

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1785 OF 2019

SUBHASH HONAJI BHALERAO
VERSUS
M/S CONCEPT PHARMACEUTICALS LTD.

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Advocate for Petitioner : Mr. U.S. Sawaji
Advocate for Respondent: Mr. Y.R. Marlapalle

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th AUGUST, 2022

ORDER :

1. This petition filed under Article 226 and 227 of the Constitution of India, impugns Part-I award dated 14.03.2012 and judgment dated 31.03.2013 passed by Labour Court, Aurangabad, in Reference IDA No. 05 of 2005.

2. The petitioner was working with the respondent as a workman. A charge sheet dated 09.01.2002 was served on the petitioner for remaining unauthorizedly absent for 56 days from June 2001 to 31st December, 2001. Thereafter, inquiry was conducted against the petitioner and inquiry officer submitted his report to the effect that the petitioner has unauthorizedly remained absent for 56 days and therefore he has committed

misconduct. By order dated 09.06.2002, the petitioner was dismissed from service.

3. The petitioner thereafter, approached Conciliation Officer and at his instance Reference IDA No. 05 of 2005 was registered. The petitioner filed statement of claim before the Labour Court, Aurangabad in reference IDA No. 5 of 2022 and challenged the dismissal order. The respondent/company filed its written statement and justified the termination order. The Labour Court thereafter framed issues and after considering the evidence, passed first part award on 14.03.2012 and held that inquiry against the petitioner was fair and proper. The inquiry officer has not recorded perverse findings and therefore directed that the reference be proceeded further on remaining issues.

4. By final judgment delivered on 31.01.2013, the Labour Court dismissed the reference with cost. Hence, this petition.

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

6. The learned advocate for the petitioner strenuously submits that the petitioner never remained absent unauthorizedly. He was orally granted leave. He submits during the course of inquiry, he has submitted doctor's certificate justifying his absence of 56 days. According to him, inquiry officer has recorded perverse findings ignoring said certificate and documents placed on record, and the inquiry report is vitiated for non application of mind. He further submits that Labour Court has erred in passing Part-I award and further committed an error in dismissing the reference. According to him, the Labour Court has failed to appreciate that shockingly disproportionate punishment is imposed on the petitioner for his absence of 56 days. By relying on the decision in Purandas Lataru Tandekar Vs. Manganese Ore (India) Ltd. & Ors [2013 (12) LJSOFT34] and Krushnakant B. Parmar Vs. Union of India & Anr. [2012 DGLS (SC) 105], he submits that, the impugned judgment of the Labour Court is liable to be quashed and set aside and the petitioner needs to be reinstated in service with full back wages and continuity of service.

7. The learned advocate for the respondent on the other hand supported the Part-I award as well as judgment

under challenge. He submits that after conducting inquiry and after considering the past service record of the petitioner, the punishment of dismissal is imposed on the petitioner. The Labour Court has recorded categorical finding that the inquiry held against the petitioner was fair and the principles of natural justice were followed. The petitioner has never challenged Part-I award and it has become final. According to him, judgment was rendered by the Labour Court on 31.01.2013 whereas present petition is filed in the year 2019 i.e. after the petitioner attained the age of superannuation. He submits that finding of fact is recorded by the Labour Court on the basis of record and same may not be interfered with in extraordinary writ jurisdiction. He therefore, submits that, the writ petition is liable to be dismissed.

8. Perusal of record indicates that the charge levelled against the petitioner of unauthorized absence and misconduct on that count, is proved on record during the course of inquiry. The petitioner was given fair opportunity to defend himself, which the petitioner has availed during the course of inquiry. The record further reveals that in the past also thrice the petitioner was given warning for his unauthorized absence. In spite of that

there was no improvement in the petitioner's conduct. The Labour Court, therefore, after appreciating the material on record has recorded a finding of fact that *"first party has considered gravity of the misconduct committed by the delinquent. After considering all these facts, first party inflicted the punishment of dismissal from service. Affidavit on record clearly shows that second party was warned three times for the misconduct of remaining absent unauthorizedly. But the second party did not improve himself or he has not learn a lesson from these punishments. So, under such circumstances say of the management that punishment of dismissal is appropriate punishment to the second party is required to be accepted."*

9. Labour Court has recorded above finding on the basis of inquiry report and record. It has also come to a conclusion that the company has inflicted appropriate punishment after considering the past service record of the petitioner, gravity of misconduct and loss suffered by company by misconduct on the part of the petitioner.

10. It is clear from the record that the petitioner remained unauthorizedly absent for 56 days. Considering the

past service record of the petitioner and three warnings given by the respondent, in the facts of this case it cannot be said that punishment imposed on the petitioner is disproportionate to the misconduct committed by him. In the facts of the present case, the punishment imposed on the petitioner does not shock the conscience of the Court.

11. The impugned judgment is passed by the Labour Court on 31.01.2013 whereas present petition is filed on 11.09.2013, however, it appears that due to non removal of objection the petition was dismissed. Thereafter, the petition was restored and numbered as Writ Petition No. 1785/2019. Taking into consideration the overall facts, this Court is of the considered view that the dismissal order is not liable to be interfered with.

12. In *Purandas Tandekar* (supra), this Court was considering the case of unauthorized absence from duty for 45 days. The Division Bench in those facts held that "*the appellant in that case was having 120 days of leave to his credit. Hence, absence from duty for a period of 45 days cannot be said to be misconduct of such a nature which justifies the dismissal of*

appellant after being in service for about 25 years."

Such are not the facts of the present case. Therefore, this decision does not assist the petitioner.

13. In the result, writ petition is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]