

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

WRIT PETITION NO.2065 OF 2018

**M.S.E.D.C.L. SAHYDRI BUILDING, DHULE
VERSUS**

SHRI. YUVRAJ TRAMBAK BHAMARE

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Advocate for Petitioner : Mr. Prakash B. Paithankar

Advocate for Respondent : Mr. Shrikant S. Patil

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07th AUGUST, 2023

PER COURT :

1. By this petition filed under Article 227 of the Constitution of India, petitioner challenges judgment and order dated 31/03/2017, passed by the Industrial Court, Dhule, in Complaint (ULP) No.07/2015.

2. Heard learned advocate for petitioner and learned advocate for respondent. Perused the writ petition memo, annexures thereto and the impugned order.

3. Learned advocate for petitioner assailed the impugned judgment and order contending that findings recorded by the Industrial Court cast negative burden on the petitioner, so also, perverse findings are recorded by the Industrial Court. According to him, in the departmental inquiry charge No.3 is rightly held to be proved against respondent and, therefore, petitioner has rightly

imposed fine of Rs.51,000/- on the respondent. This aspect is ignored by the Industrial Court while passing the impugned order. He, therefore, seeks quashing and setting aside of the order impugned in present petition.

4. Learned advocate for respondent, on the other hand, supported the impugned judgment and order contending that petitioner has failed to prove on record alleged misconduct of respondent and therefore, Industrial court is right in passing the impugned order.

5. Perusal of the record indicates that misconduct alleged in charge No.3 is that, respondent violated Circular No.10070, dated 08/05/1967 and Circular No.451, dated 20/01/2004. It appears from record that total 4 charges were levelled against respondent and after conducting departmental inquiry he was exonerated from charge Nos.1, 2 and 4 and was held guilty of charge No.3 and punishment of fine of Rs.51,000/-, to be recovered from his monthly salary, was imposed on the respondent. Respondent challenged the same by filing Complaint (ULP) No.07/2015. The Industrial Court, Dhule, after recording of evidence has held that petitioner has failed to prove misconduct alleged in charge No.3 and therefore, allowed the complaint thereby setting aside the punishment order.

6. From the evidence led by petitioner, it is clear that two years after respondent left the office, flying squad visited the spot. Witness of the petitioner has admitted in the cross-examination that charge against respondent is that, he did not inspect 5% consumers and did not keep 'record' of the same. The record regarding checking of industrial connections is available in the office at Kheda, however, the same is not produced. To prove this fact, nothing is placed on record. His admission that there may be a 'record' in the concerned office, is fatal to the case of petitioner.

7. Industrial Court has taken into consideration all these relevant aspects and has recorded finding that, petitioner has failed to prove that because of such breach committed by the respondent any pecuniary loss has been caused to the petitioner/Company. Rule 91 of the M.S.E.D.C.L. Employees Service Regulation, is quoted and it is observed that, *"such fine can be imposed only when pecuniary loss has been caused to the company because of breach of order by the employee"*. Specific finding is recorded that *"even if it is presumed that the complainant failed to keep record of checking of electricity connections of industrial consumers, fine could not have been imposed on the complainant"*. The Industrial Court is justified in coming to the conclusion that misconduct of the respondent is not proved and the penalty imposed on him is not legal and valid.

8. Findings recorded by the Industrial Court are supported by the record. There is no illegality or perversity in the judgment and order impugned in present petition. Writ petition being devoid of merit, is dismissed.

9. The amount deposited by the petitioner in this Court shall be paid to the respondent along with the interest accrued.

(NITIN B. SURYAWANSHI, J.)