

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 782 OF 2022

Glaxo Laboratories Employees
Union and anr .. Petitioners
Versus
Glaxo Smithkline Pharmaceuticals
Ltd and ors .. Respondents

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Mr. Gurunath Naik i/b G.R.Naik & Co. for the petitioners.
Mr.J.P. Cama, Sr. Advocate i/b Nutan Patankar for respondents.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 25th JANUARY, 2022

P.C:-

1 I have considered the submissions of the learned counsel for the petitioners and the learned Senior Advocate Mr.Cama with Ms.Patankar for the respondents. With their assistance, I have gone through the petition paper book.

2 It is well settled that even at a penultimate stage i.e. when the employer issues a show cause notice proposing the quantum of punishment, an aggrieved charge-sheeted employee/workman (CSW) can approach the Labour Court under item 1 of

Schedule IV in the light of Ashok Vishnu Kate and others vs. M.R.Bhope, Judge, Labour Court and Hindustan Lever, 1992 (I) CLR 531 and Hindustan Lever Limited Vs Ashok Vishnu Kate, 1995 II CLR, 823.

3 It is equally settled, over a period of more than six decades, that once an employee assails the proposed action by way of punishment or approaches the Labour Court against the imposition of the punishment of dismissal from service and assails the Domestic Enquiry and the findings of the Enquiry Officer, the following two issues have to be framed :-

- (a) Does the complainant prove that the Domestic Enquiry conducted with reference to the charges levelled upon him, is vitiated ?
- (b) Does the complainant prove that the finding of the Enquiry Officer are perverse and unsustainable ?

4 It is equally settled that until the above stated two issues are framed and answered purely on the basis of the Record and Proceedings of the Domestic Enquiry conducted by the employer, the Labour Court cannot grant interim relief during the disposal of the main complaint.

5 In the case in hand, when the Labour Court delivered it's interim order dated 31/3/2021 below Application Exhibit U-2 filed by the petitioner in Complaint (ULP) No.43 of 2021, it has

merely dealt with the scope of Section 30(2) and item 1 of Schedule IV while passing the order. The issues cast below paragraph 15 indicate that neither of the parties brought it to the notice of the Labour Court that it had to cast the two issues stated above before dealing with the application for interim relief.

6 Nevertheless, though the above referred two issues were not specifically cast, the Labour Court has indeed gone into the R & P of the Domestic Enquiry and has concluded that the Enquiry, *prima facie*, appears to be fair and proper. Due to Covid-19 pandemic, it was conducted online and yet, the Labour Court did not find violation of the principles of natural justice. In coming to such conclusion, the Labour Court has rightly relied upon State of Haryana Vs. Rattan Singh, (1982) 1 LLJ 46 SC and Tata Infomedia Ltd Vs. Tata Press Employees' Union And ors, 2006 (108) FLR 490.

7 After considering the findings of the Enquiry Officer and upon assessing the evidence placed before it, the Labour Court also came to a conclusion that the finding of the Enquiry Officer do not appear to be perverse.

8 Despite the above fact situation, the Labour Court directed that the employer should not proceed to propose the punishment of discharge or dismissal from service. This

conclusion has been rightly interfered with by the Industrial Court vide the impugned judgment dated 23/11/2021. The Industrial Court has rightly held that it would be for the employer to propose the punishment and in the event it proposes the punishment of dismissal, the said quantum of punishment could be considered by the Court provided the workman raises a grievance to that extent. In Hindustan Lever (supra), the Hon'ble Apex Court has held that if the proposed punishment of dismissal from service would amount to an unfair labour practice which would also include the issue of whether the punishment is shockingly disproportionate to the gravity of the misconduct, the Labour Court can very well consider the said aspect.

9 Considering the above, the learned Advocate for the petitioner employee submits, on instructions, that as the Management has proposed the punishment of dismissal from service with regard to which the Industrial Court has protected him for a period of two months from the date of service of the order of proposed punishment, he would approach the Labour Court in the pending complaint with an application to decide whether the proposed punishment would amount to a ULP. He, therefore, prays that this Petition may be disposed off and he would avail of the said remedy.

10 In view of the above, this Petition stands disposed off in the light of the order dated 23/11/2021 delivered by the Industrial Court, Mumbai.

11 It is made clear that as the petitioner has already received the notice proposing the punishment of dismissal from service dated 29/11/2021, on 30/11/2021, he would have the liberty to approach the Labour Court in view of the observations of the Industrial Court. If the petitioner approaches the Labour Court as against the proposed punishment, the Labour Court would consider the same strictly in accordance with the law applicable, and by considering whether the proposed punishment is shockingly disproportionate to the gravity and seriousness of the misconduct in the light of the past service record of the complainant.

RAVINDRA V. GHUGE, J