

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

WRIT PETITION NO.6427 OF 2018

Ankush Mansing Rathod
Age : 48 years, Occu : Nil,
R/o. Babi, Post. Uplal,
Tq. Wadvani, Dist. Beed

.. Petitioner

Versus

1. Majalgaon Sahakari Sakhar
Karkhana Ltd., Sundar Nagar,
Post Telgaon, Tq. Majalgaon,
Dist. Beed,
Through its Managing Director.
2. Shri. Adv. Durgadas More,
Age : Major, Occu : Advocate,
Majalgaon SSK Ltd., Sundar Nagar,
Post Telgaon, Tq. Majalgaon,
Dist. Beed At present Practicing in
Additional Session Court, Majalgaon,
Dist. Beed.

.. Respondents

...

Mr. N.L. Dhobale h/f. Mr. H.P. Jadhav, Advocate for the petitioner
Mr. U.V. Khonde, Advocate for the Respondent No.1

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 10-01-2023

ORAL JUDGMENT :

. Rule. It is made returnable forthwith. Mr. U.V. Khonde, learned advocate waives service for respondent no.1. At the joint request of learned advocate appearing for the parties, the matter is heard finally at the admission stage.

2. The challenge in this petition is to the order dated 04.03.2011 passed by the respondent no.1 terminating the services of the petitioner and the order dated 19.05.2015 passed by the Labour Court-1, Aurangabad in Complaint ULP No.51 of 2011 and order dated 11.01.2018 passed by the Industrial Court, Aurangabad in Revision (ULP) No.39 of 2015.

The facts of the case are as under:

3. The petitioner was in the employment of the respondent no.1 as an Agricultural Assistant since the year 1995. The incident in question occurred on 19.03.2010 when the petitioner was on duty. It is the case of the respondent no.1 that on 19.03.2010 the petitioner came on duty under the influence of liquor and there was an exchange of words with one Shri. K.L. Solanke, who was the Mill Fitter. After the exchange of words with Shri. K.L. Solanke, the petitioner, on the instructions of the Works Manager, was sent to the police station where complaint came to be lodged and the petitioner was sent to Primary Health Centre, Mohkhed, where he was medically examined and the Medical Officer issued a Medical Certificate certifying the petitioner to be under influence of liquor.

4. On 30.03.2010 the petitioner was charge-sheeted on

various grounds. It was a specific charge that on 19.03.2010 the petitioner was on duty during the 4 a.m. to 12 p.m. shift and in spite of being on duty on the machine which is a responsible work, the petitioner had come on duty under the influence of liquor and there was heated exchange of words with Shri. K.L. Solanke. On 13.04.2010 an explanation was submitted by the petitioner denying the charges. Enquiry Officer came to be appointed and during the course of enquiry, on 15.04.2010 the Enquiry Officer recorded the statements of Mahadeo Dattatraya Ghorpade, Kanifnath Laxmanrao Solanke, Suresh Bhanudas Lagad and Bappasaheb Savlaram Solanke. Thereafter the petitioner himself has given his statement. The Enquiry Officer on consideration of the statements of the witnesses and in particularly the documents produced by the witnesses pertaining to the previous misconduct i.e. a notice dated 28.07.2006 issued for unauthorised absence, notice dated 20.09.2007 for misbehaviour, notice dated 26.02.2008 about unauthorised absence, notice about leaving the premises after reporting for duty, came to the finding that the charge as regards the incident which took place on 19.03.2010 has been proved and recommended strict punishment. On 04.03.2011 a copy of the Enquiry Report was forwarded by the respondent no.1 to the petitioner. It was stated in the communication dated 04.03.2011 that a copy of the enquiry report had already been

forwarded to the petitioner for his reply, which the petitioner has failed to reply and as such, in order to afford an opportunity to the petitioner to show cause as against the enquiry report dated 30.06.2010, the enquiry report is again forwarded. As there was no submission forwarded by the petitioner on the enquiry report, by order dated 04.03.2011 the respondent no.1 terminated the services of the petitioner.

5. The petitioner challenged the order of dismissal by filing Complaint (ULP) No.51 of 2011 under Section 28 (1) read with Item 1 (a)(b)(c)(d)(f)(g) and Item 5 of MRTP & PULP Act, 1971. On 03.11.2011 the respondent no.1 filed his written-statement opposing the relief sought by the petitioner. The Labour Court framed preliminary issue as regards the fairness of the enquiry, in view of the contention of the petitioner that the enquiry was not fair and proper, which was answered in the affirmative. In view of the Part-I order, the respondent sought opportunity to prove the charges before the Labour Court and evidence was produced by both the parties in respect of the issues nos.3 to 6 which are as under:

ISSUES	FINDINGS
No.3 Whether the respondent proves the charges before the Court ?	.. Affirmative
No.4. Whether the complainant proves that, his dismissal from service is by way of unfair labour practice as contemplated	

under any one or other clauses of item
-1 of Schedule IV of MRTU & PULP Act,
1971?

.. Negative

No.5. Whether the complainant is entitled for
relief of reinstatement with continuity of
service & back-wages?

.. Negative

No.6. What order?

.. The complaint is dismissed as
per final order.

6. After considering the evidence led by the parties, the Labour Court by order dated 19.05.2015 dismissed the complaint. The order dated 19.05.2015 was challenged in Revision (ULP) No.39 of 2015 before the Industrial Court at Aurangabad. The said Revision came to be dismissed on 11.01.2018 thereby upholding the findings of the Labour Court.

7. Heard Mr. N.L. Dhobale h/f. Mr. H.P. Jadhav, learned counsel appearing for the petitioner and Mr. U.V. Khonde, learned counsel appearing for the respondent no.1.

8. Learned counsel for the petitioner submits that the findings of the Enquiry Officer are perverse as the charge was not clear. He submits that in the charge-sheet the words which were alleged to have been used by the petitioner has not been mentioned and it is only stated that there was an exchange of words. He further submits that as per Model Standing Order-25 there has to be a clarity

in charge. He submits that the charge against the Petitioner cannot be said to be proved based on the Medical Certificate, which was exhibited at 'C-3/11' on the ground that there was no blood test conducted, the Medical Officer was not examined and the certificate was produced through the witness of Respondent No 1.

9. In support of his submissions, he relies upon the judgment of the Apex Court in the case of **Munna Lal vs. Union Of India & Ors, Civil Appeal No.6510 of 2009 decided on 29.09.2009** and the judgment of this Court at Principle Seat in the case of **Griffon Laboratories vs. Maharashtra Shramik Sena, Writ Petition No.303 of 1997 dated 01.08.2001**

10. Per contra, the learned counsel for the respondent no.1 supported the order of dismissal. He submits that the charges have been proved and the findings has also been upheld in the revision petition.

11. I have considered the rival submissions of the parties.

12. Learned counsel for the petitioner has assailed the impugned orders on two grounds firstly, that the Medial Certificate cannot be relied upon as no blood test has been conducted and secondly, there is no clarity of charge as the exact words alleged to

be used by the Petitioner has not been stated in the charge-sheet.

13. In spite of the limited submissions made by the learned counsel for the petitioner, I have gone through the record and proceedings which has been called by this Court. Before the Labour Court, the petitioner had examined himself and in his affidavit of evidence it is admitted that he was taken to the police station and after the complaint was registered, the police had taken him to Mokhed Primary Health Center for medical examination. In his affidavit of evidence, he had also admitted that on 19.03.2010 he had approached the Mill Fitter Shri. K.L. Solanke and had asked for an assistant and upon refusal by the Mill Fitter there was an exchange of words between the petitioner and Shri. K.L. Solanke. In the cross-examination, the petitioner has admitted that there is no past dispute between himself and Shri. K.L. Solanke and has also admitted that in the past he has received various show cause notices.

14. There is an admission by the Petitioner that there was exchange of words between him and Shri. K.L. Solanke and in view of this admission, the submission of the learned counsel for the petitioner that the exact words have not been reproduced in the charge-sheet and hence the charge is vague, cannot be countenanced.

15. Apart from the admission by the Petitioner, the witnesses examined by the Respondent No 1 has also deposed about the heated exchange of words i.e. Bappaheeb Savlaram Solanke, Kanifnath Laxmanrao Solanke, Ramdayal Ramdulare Gupta, Dagadu Dadarao Gaikwad and Satu Raosaheb Solanke. Considering the evidence on record, the charge as regards the heated exchange of words stands proved.

16. Now, the only issue which remains to be examined is as regards the petitioner coming on duty on 19.03.2010 under the influence of liquor. In that regard, the witnesses examined by respondent no.1 have deposed as regards witnessing the petitioner to be under the influence of liquor. In the cross-examination of these witnesses, the only defence of the petitioner appears to be that in stead of taking the petitioner to a nearby medical clinic, the petitioner was taken to the Dindrud Police station which is under the influence of Chairman of the respondent no.1. It is to be noted here that petitioner was taken to the police station for the purpose of lodging of complaint and it was the police who had taken the petitioner for medical examination at the primary health centre where, after the medical examination Medical Certificate was issued by the Medical Officer (Exh.C-3/11)

certifying that the petitioner was smelling of alcohol, was unable to walk properly and was also incoherent. The cross-examination does not show that during evidence the Petitioner had objected to the admissibility of the Medical Certificate and the objection now raised during arguments as to the mode of proof in as much as the Medical Officer was not examined is not sustainable.

17. Learned Counsel for the Petitioner has limited his arguments to the two submissions stated above and has not demonstrated perversity in the findings. It is also required to be noted that the petitioner does not have a clean and unblemished record and from time to time various show cause notices have been issued to him for misconduct and he was let off on lenient view. The charge in the present case as about the consuming of liquor is a grave charge of misconduct. Considering the work of the petitioner of operating the machine, coming on duty under the influence of liquor, may have resulted in major mishap occurring. The misconduct of the petitioner is also proved as regards the exchange of words with the superior and considering the evidence and the past conduct of the petitioner, in my opinion, the punishment imposed is not disproportionate.

18. In the departmental proceedings, the standard of proof

which is required is of the preponderance of probabilities and considering the totality of the circumstances, in my opinion, the charges have been proved by respondent no.1. Even without production of the Medical Certificate as to the blood contents, the findings are supported by a Medical Certificate and the statements of witnesses that the misbehaviour of the petitioner is ostensibly under the influence of liquor. I also do not find any reason for public Medical Officer to issue a Medical Certificate certifying the petitioner to be under the influence of liquor.

19. For the reasons above, there is no justification for interfering with the impugned order of dismissal.

20. In the result, the writ petition is dismissed. Rule is discharged.

(SHARMILA U. DESHMUKH, J.)

GGP