

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
10 WRIT PETITION NO.4278 OF 2021
WITH WP/4279/2021 WITH WP/4280/2021 WITH
WP/4281/2021

DATTATRAYA RATAN JADHAV
VERSUS
M/S NSL SUGAR LTD UNIT III

Mr. Rajesh K. Khandelwal, Advocate for the petitioner
Mr. S. V. Dankh, Advocate for the respondent

CORAM : RAVINDRA V. GHUGE, J.

DATE : 14-03-2022

P. C.

1. I have considered the submissions of the learned Advocates for the respective sides.

2. The petitioners are aggrieved by the interlocutory order passed by the Labour Court, by which, these petitioners have been refused interim relief against the second show cause notice issued by the respondents calling upon the petitioners to explain as to why the findings of the Enquiry Officer should not be accepted. By order dated 20-08-2019, the application Exh.U-2 has been rejected. These petitioners approached the Industrial Court by preferring the revision petition under Section 44 of the MRTU and PULP Act, 1971. By the judgment dated 23-02-2021, these revision petitions are dismissed.

3. The record reveals that these petitioners were charge-sheeted for having committed grave and serious misconducts inclusive of physical assaulting the Vice-President of the establishment. All were charge-sheeted under the certified standing orders which were framed under the Industrial Employment (Standing Orders) Act, 1946. There is no doubt that the respondent being a sugar industry, would be covered by the Bombay Industrial Relations Act, 1946. However, the Management as well as the workers had approached the Certifying Officer under the 1946, Act and sought approval to the certified standing orders.

4. It calls for no debate that the workers /Union and the Management are equal participants in the process of certification of the standing orders. Once the certification is done, a certificate is issued by the competent authority which is normally the Deputy Commissioner of Labour and such standing orders are then referred to as the certified standing orders. It is beyond debate that the certified standing orders cannot be challenged before the Labour Court and the challenge would lie before the Industrial Court. Neither the Union of workers nor any of the workers have challenged the certification.

5. After receiving the second show cause notice, these petitioners straight away rushed to the Labour Court without even offering a reply to the show cause notice to the employer. The show cause notice dated 08-10-2018 indicates that the copy of the findings of the Enquiry Officer, i.e. report of the Enquiry Officer dated 30-07-2018 has been supplied to the petitioner and he has been called upon to show cause as to why the Management should not accept the report/findings of the Enquiry Officer. These petitioners rushed to the Labour Court praying for interim relief.

6. The Hon'ble Apex Court has laid down the law in the Case of Hindustan Lever Vs Ashok Vishnu Kate reported in (1995) 6 SCC 326, concluding that the workers can approach the Labour Court if the quantum of punishment or the act of the Management of punishing the workers is likely to result in unfair labour practice. As such, before the actual order of punishment is issued, the Labour Court can interject in the matter and restrain the employer from issuing the final order of punishment provided, it concludes that the punishment proposed cannot be imposed upon the workers.

7. In paragraph No. 54 of the Hindustan Lever

Ltd. (supra), the Hon'ble Apex Court has struck a note of caution which reads as under:-

54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of chargesheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under [Section 30\(2\)](#) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.

8. It is, thus, apparent that the Hon'ble Apex Court has sounded the Labour Court not to grant interim protection at the "mere askance" as it is only in rarest of rare case that the Labour Court can restrain the employer from awarding the punishment to the employee. It is equally well settled that unless the finding of the Enquiry Officer are held to be perverse and unless the

Enquiry is vitiated, grant of interim relief should be in the rarest of rare cases and that too only if the Labour Court concludes that assuming that the charges leveled upon employee are proved, yet, punishment of dismissal from services would be shockingly disproportionate to the gravity and seriousness of the misconduct, in the light of his past service record. (See Damoh Panna Sagar Rural Regional Bank Vs Munna Lal Jain, [2005(104)FLR 291=AIR 2005 SC 584]).

9. In the instant case, the grounds on which the prayer for interim relief rests upon is, firstly, that false charges of assault, abuses and wrongful behavior on the premises of the establishment have been leveled upon the petitioners, and secondly, the second show cause notice should have been issued under the standing orders framed under the Bombay Industrial Relations Act (Presently Maharashtra Industrial Relation Act, 1946).

10. I have perused the interlocutory order of the Labour Court refusing interim relief to the petitioners. The Labour Court has noted that the misconduct rules are grave and serious. Several employees as well as Vice-President have been abused and assaulted and the property of the establishment

has been damaged. The members of the administrative staff have also been assaulted. The Industrial Court has considered these aspects and had agreed with the findings of the Labour Court.

11. In view of the above, I do not find that the impugned orders could be turned as perverse or erroneous. The petitioners are at liberty to reply to the second show cause notice, notwithstanding, the fact that without doing so they have been litigating since October, 2018 onwards. Thereafter, the employer would be at liberty to consider the gravity and the seriousness of misconduct proved, the past service record of the charge-sheeted employees and then award the punishment which would be commensurate to the seriousness of the misconduct. In view of the above, these petitions stand dismissed.

12. Since these petitioners have not replied to the second show cause notice, time is extended till 19-03-2022. Any of the petitioners, if fail to tender the reply within the said period, the Management would be at liberty to proceed thereafter in accordance with law.

[RAVINDRA V. GHUGE, J.]