour practice before Industrial Court at Aurangabad, challenging the action of suspension. Along with complaint, application under section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'said Act'), challenging show cause notice was also filed. The petitioner contended in the said application that conciliation proceeding is admitted as industrial dispute and during the pendency of industrial dispute management cannot take any action against the petitioner.

Respondent No. 1 filed written say and made a statement that there is no industrial dispute pending under the

Central Act or Bombay Act. A purshis was filed by respondent No. 1 before Industrial Court stating that the company has dismissed the services of the petitioner by order dated 17.09.2008 and because of dismissal order, said complaint is held to be *infructuous*.

7. Respondent No. 1 thereafter challenged rejection of approval application by respondent No. 2 on the ground of 12 days delay by filing writ petition No. 5815/2010. This Court set aside the order of refusing approval dated 20.04.2010 and remanded the matter back to respondent No. 2 to consider the matter in the light of decision of the Apex Court in *The Strawboard Manufacturing Company Vs. Govind and others* (AIR (1962) SC 1500) and pass appropriate orders.

8. After remand, respondent No. 2 by the impugned order granted approval to the dismissal of the petitioner. Hence, the present petition.

9. Heard the learned advocate for the petitioner and learned advocate for respondent No. 1.

10. The learned advocate for the petitioner submits that dismissal order is issued on 17.09.2008. Admittedly, on that day no application seeking approval was moved by respondent No. 1. The approval was sought after 12 days, on 29.09.2008 and on the same day one month's salary is paid to the petitioner. Hence, there is violation of Section 33(2)(b) of the said Act. The said provision being mandatory and as it is not followed, the approval ought to have been rejected by respondent No. 2. He submits that, the order passed by this Court in Writ Petition No. 5815/2010 is misinterpreted by respondent No. 2 while granting approval and ratio in *Strawboard Manufacturing Company* (supra) is ignored. He therefore submits that the impugned order be quashed and set aside by allowing the writ petition.

In support of his submissions he relied on *Strawboard Manufacturing Company* (supra), unreported order of this Court in Writ Petition No. 5776/2009, *Vidya V. Kulkarni Vs. Bombay Khadi and Village Industries Association* [2007 (114) FLR 810], *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma and Others* [C.A. Nos. 87 and 88/1996, dated January 17, 2002] and *M/s. Potdar Mills Ltd. Vs. Bhagwan Singh and Another* [1974 3 SCC 157].

11. On the other hand, the learned advocate for respondent No. 1 submits that the delay of 12 days is already condoned by this Court in Writ Petition No. 5815/2010. This order is not challenged by the petitioner. The petitioner has also not challenged the inquiry held against him. He further submits that the petitioner was dismissed after conducting full fledged inquiry. Salary of 42 days is paid to the petitioner. Section 33(2) (b) of the ID Act, contemplates summary inquiry and the Industrial Court has rightly granted approval. He therefore submits that there is no substance in the challenged raised by the petitioner and the petition may be dismissed.

In support of his submissions, he relied on, *Cholan Roadways Ltd., Vs. G. Thirugnanasambandam* (2005 3 SCC 241) and *John D'souza Vs. Karnataka State Board Transport Corporation* (2019 18 SCC 47).

12. It is a matter of record that, the order passed by respondent No. 2 rejecting approval application of respondent No. 1 on the ground of delay of 12 days was challenged by respondent No. 1 in Writ Petition No. 5815/2010.

13. This Court (Coram: K.U. Chandiwal, J.) while allowing the petition, observed:

"16) The pursis filed in Complaint (ULP) 106/2007, to which reference was given by Mr. Kulkarni, needs to be read in proper perspective. On the date of filing of such pursis, the circumstances suggest that the employer/petitioner was unaware of revival of the conciliation proceedings at the behest of Respondent No. 2. Respondent No. 2 cunningly ensured to revive the conciliation proceedings to cause sabotage to his dismissal effected after a duly constituted enquiry wherein, several days of hearing were availed by respondent No. 2. This is more so, that the Assistant Labour Commissioner and the Conciliation Officer had submitted his evaluation report dated 2nd December, 2008 and the matter was referred to the Industrial Tribunal on 7.1.2009.

17) In the light of legal position enunciated herein above, where application is made under Section 33 (2) (b) of the I.D. Act before the authorities before whom such approval is pending, has to examine as to whether the order of dismissal or discharge is bonafide and whether there was victimization or unfair labour practice. However, before doing this, the rigour and effects of Section 33(2) (b) of the Act seeking approval should not have been turned down on the ground of so-

called 12 days delay or that the dismissal order did not accompany 30 days wages. The observation of the Division Bench of the Madras High Court in the case of Tamil Nadu State Transport Cooperation Ltd. (cited supra), are eye-opener and the observation in the matter of Strawboard (cited supra) were required to be considered in right perspective.

18) In the result, the order of refusing approval dated 20.4.2010 on the count of delay of 12 days, is set aside. Respondent No. 1 may accord approval of the dismissal order of Respondent No. 2, the workman, in accordance with legal position and specific facts of the case. Respondent No. 1 to consider the question of grant of approval in the light of judgment of Hon'ble Supreme Court in the matter of Straw Board Manufacturing Co. Vs. Govind & Ors. And other connected matters referred in the judgment on the subject matter and pass appropriate orders. No costs."

14. It is clear that, this Court has categorically observed that respondent No. 2 may accord approval to the dismissal order of the petitioner in accordance with legal position and specific facts of the case and in the light of judgment of Hon'ble Supreme Court in *Strawboard Manufacturing Company (supra)*.

15. The legal position applicable to the present case is settled by decision in *Straw Board Manufacturing Company* (supra), wherein it is held:

"The proviso to S. 33(2)(b) contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payment of wages and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction, so that the employer when he takes the action under S. 33(2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time. The employer's conduct should show that the three things contemplated under the proviso, are parts of the same transaction. If that is done, there will be no occasion to fear that the employee's right under S. 33-A would be affected. The question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of act and will depend upon the circumstances of each case."

The above ratio is being consistently followed in the subsequent judgments of the Hon'ble Apex Court in *M/s. Potdar* (supra) and *Jaipur Zila Sahakari* (supra).

16. In the present case it is an admitted position on record that the petitioner is dismissed on 17.09.2008. He was paid one month's salary and application for approval of his dismissal is presented before respondent No. 2 on 29.09.2008. Thus, there is a gap of 12 days in passing the dismissal order, payment of one month's salary and submitting approval application. It is therefore, clear that dismissal of the petitioner, payment of one month's salary and submitting application for approval is not done simultaneously and it cannot be said to be part of the same transaction. Therefore, in the light of ratio in *Strawbaord Manufacturing Company* (supra) and in view of mandate of Section 33(2)(b), respondent No. 2 ought to have rejected the approval.

17. While passing the impugned order, respondent No. 2 has held that this Court in Writ Petition No. 5185/2010 has condoned the delay of 12 days in filing application for approval. Respondent No. 2 further erroneously recorded a finding that the act of termination, payment of one month's salary and filing of application for approval all this was completed on 29.09.2008 and therefore, decision of Apex Court in *Strawbaord Manufacturing Company* (supra) is applicable to the facts of the

case. It is therefore clear that a perverse finding is recorded by respondent No. 2 by misinterpreting the order passed by this Court in Writ Petition No. 5815/2010. Said finding being contrary to the admitted position on record that approval application and one month's salary is paid after a gap of 12 days from the date of dismissal, cannot be sustained.

18. In *John D'souza* (supra) and *Cholan Roadways Ltd.*, (supra), the Apex Court has held that '*section 33(2)(b) contemplates inquiry by way of summary proceeding and this inquiry is not akin and on a par with its jurisdiction to adjudicate an industrial dispute under sections 10(1)(c) and (d) of the ID Act.*'

There cannot be any dispute about said proposition of law, however, since the decision impugned in the present petition is contrary to the ratio in *Strawboard Manufacturing Company* (supra) these rulings are of no help to the case of the respondents.

19. For the aforestated reasons, the impugned order cannot be sustained. Hence, the following order:

ORDER

- I) The writ petition is allowed.
- II) The impugned order dated 11/03/2013 in application I.D.A. No. 01/2012, passed by respondent No. 2, is hereby quashed and set aside.
- III) Application filed by respondent No. 1 seeking approval to the dismissal of the petitioner, is hereby rejected.

Rule is made absolute to the above extent.

[NITIN B. SURYAWANSHI, J.]