

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

WRIT PETITION NO.2907 OF 2021

Nana Kishanrao Mhaske,
Age 45 years, Occ. Nil,
R/o H. No.246, Ghati,
Town Hall,
Aurangabad 431 001

... Petitioner

Versus

The Management,
Aurangabad Electricals Limited;
GDC Division, Gut No.65,
Village Chitegaon,
Tq. Paithan,
Dist. Aurangabad 431 105

... Respondent

...

Advocate for Petitioner : Mr. Ashok More
Advocate for Respondent : Mr. B. R. Kawre

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 23rd SEPTEMBER, 2022

PRONOUNCED ON : 07th OCTOBER, 2022

ORDER :

1. Petitioner is aggrieved by rejection of Reference IDA No.06/2014 wherein his termination order dated 27/07/2011 was challenged.

2. In statement of claim petitioner contended that he was appointed as a Trainee vide appointment order dated 24/10/1998. Thereafter, training period was extended and he was confirmed by order dated 01/01/2000 as a Semi Skilled Workman. He claimed

that his service record is meritorious and up-to the mark. On 23/12/2010, charge-sheet cum show-cause notice was issued to him leveling charge of absenteeism. Company did not allow him to resume duty and inquiry was conducted by appointing a biased Inquiry Officer. Neither procedure of inquiry was explained to him, nor he was given understanding about his rights and how to cross-examine witnesses and to lead evidence in defence. Inquiry was held in arbitrary manner. Copies of documents were not supplied to him. After completion of inquiry, show-cause notice alongwith inquiry report dated 12/02/2011 was served on him. He has replied the show-cause notice in detail. Though he was regularly approaching for resuming duty, he was not allowed to do so. On the basis of inquiry report, he was dismissed from service with effect from 26/07/2011. He, therefore, claimed that act of the Company dismissing him is illegal and amounts to victimization and the punishment imposed on him is shockingly disproportionate.

3. Respondent Company filed written statement and opposed claim of petitioner workman. It is contended that workman was appointed as multi skilled workman. He is politically motivated and active member of a renowned political party. For the party work, he frequently remained absent and therefore, he is habitual absentee. Due to his absence management suffered disturbance in

production activity. Therefore, charge-sheet cum show-cause notice was served on him. The workman remained absent for the period from 01/04/2009 to 31/10/2010 for 251 days out of 479 days of actual working days. He again remained absent between 01/11/2010 to 09/11/2010. Inquiry was conducted by giving fair opportunity of hearing to workman and following principles of natural justice. Charges leveled against workman were found to be proved and therefore, Company has dismissed him from service.

4. Labour Court, Aurangabad passed Part-I award on 31/07/2018, thereby holding that inquiry held against workman is fair and proper and the findings recorded by inquiry officer are not perverse. Thereafter, Part-II award is passed on 11/03/2019, thereby answering the reference in negative. Hence, the present petition.

5. Heard learned advocate for petitioner and learned advocate for respondent.

6. Learned advocate for petitioner has assailed the impugned order contending that petitioner admitted the guilt in writing at the instance of Company, as he was assured that no serious action would be taken against him. However, Company has gone back on it's words and has conducted inquiry against

petitioner. Once the charge was admitted, there was no occasion for Company to conduct inquiry and therefore, it shows that inquiry was conducted only with a view to dismiss the petitioner from service. He further submits that admission of guilt is not reflected in Part-I award. He assailed the first and second parts of award contending that erroneous reasons are recorded by the Labour Court. Further submission is that punishment of dismissal is shockingly disproportionate to the charge leveled against him. According to him, Labour Court has ignored the fact that petitioner had rendered 12 years of service and there is no previous punishment imposed on petitioner and therefore, punishment of dismissal is grossly disproportionate to the misconduct alleged against petitioner. In support of his submissions, he relied on judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No.5937/2019 in Special Leave Petition (C) No.30953/2018 (Oil and Natural Gas Corporation Limited Vs. Anjana Mittal)*** and ***State Bank of Patiala and Others Vs. S. K. Sharma [AIR 1996 SC 1669]***.

7. Learned advocate for respondent Company, on the other hand, supported the impugned awards by relying on clause 24(f) of the Model Standing Orders of Schedule-I of the Maharashtra Industrial Employment (Standing Orders) Rules, 1959 (for short 'MSO'). He submits that petitioner is habitual absentee and

therefore, punishment of dismissal is rightly imposed on him and it is in consonance with clause 25(d) of the MSO. He submits that since petitioner was appointed as skilled workman, he was doing duty as operator on the machine. Because of absence of petitioner, company has incurred heavy losses. He, therefore, submits that, taking into consideration the facts of the case, it cannot be said that punishment is shockingly disproportionate. In support of his submissions he relied on judgments passed by the Hon'ble Supreme Court in *Civil Appeal No.3852/2006 (M/s L & T Komatsu Ltd. Vs. N. Udayakumar)*, *Civil Appeal No.4893/2007 (Om Prakash Vs. State of Punjab and Others)* and *Civil Appeal No.1770/2008 (Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu)*.

8. It is an admitted position on record that during the period between April, 2009 to October, 2010, out of 479 working days, petitioner has unauthorisedly remained absent for 251 days without leave. Thereafter, again for the period between 01/11/2010 to 09/11/2010, he was absent without leave. On 12/12/2010, petitioner has admitted in writing that he was absent without leave for the period between 15/11/2010 to 11/12/2010. According to petitioner, he was not keeping well during that period, but he did not inform about the same to the Company. He has accepted his mistake and requested to allow him to resume duty.

9. Clause 24(f) of MSO defines habitual absence as misconduct in following terms:-

"24. The following acts and commissions on the part of a workman shall amount to misconduct:-

(f) habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation;"

10. From the facts of the present case, documents placed on record and inquiry report, it is clear that petitioner has habitually remained absent without leave for more than 10 consecutive days on multiple occasions, without sufficient ground and there is no proper or satisfactory explanation given by petitioner. Petitioner was working as an operator and his duty was connected to day to day production activity. Habitual absence of petitioner has caused disruption in production activity and loss to the Company. Since this is serious misconduct under clause 24(f), the dismissal order passed against petitioner cannot be said to be shockingly disproportionate.

11. In that view of the matter, it is clear that absence of petitioner for 251 days out of 479 actual working days is habitual, without leave and without sufficient grounds or without proper or satisfactory explanation. Admittedly, petitioner was employed in the factory as an operator and his duty was directly connected to day to

day production activities. Absence of petitioner has caused disruption in production activity and production loss to the Company. It is clear from record that for frequent unauthorised absence of petitioner without leave, inquiry was conducted against him and in inquiry petitioner found guilty of misconduct alleged against him. Punishment of termination, therefore, cannot be said to be shockingly disproportionate.

12. As noted supra, the Labour Court has passed Part-I award holding that inquiry held against petitioner is fair, proper and findings of the Inquiry Officer are not perverse. Labour Court in Part-II award has held that workman was absent for 251 days and there is no explanation or reason for the said absenteeism. No medical certificate is produced by the workman and therefore, he was absent for 8 months without any sufficient cause. After considering rulings in *Pandurang Vithal Kevne Vs. Bharat Sanchar Nigam Ltd. [2010 LLJ 93]*, judgment passed by the Coordinate Bench of this Court in *Writ Petition No.3363/1985 (Ramchandra Sitaram Kale Vs. MSRTC)*, *Shakoor Mohammad Vs. Labour Court & Industrial Tribunal Ajmer (Raj HC)*, *Santoks Singh Vs. Punjab State Electricity Board [2016 LAB LR 353]*, *Rishi Kumar Vs. Presiding Officer [2016 LLR 236]*, *Siddagangaiah Vs. The Managment of KSRTC [2010 (II) CLR 346]*, *Grodhanbhai C. Parmar Vs. D.C.*

GSRTC, Baroda [2002(I) GCD 815 (Guj.HC), Management of M/s. Vikrant Tyre Ltd., Vs. T. Vyanktesh [2013 (III) CLR 991], Shri. R. Aneppa Vs. Bangalore MTC [2016 (151) FLR 168], the Labour Court held that punishment of dismissal imposed on petitioner is not shockingly disproportionate. Labour Court was, therefore, right in upholding dismissal of petitioner and rejecting reference by giving cogent reasons.

13. In *Oil and Natural Gas Corporation Limited* (supra), workman was absent for 1968 days in seven years and the said absence was ex-post facto sanctioned as medical leave. In the meantime, she was also promoted as temporary Assistant Grade-II. In these facts and considering the fact that period of absence was regularized by Management by considering the same as period of leave, the Hon'ble Apex Court held that termination order passed against workman without inquiry is bad in law. Thus, said decision is rendered in different facts and situation and will not help the case of petitioner.

14. In *State Bank of Patiala and Others* (supra), the Hon'ble Apex Court considered scope of challenge raised to departmental inquiry and order of punishment imposed by employer, on the ground of violation of principles of natural justice. This decision also, since is rendered in different facts, will not help the case of

petitioner.

15. In catena of decisions, the Hon'ble Apex Court has held that the Courts should not interfere in the quantum of punishment once the charge of unauthorized absenteeism is proved and inquiry conducted is held to be fair and proper in accordance with principles of natural justice.

16. In *M/s L & T Komatsu Ltd.* (supra), the Hon'ble Apex Court held that habitual absentism means gross violation of discipline and the Labour Court and the High Court were not justified in reinstatement of orders of termination. In this case workman was a habitual absentee for 15 times.

17. In the case in hand, repeated absenteeism of petitioner is brought on record and the same is also accepted by petitioner. Hence, clause 24(f) of MSO is attracted to the case of petitioner and considering the habitual absenteeism of petitioner, punishment of dismissal imposed on him cannot be said to be shocking disproportionate.

18. In *Chairman and MD V.S.P. and Others* (supra), the Hon'ble Apex Court was considering case of a workman who was habitual absentee. He was removed from service on the touch stone of doctrine of proportionality. In view of that case, it is held that the

Courts cannot set aside a well reasoned order only on the basis of sympathy or sentiment, in disciplinary matters while judicially reviewing order.

19. In *Om Prakash* (supra), taking into consideration the fact that workman was habitual absentee without leave, it is held that he does not deserve sympathy from the Hon'ble Apex Court.

20. This Court while exercising jurisdiction under Article 226 and 227 of the Constitution of India, is not sitting in appeal over the quantum of punishment. There is no merit in the challenge raised by petitioner in present petition. Writ petition being devoid of merits is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)