

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

WRIT PETITION NO.8738 OF 2018

1. The Managing Director,
The Maharashtra State Co-operative
Marketing Federation Ltd, Mumbai
2. The Factory Manager,
Vaibhav Pashu Khadya Karkhana
Bor Vihir, Dhule, Tq. & Dist. Dhule .. Petitioners

Versus

Dilip s/o. Manga Choudhari
Age : 63 years, Occu : Nil,
R/o. 40, Professor Colony,
Vimal Park, Plot No.5,
Deopur, Dhule, Tq. & Dist. Dhule. .. Respondent

...
WITH

WRIT PETITION NO.8739 OF 2018

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The Maharashtra State Co-operative
Marketing Federation Ltd, Mumbai
2. The Factory Manager,
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Age : 63 years, Occu : Nil,
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Deopur, Dhule, Tq. & Dist. Dhule. .. Respondent

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In both the matters:

Mr. D.N. Suryawanshi, Advocate for petitioners.
Mr. Shrikant S. Patil, Advocate for Respondent.

CORAM : SANDEEP V. MARNE, J.

DATE : 29-11-2022

ORAL JUDGMENT :

. Rule. Rule is made returnable forthwith. With the consent of the parties, called out for final hearing. Mr. Shrikant S. Patil, the learned Counsel waives notice on behalf of respondent.

2. These petitions are filed by the Maharashtra State Co-operative Marketing Federation Ltd challenging the judgment and order dated 16.02.2017 passed by the Labour Court, Dhule in Complaint (ULP) No.30 of 2010 and judgment and order dated 19.04.2018 passed by the Industrial Court, Dhule in Revision Application (ULP) No.8 of 2017. The Labour Court, in complaint filed by respondent challenging the penalty of dismissal from service, had passed Award-I on 01.07.2016 holding that the domestic enquiry was just, fair and proper and that the findings recorded by the Inquiry Officer were not perverse. The Labour Court later passed Award-II dated 16.02.2017 setting aside the dismissal order on the ground of the same being shockingly disproportionate to the misconduct alleged and directed payment of 50% back-wages. Both petitioners as well as respondent were aggrieved by the order of the Labour Court. Respondent filed Revision Application (ULP) No.15 of

2017 challenging both the Awards i.e. Award-I as well as Award-II. Award-II was challenged by him to the extent of proof of charges and denial of 50% back-wages. Petitioners also filed Revision Application (ULP) No.8 of 2017 challenging Award-II of the Labour Court. By the judgment and order dated 19.04.2018, the Industrial Court was pleased to allow respondent's Revision Application (ULP) No.15 of 2017 while dismissing petitioners' Revision Application (ULP) No.8 of 2017. The Industrial Court has held that the enquiry conducted was not fair and proper and finding of guilt recorded is perverse. Respondent is held entitled to full back-wages from 04.10.2010 to 31.07.2013. The Industrial Court has also awarded compensatory costs of Rs.25,000/- to respondent. Petitioners are aggrieved by the orders passed by both the Labour Court as well as the Industrial Court and have filed the present two petitions. In Writ Petition No.8738 of 2018 dismissal of Revision Application (ULP) No.8 of 2017 is questioned, whereas in the Writ Petition No.8739 of 2018 the order of the Industrial Court allowing respondent's Revision Application (ULP) No.15 of 2017 is challenged.

3. Shorn of unnecessary details, the brief facts of the case are that Petitioner no.1 is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 and is engaged in

activities *inter alia* of producing fertilizers as well as implementing government schemes throughout the State of Maharashtra. Respondent was appointed on 10.11.1975 on the post of Time Keeper / Clerk at petitioners cattle feed factory, Bor Vihir, Dhule. Previously the services of respondent were terminated by petitioners on 12.05.1992, which came to be set aside in Complaint (ULP) No.361 of 1992 by the Labour Court vide judgment and order dated 15.09.1994. Petitioners' Revision (ULP) No.58 of 1995 was rejected by the Industrial Court and orders were confirmed by this Court. Respondent was reinstated with 70% back-wages and continuity of service. Respondent was further required to litigate for denial of promotional benefits, which came to be granted after litigation before the Industrial Court and this Court.

4. While holding the substantive post of Cashier and holding the charge of post of District Marketing Officer, respondent was served with memorandum of charge-sheet dated 15.10.2007 alleging three charges against him. In the first charge, it was alleged that he paid an amount of Rs.1,69,816/- to Dhanegaon Grampanchayat towards property tax for 5 years without taking prior approval of the head office. In the second charge, it was alleged that he incurred expenses towards mobile phone purchase, photocopying

charges, taxi charges, advocate fees, meeting fees, share purchase without verification and without obtaining prior permission of the head office. In the third charge, it was alleged that petitioner gave charge of the post of cashier to Shri. Pandharpurkar, a peon who was a class-IV employee.

5. Domestic enquiry was conducted in pursuance of the said memorandum of the charge-sheet, in which the Inquiry Officer submitted report dated 24.09.2008 holding that the article of charge no.1 was not proved, whereas article of charge nos.2 and 3 were proved. A show cause notice was issued to respondent on 29.12.2008/ 02.01.2009 calling his representation against the report of the Inquiry Officer. Respondent approached Labour Court by filing Complaint (ULP) No.03 of 2009 in which interim order was granted not to pass an order of dismissal from service. Petitioner federation filed Revision (ULP) No.8 of 2009 before Industrial Court, Dhule which came to be rejected which led to filing of Writ Petition No.8719 of 2009 before this Court. By order dated 26.02.2010, this Court directed that if respondent was to be dismissed / terminated, such an order shall not be given effect for a period of two weeks. Respondents' Complaint (ULP) No.3 of 2009 was accordingly disposed of on 03.06.2009.

6. Petitioner federation thereafter proceeded to pass order dated 28.09.2010 imposing penalty of dismissal from service on respondent.

7. Respondent filed Complaint (ULP) No.30 of 2010 before Labour Court, Dhule challenging the dismissal order. The Labour Court was pleased to pass Award-I on preliminary issues and held that the domestic enquiry conducted by petitioner federation was just, fair and proper and the findings recorded by the Inquiry Officer were not perverse. Respondent did not immediately challenge the Award-I dated 01.07.2016 and waited for passing of Award-II. The Labour Court, Dhule was pleased to pass Award-II vide judgment and order dated 16.02.2017, holding that the disciplinary authority had erroneously disagreed with the finding of the Inquiry Officer about proof of charge-1. It held that though the charge nos.2 and 3 were held to be proved, the penalty imposed was shockingly disproportionate to the misconduct alleged. It therefore set aside the order of dismissal from service but proceeded to deny 50% back-wages to respondent on account of proof of charge nos. 2 and 3.

8. Both petitioner federation as well as respondent were

aggrieved by the decision of the Labour Court. Petitioner federation filed Revision Application (ULP) No.8 of 2017 before Industrial Court, Dhule challenging the order of the Labour Court. On the other hand, respondent filed Revision Application (ULP) No.15 of 2017 challenging both Award-I as well as Award II to the extent of proof of charge nos.2 & 3 and denial of 50% back-wages. The Industrial Court by judgment and order dated 19.04.2018 dismissed petitioners' Revision Application (ULP) No.8 of 2017 and allowed respondent's Revision Application (ULP) No.15 of 2017. The Industrial Court held that the inquiry conducted was not fair, legal or proper and the findings of guilt were perverse. The Industrial Court has held that respondent would be entitled to full back-wages from the date of dismissal i.e. 04.10.2010 till 31.07.2013, when respondent attained the age of superannuation. The Industrial Court has also awarded compensatory cost of Rs.25,000/- to respondent. The common judgment and order of the Industrial Court dated 19.04.2018 is a subject matter of challenge in the present petitions filed by the petitioner federation.

9. Mr. Suryawanshi, the learned Counsel for petitioner federation would submit that the domestic inquiry was conducted after following the principles of natural justice and respondent was

given full opportunity of defending himself. He would further submit that the Disciplinary Authority is empowered in law to disagree with the finding of the Inquiry Officer about charge-1, which was rightly been held to be proved by the Disciplinary Authority. He would submit that the misconduct committed by respondent was serious in nature warranting penalty of dismissal from service. He would submit that the Industrial Court has erred in reversing Award-I of the Labour Court which had held that the enquiry was properly conducted and the findings were supported by evidence on record. He would submit that the Industrial Court erred in sitting over appeal on those findings. He would submit that the charges were proved on the touchstone of preponderance of probability as there is sufficient evidence available on record to hold the charges as proved. Lastly, Mr. Suryawanshi would submit that petitioner federation cannot be saddled with liability of payment of back-wages especially in the light of the fact that at least article of charges no.2 and 3 were held to be proved by the Inquiry Officer.

10. Per contra, Mr. Patil, the learned counsel for respondent opposes the petitions and supports the order passed by the Industrial Court. He would submit that the Labour Court had committed an error in passing Award-I and the Industrial Court has rightly set aside

that decision of the Labour Court. He would submit that though respondent was unnecessarily implicated in proceedings by petitioner federation in respect of allegations which were trivial in nature and did not warrant infliction of any penalty, much less the penalty of dismissal from service. He would submit that on account of the actions of petitioners, respondent unnecessarily remained suspended from 08.08.2007 to 23.09.2010 and even though he is awarded back-wages from 23.09.2010 to 31.07.2013, the loss caused to him during prolonged period of suspension would have remained uncompensated. He would therefore urge for dismissal of the petitions, so that respondent at least will receive some monetary compensation for wrongful dismissal.

11. Rival contentions of the parties now fall for my consideration.

12. Respondent faced three charges in the disciplinary proceedings. The first charge of payment of property taxes to the grampanchayat without obtaining prior approval of Head Office is held to be disproved by the Inquiry Officer. The second charge of incorrect expenditure under various heads without verification and without obtaining prior approval of the head office is held to be proved in the enquiry. The third charge of handing over charge of the

post of Cashier to a Peon in class-IV category is also held to be proved.

13. Even though the first charge of payment of property taxes to grampanchayat without obtaining prior approval of the head office was held to be disproved in the inquiry report, the Disciplinary Authority has disagreed with the finding of the Inquiry Officer and proceeded to hold the same as proved. Though in law, the findings of the Inquiry Officer are not binding on the Disciplinary Authority and that the Disciplinary Authority enjoys full jurisdiction, power and authority to disagree with the findings recorded by the Inquiry Officer, there is a procedure that is required to be followed for doing so. Before disagreeing with the findings of the Inquiry Officer, Disciplinary Authority is required to record reasons for doing so. Such reasons are required to be communicated to the delinquent employee and his response is required to be sought on such findings and reasons. There is catena of decisions laying down these principles. It would be profitable to refer to the judgment of the Apex Court in this regard in ***Punjab National Bank v. Kunj Behari Misra***, (1998) 7 SCC 84 in which it is held as under:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings

on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

14. In the present case, the aforesaid procedure was not followed by the Disciplinary Authority before disagreeing with the findings of the Inquiry Officer with regard to charge no.1. The Disciplinary Authority first proceeded to disagree with the finding of the Inquiry Officer with regard to proof of article of charge no.1 and this factum was made known to respondent directly in the show cause notice dated 29.12.2008 / 02.01.2009 proposing to impose the penalty of dismissal from service. The action of the Disciplinary Authority in disagreeing with the finding of the Inquiry Officer with regard to the proof of charge no.1 is thus in gross violation of the principles of natural justice and is unsustainable.

15. Coming to charge nos.2 and 3, to my mind, the misconduct alleged therein is of minor and trivial in nature. Respondent is not accused of committing any misappropriation of funds. What is alleged against him in charge 2 is to incur expenditure without obtaining prior permission of the head office.

There is no allegation that respondent was not required to incur expenditure on those items or he committed any emblazonment while incurring that expenditure. The Industrial Court has recorded a finding that in respect of some of the items *post facto* approval was given by the head office of the petitioner federation. Charge no.3 levelled against respondent was also of trivial nature. It is alleged that respondent handed over the charge of the post of Cashier to a Peon. However, there is no allegation that such an action caused any financial loss to petitioner federation. Apart from the nature of misconduct alleged in charge nos.2 and 3, the Industrial Court has considered the entire evidence on record and has arrived at a finding that the finding of guilt with regard to charge nos.2 and 3 are not supported by the evidence on record.

16. Respondent has been dismissed from service on the basis of allegations part of which were disapproved and the rest of the part of trivial nature which, even if held to be proved, did not warrant in imposition of extreme penalty of the dismissal from service. The Industrial Court has already made observations about eagerness of petitioner federation to throw respondent out of service. The findings recorded by the Industrial Court in its well reasoned order do not otherwise warrant any interference. Therefore, I am of the

view that the penalty of dismissal imposed on respondent was not at all warranted. The penalty has rightly been set aside both by Labour Court as well as Industrial Court.

17. What remains now is to examine the issue of back-wages. Respondent attained the age of superannuation during the pendency of the proceedings before Labour court on 31.07.2013. He has been dismissed from service with effect from 23.09.2010. Therefore the intervening period during which claim for back-wages could be raised is relatively short i.e. from 23.09.2010 to 31.07.2013. Prior to dismissal, respondent was placed under suspension for a long period of time from 08.08.2007 to 23.09.2010. Though suspension is not a punishment in itself, the same had the effect of preventing respondent from discharging his duties as well as denial of full wages, increments, promotions etc. Neither the Labour Court nor the Industrial Court has dealt with the issue of treatment of period of suspension. Ordinarily upon dismissal order being set aside on merits, the suspension period is required to be treated as duty. However instead of doing so, respondent can be compensated by extending the benefit of full back-wages from the date of dismissal till the date of retirement. In addition to the reasons cited by the Industrial Court for award of full backwages, this is yet another

reason why Respondent needs to be awarded full back-wages for that short period from 23.09.2010 to 31.07.2013. The compensatory costs of Rs.25,000/- awarded by the Industrial Court to respondent are also justified in the light of the act of the petitioner federation in dismissing respondent being found totally unwarranted.

18. In the result, I do not find any error being committed by the Industrial Court in passing the impugned judgment. Petition is devoid of merits and the same is dismissed without any orders as to costs. Rule discharged.

(SANDEEP V. MARNE, J.)