

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

WRIT PETITION NO.2700 OF 2022

**THE PRESIDENT YASHWANTRAO CHAVAN SHIKSHAK SAHAKARI PAT
SANSTHA LTD. AND OTHERS
VERSUS
ROHIDAS DATTARAM SHINDE**

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Advocate for Petitioners : Mr. Ankush N. Nagargoje

Advocate for Respondent : Mr. V. P. Golewar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 01st AUGUST, 2023

PER COURT :

1. Order dated 27/11/2021, passed by the learned Member, Industrial Court, Jalna, in Complaint (ULP) No.306/2015 is impugned in the present petition. For the sake of brevity the petitioners are referred to as 'employer' and the respondent is referred to as 'complainant'.

2. Complainant joined service of the employer as 'Clerk' in the year 1998. He was confirmed in the same year. Complainant filed Complaint (ULP) No.306/2015 in the Industrial Court, Jalna, contending that, at the end of October 2011, he was found HIV Positive and he started treatment in the Government Hospital, Nanded. Therefore, with due permission of the employer, he remained absent from duty in between 01/11/2011 to 01/07/2012 and was on medical leave. Thereafter, he went to resume duty on

01/07/2012 and prayed for arrears of salary. He was not allowed to join the duty and arrears of salary was not disbursed to him. He was told that his case will be discussed in the meeting of Board of Directors and the decision will be communicated to him. Though time and again he applied for joining duty and requested to pay arrears of salary, the employer did not permit him to resume duty and did not pay him arrears. He was regularly attending office of the employer. He, therefore, claimed that since he was not permitted to join duty and sign muster roll and since he was not paid arrears of salary, the employer has committed unfair labour practice.

3. The employer by filing say and written statement, opposed the complaint. Employer claimed that they never disallowed complainant to join duty. Complainant had obtained loan from the employer and to avoid repayment of the same he has remained absent and filed present complaint. Parties led their respective evidence. The Industrial Court allowed the complaint. Hence, the present petition.

4. Heard learned advocate for employer and learned advocate for complainant.

5. Learned advocate for employer assailed the impugned order contending that the medical record produced by the

complainant before Industrial Court is not properly proved on record. Complainant has admitted discrepancies in the said medical documents. In spite of that and though no Doctor is examined, the Industrial Court has erroneously exhibited those documents and has placed reliance on those documents. He submits that complainant has abandoned the service and therefore, he was not entitled for reliefs claimed in the complaint. In support of his submissions, he relied on *Vijay S. Sathaye Vs. Indian Airlines Limited and Others, (2013) 10 SCC 253*. He further submits that though complainant claims that in the year 2012 he was not permitted to join duty, complaint itself is filed in the year 2015 and the Industrial Court has committed error in saddling responsibility of payment of the said period of three years on the employer. According to him, Industrial Court has recorded perverse findings contrary to the record and hence, the impugned judgment and order is liable to be quashed and set aside.

6. Learned advocate for complainant, on the other hand, supported the impugned order. He relied on the admissions given by the witnesses of employer and submits that admittedly no show-cause notice was issued to the complainant for his absenteeism. So also, no departmental inquiry was initiated against him. By relying on *Secretary, Krishi Vigyan Kendra, Jalna Vs. Ghansham*

Ramchandra Varma, 2016 (3) Mh.L.J. 512, he submits that misconduct of unauthorised absenteeism has to be proved in the disciplinary proceedings. He, therefore, submits that the Industrial Court has passed a reasoned judgment and no case is made out by the employer to interfere in the same.

7. Heard learned advocate for employer and learned advocate for complainant at length, and perused the record.

8. This Court is of the considered view that no interference is called for in the order impugned in present petition, for the following reasons:-

It is well settled position that Labour Court and Industrial Court are discharging quasi judicial function while adjudicating complaints under the Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971.

9. In **State of Mysore Vs. S.S. Makapur, (1964) 1 LLJ 24 SC**, the Apex Court held that,

"For a correct appreciation of the position, it is necessary to repeat what has often been said that Tribunals exercising quasi-judicial functions are not Courts and that, therefore, they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being

fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity, must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts.

To the same effect is the decision in Engineering Mazdoor Sabha v. Hind Cycles Ltd., Bombay (1963) 1 Supp. S.C.R. 625 at 631, already referred to. There that Court pointed out:

They (the Tribunals) can compel witnesses to appear, they can administer oath, they are required to follow certain rules of procedure; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations."

10. In view of the above settled legal position, there is no merit in the argument of the employer that medical documents are not proved on record in accordance with the provisions of Indian Evidence Act.

Discrepancies pointed out by employer in the medical

certificates are not of substantial nature and they are not sufficient to doubt the veracity of medical certificates. The Industrial Court has rightly relied upon the said medical documents while allowing complainant of the respondent.

11. It is evident from record that witness of employer has categorically admitted in cross-examination that for unauthorized absence of complainant, neither notices were issued nor any departmental inquiry was initiated against him. In this view of the matter, there is no substance in the contention of employer that complainant is guilty of absenteeism and they never disallowed him from attending duty.

12. In ***Vijay S. Sathaye*** (supra) the Hon'ble Apex Court has held that, employee has right to abandon service any time voluntarily by submitting his resignation and alternatively, not joining or reporting for duty for a long period. Absence from duty in beginning may be misconduct, but when such absence is for long period, it may amount to voluntary abandonment of service, resulting in termination of service automatically without necessitating any further order from employer. The said decision is rendered in different facts and it takes into consideration the rules and regulations of the Indian Airlines Limited. Therefore, this citation is of no help to the case of petitioner.

13. There appears substance in the contention of complainant that since he was HIV positive, he was not allowed to resume duty. Complainant has proved that he was suffering from HIV disease and he was prevented by that reason from attending duty.

14. Industrial Court has rightly relied on Section 8 of the Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome (Prevention & Control) Act, 2017 (for short 'the said Act'), which provides that no person shall be compelled to disclose his HIV status and Section 3 of the said Act which prohibits discrimination of 'protected person'. The complainant falls within the definition of 'protected person' given in Section 2(s) of the said Act. The Industrial Court has further recorded a finding that "*identity of protected person is to be protected and such person himself has to take precaution that others should not get infected and it is his duty to prevent transmission of HIV to other persons which is likely to transmit more particularly by sexual act or contact or by sharing of needles*". The Industrial Court has rightly held that by compelling complainant to produce certificate of his medical examination, the petitioners/employer is committing breach of Section 8 of the said Act.

15. Findings of fact recorded by the Industrial Court are

supported by the record. There is no illegality or perversity in the order impugned in present petition. Industrial Court has not committed any jurisdictional error or error of law while passing impugned judgment. No case is made out by the petitioners to warrant interference in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)