

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10143 OF 2023

Divisional Controller,
M.S.R.T.C., Ahmednagar

.... Petitioner

Versus

Bhagwan Kisan Nagare

.... Respondent

.....
Mr. Bhausahab S. Deshmukh, Advocate for the Petitioner
Mr. Parag V. Barde, Advocate for the Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th AUGUST, 2023

ORDER :

1. Order passed by the Labour Court, Ahmednagar in Reference (I.D.A.) No.15 of 2018 is impugned in the present petition filed under Article 227 of the Constitution of India.

2. At the instance of the respondent, Reference (I.D.A.) No.15 of 2018 was initiated before the Labour Court, Ahmednagar. By filing statement of claim, the respondent contended that, while he was working as Sweeper with the petitioner, he was illegally dismissed on 29/12/2011 without following the principles of natural justice. He could not go to the duty during 01/06/2008 to 30/06/2008 due to illness.

He has rendered unblemished service from 15/02/1983. First Information Report was lodged against him alleging theft of articles worth of Rs.3,150/- from the S.T. workshop. Charge-sheet in terms of the Discipline and Appeal Rules of the petitioner/Corporation was served on the respondent on 23/07/2008, leveling the charge of theft. It is alleged that on 28/06/2008, on the day on which he was not on duty, he committed theft. Number of employees are working in the workshop and a watchman does 24 hours duty on the gate of the workshop. Every outgoing employee is thoroughly searched before leaving the workshop. He, therefore, claimed that only on the basis of suspicion, he was charge-sheeted and he has made accused, so as to save the real culprits.

3. It is further contended that, material witnesses were not examined during the domestic enquiry, and he was not given proper opportunity to cross-examine. Relevant documents were not produced during the enquiry. The Enquiry Officer alone has performed the role of presenting officer, enquiry officer and disciplinary authority by awarding punishment to the respondent. He, therefore, challenged the punishment of dismissal.

4. The petitioner by filing say, opposed the claim and submitted that on 28/06/2008, articles were not found in the workshop. Hence, Assistant Superintendent of the workshop Shri B.B. Aauti with security guard Shri B.L. Pote and Shri S.K. Mapari searched for the articles in the workshop, they could not find them. The articles were found outside with Smt. Sayyad, who is running scrap business. Smt. Sayyad told that she has purchased the said articles from the respondent for Rs.900/-. Criminal Court has acquitted the respondent by giving benefit of doubt. Though the respondent was on leave, he used to visit the workshop, and after conducting departmental enquiry, in which proper opportunity was given to the respondent, punishment of dismissal of service is rightly passed against him.

5. The Labour Court, after hearing the parties held that, the enquiry conducted against the respondent is fair, legal, proper and in accordance with the principles of natural justice. It is further held that, the findings of Enquiry Officer are perverse. The petitioner is aggrieved by the said finding recorded by the Labour Court.

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

7. It is a matter of record that in support of the charges, the petitioner has examined Mr. Aauti to prove the charge of theft against the respondent. In his evidence, it has come on record that on 28/06/2008, when the alleged theft was committed, the respondent was not on duty. Two other security guards accompanied Mr. Aauti i.e. Mr. Pote and Mr. Mapari were not examined during the course of departmental enquiry. So also, Smt. Sayyad was not examined during the course of departmental enquiry. It is the case of the petitioner that the said articles were stolen by the respondent and those were sold by him to Smt. Sayyad, and the said fact was disclosed by Smt. Sayyad to Mr. Aauti, Mr. Pote and Mr. Mapari. It was, therefore, necessary for the petitioner to record the statement of Smt. Sayyad in support of the charge of theft levelled against the respondent.

8. Admittedly, First Information Report against the respondent was lodged on the basis of statement of Smt. Sayyad that, the respondent had sold the said articles to her. Departmental Enquiry is also initiated on the basis of her

statement. The respondent is already acquitted in the criminal case. No evidence is brought on record during the course of enquiry to show that the respondent entered the workshop, though he was on leave and/or he was not on duty on that day.

9. In the light of the above facts, the Labour Court was fully justified in answering the preliminary issued holding that the findings recorded by the Enquiry Officer are perverse.

10. The Labour Court has properly appreciated the record and contention of the respective parties and has passed a reasoned order, which is not liable to be interfered with in extraordinary writ jurisdiction. No jurisdictional error or error of law committed by the Labour Court while passing the impugned order. The writ petition being devoid of merit is dismissed.

11. Needless to state that observations made in this order are prima facie and shall not come in the way of the petitioner, in case the petitioner decides to take appropriate legal steps, permissible in law.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane