

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

WRIT PETITION NO.12822 OF 2022

**SUBHASH HARI BAVISKAR
VERSUS
EXECUTIVE DIRECTOR, CHOPDA SHETKARI SAHKARI SAKHAR
KARKHANA LIMITED**

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Advocate for Petitioner : Mr. B.R. Waramaa

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 18th JULY, 2023

PER COURT :

1. By this petition filed under Article 227 of the Constitution of India, petitioner takes exception to the order dated 15/09/2022, passed by learned Member, Industrial Court, Jalgaon, in Revision Application (ULP) No.09/2020, thereby allowing the revision application filed by respondent and upsetting the judgment and order dated 25/03/2019, passed by the Labour Court, Jalgaon, in Complaint (ULP) No.17/2013.

2. Petitioner is a physically challenged person who joined employment of the respondent in the year 1995 as a Peon. At the relevant time, he was assigned duty as peon in the office and laboratory of 'Chief Chemist'. On 28/05/2012, after duty hours, on checking the security guard found that the petitioner was carrying sugar in his tiffin. Petitioner admitted to have carried some sugar

from the sample kept in the laboratory for testing. Departmental inquiry was initiated against petitioner vide charge-sheet dated 28/06/2012. Petitioner submitted his apology letter on 10/12/2012 and requested for pardon. Petitioner also submitted his apology on Rs.100 stamp paper, on 19/12/2012. Petitioner was taken back in service on 31/01/2013 and he was transferred to Civil Department. Pursuant to the inquiry report which held the petitioner guilty of the charges levelled against him, final show-cause notice dated 04/04/2013 was given to the petitioner as to why he should not be terminated from service. Petitioner replied the same. However, petitioner was terminated from service by order dated 30/05/2013.

3. Petitioner challenged the termination order by filing Complaint ULP No.17/2013. Respondent opposed the complaint by filing written say. After recording evidence of the parties, Labour Court, Jalgaon, partly allowed the complaint and directed reinstatement of petitioner in service along with 50% back wages from the date of termination of his service and also granted continuity of service and cost of Rs.5,000/-. Respondent challenged the order of Labour Court by filing revision application, which is allowed. Hence the present petition.

4. Heard learned advocate for petitioner. Though duly served, none appears for respondent. Perused the writ petition

memo, annexures thereto and the impugned order.

5. Labour Court has partly allowed the complaint filed by petitioner holding that punishment imposed on the petitioner is shockingly disproportionate to the misconduct alleged against him. From the evidence laid before the Labour Court, it is clear that petitioner has admitted his misconduct and submitted apology letter requesting for pardon and by accepting his apology he was taken back in service. Labour Court has recorded finding that the termination order is passed on 30/05/2013 and by the said order service of the petitioner is terminated with effect from 17/05/2013. Thus, the retrospective effect is given to the termination order which is not permissible in law. By relying on decision in *The Chief Executive Officer, Jalgaon and Another Vs. Anita Sitaram Mali and Another, 2016 (5) ALL MR 259* and *Aasaram Vs. Executive Engineer, 1989 II CLR 331*, the Labour Court has held that retrospective termination order is illegal. Labour Court has further arrived at conclusion that proved misconduct of the petitioner is not of such serious nature to invite punishment of termination of service. Labour Court, therefore, held that punishment imposed on the petitioner is shockingly disproportionate, harsh and unreasonable to the gravity of the misconduct. Labour Court, therefore, by way of punishment denied 50% back wages to the petitioner, while

allowing the complaint and directing reinstatement of petitioner in service along with 50% back wages.

6. Industrial Court while upsetting the decision of Labour Court has erroneously held that Labour Court has erred in showing unwarranted sympathy to the petitioner and if the punishment awarded to the petitioner is set aside, he will remain unpunished for the proved misconduct. Commission of theft is held to be serious misconduct and therefore, the Industrial Court is of the view that punishment of termination for such misconduct cannot be said to be shockingly disproportionate.

7. Industrial Court has misread and misconstrued the citations relied upon before it and has misdirected himself in interfering with the order passed by the Labour Court. In the facts of the present case, Labour Court is justified in coming to the conclusion that punishment imposed on the petitioner is shockingly disproportionate. Admittedly, less quantity of sugar was carried by the petitioner in his tiffin. Also, the said misconduct was admitted by him and he has tendered apology and requested for pardon. By accepting his apology, he was taken back in service. In this view of the matter also, the Labour Court was right in holding that punishment imposed on the petitioner is shockingly disproportionate to the misconduct alleged against him.

8. The Industrial Court has not dealt with the finding of Labour Court that the order of retrospectively terminating service of petitioner is illegal and cannot be sustained. Industrial Court has erroneously exercised revisional jurisdiction and has erred in setting aside the order passed by Labour Court. The impugned order, therefore, cannot be sustained. Hence, the following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 15/09/2022, passed by learned Member, Industrial Court, Jalgaon, in Revision Application (ULP) No.09/2020, is quashed and set aside.
- (III) Judgment and order dated 25/03/2019, passed by the Labour Court, Jalgaon, in Complaint (ULP) No.17/2013, is upheld.

(NITIN B. SURYAWANSHI, J.)