

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12995 OF 2019

Emerson Climate Technologies (India)

Private Limited, A Company duly incorporated
under the Companies Act, 1956 and
an Existing Company within the meaning
of Section 2 of the Companies Act, 2013.

Having its registered office at Rajiv Gandhi Infotech,
Phase II, Hinjewadi, Pune.

Through its Authorised Representative

Mr. Sharad Keshav Paranjape,

Age – 56 Years, Occupation – Service,

O/at Emerson Climate Technologies (India)

Private Limited, Atit Tal. and Dist. Satara.

.. Petitioner

Versus

Shirish Ramchandra Pawar

Age : Adult, Occupation – Nil,

R/at post Shenoli, Taluka Karad,

District – Satara.

.. Respondent

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- Mr. V.R. Joshi a/w. Mr. Chetan Alai, Advocates for Petitioner.
 - Mr. Vaibhav R. Gaikwad, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

RESERVED ON : OCTOBER 23, 2023.

PRONOUNCED ON : NOVEMBER 28, 2023.

JUDGMENT:

1. Heard. Rule. Taken up for final hearing by consent of the parties.

2. By the present Writ Petition filed under the provisions of

Articles 226 and 227 of the Constitution of India Petition has challenged the Award dated 01.03.2019 passed by the Presiding Officer, Labour Court at Satara in Reference (IDA) No.53 of 2016. Petitioner is a private limited company. Dispute before the Labour Court, Satara pertains to reference made by the office of the Deputy Commissioner of Labour, Satara for adjudication of the termination by order dated 10.04.2013 of Respondent - workman who was employed in the services of the Petitioner – Company. Present Writ Petition challenges the Award partly since the Award holds that the enquiry conducted against the second party is fair, legal and proper, but the findings drawn by the Enquiry Officer are perverse.

3. Such of the relevant facts which are necessary for deciding the present Writ Petition are as under:-

3.1. Petitioner – Company has its registered office at Pune. One of its plant / factory is situated at Atit, District Satara. Petitioner is engaged in the manufacturing of hermetically sealed compressors at Atit. Petitioner – Company employed about 502 workmen whose terms and conditions are governed by the contract of employment and Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 and various settlements executed with the recognized Union i.e. Engineering Kamgar Sanghatana representing the workmen.

3.2. On 01.09.1993, Respondent – workman was appointed as a Welder and worked with the Petitioner – Company for 21 years until he was terminated from services by order dated 10.04.2013. Admittedly, the service record of Respondent – workman is clean and unblemished.

3.3. On 02.06.2012, Respondent – workman working in the second shift completed his shift duty at 12.30 a.m. and thereafter went and sat in the bus bearing number MH-11-T-9343 which had come to the gate for departure. While waiting for the bus to depart, Respondent - workman fell asleep on the seat since it was midnight. When the bus arrived at the gate for departure, the security guard Mr. K.B. More entered inside the bus for checking and noticed a bag lying under the seat on which the Respondent - workman was asleep. The security guard woke up the Respondent and it is Petitioner's case that Respondent owned up that the bag under the seat belonged to him. The bag contained 3 kilograms of copper material belonging to the Petitioner – Company which according to the Petitioner was attempted to be stolen. It is the Petitioner's case that Respondent had owned up that the bag was his and accepted that he had stolen the said copper material. This stand of the Petitioner – Company is however refuted by the Respondent – workman.

3.4. Respondent – workman was taken to the security cabin i.e. chowki where he was made to sign on a blank paper. The above misconduct was viewed seriously by the Petitioner – Company under clauses 24(d) and 24 (l) of the Model Standing Orders and charge-sheet cum suspension order dated 07.06.2012 was issued to Respondent – workman. Respondent – workman was directed to submit his written explanation to the charge-sheet. Enquiry was instituted and Enquiry Officer was appointed. Respondent – workman was represented by Mr. Jangam and Mr. Patil, Advocates as his representatives and thereafter enquiry commenced. Respondent – workman informed the Enquiry Officer that the charges stated in the charge-sheet were not accepted by him.

3.5. On behalf of the Petitioner – Company, 3 witnesses were examined before the Enquiry Officer namely Mr. K.B. More, Mr. J.B. Chavan and Mr. S.S. Salunkhe whereas on behalf of Respondent – workman, 2 witnesses were examined before the Enquiry Officer namely Mr. R. V. Shitole and Mr. Sanjay P. Pawar. Witnesses on either side were extensively cross-examined by the opposite party. Enquiry was concluded and report dated 28.02.2013 was forwarded by the Enquiry Officer to the Petitioner – Company holding the Respondent – workman guilty of the charges leveled against him.

3.6. Petitioner – Company agreed with the findings of the Enquiry Officer and dismissed the Respondent – workman from his services w.e.f. 12.01.2013.

3.7. Respondent – workman raised a dispute before the Deputy Commissioner of Labour, Satara. Conciliation proceeded but failed. The Deputy Commissioner of Labour, Satara thereafter referred the case to the Labour Court for adjudication of Reference (IDA) No.53 of 2016.

3.8. The following issues were framed by the Presiding Officer, Labour Court, Satara:-

- “1) Whether the enquiry conducted against the Second Party workman is legal and proper?*
- 2) Whether the findings drawn by the Enquiry Officer are proper or perverse?*
- 3) Whether the Second Party Workman was illegally terminated by the First Party w.e.f. 10/04/2013?*
- 4) Whether the Second Party is entitled for the reliefs of reinstatement with continuity of service, full back wages and consequential benefits as prayed?*
- 5) What order?”*

3.9. It is seen that issue Nos.1 and 2 were to be treated as preliminary issues. Award Part-I was delivered on 01.03.2019 in Reference (IDA) No.53 of 2016 which is impugned in the present Writ Petition. The Petitioner – Company being aggrieved with the impugned Award Part-I has challenged the same.

4. Mr. Joshi, learned Advocate appearing for the Petitioner – Company would submit that the impugned award is ex-facie bad in law and contrary to well settled principles and is perverse and unsustainable. He would submit that the Labour Court has re-appreciated the evidence placed before the Enquiry Officer differently and arrived at a different conclusion which is not permissible in law. He would submit that the Labour Court has incorrectly held that the charges against the Respondent – workman are not proved despite the admission of the witnesses ignoring the principles of preponderance of probabilities which are applicable to a domestic enquiry. He would submit that the Labour Court has rejected and disbelieved the testimony of the star witnesses of Petitioner – Company i.e. PW-1 Mr. K. B. More merely on the ground that he was unable to mention the number of persons seated in the bus at the time of checking and for non preparation of spot panchnama of the incident. He would submit that the Labour Court has equated the domestic enquiry to a criminal trial and invoked strict standard of proof as applicable to the criminal trial. He would submit that the Labour Court has returned a finding that the findings of the Enquiry Officer's are perverse only on the ground that there is no sufficient evidence to that effect however ignoring available evidence which is placed on record by the Petitioner – Company. He would submit that the Labour Court has itself disbelieved the testimony of the second witness of the Petitioner –

Company namely Mr. J. B. Chavan and concluded that his evidence does not corroborate the evidence given by Mr. K.B. More, the star witness of the Petitioner – Company.

5. Mr. Joshi has drawn my attention to the operative part of the impugned Award stating that in view of the findings returned by the learned Labour Court that the departmental enquiry conducted against the second party is legal and proper, the findings of the Enquiry Officer are perverse is therefore challenged. He would submit that the impugned Award deserves to be set aside. He would submit that once it is held that the departmental enquiry conducted against Respondent – workman is legal and proper then the findings of the Enquiry Officer are bound to be accepted.

6. *PER-CONTRA*, Mr. Gaikwad, learned Advocate appearing for the Respondent – workman at the outset would submit that the Award Part-I dated 01.03.2019 returns cogent and reasoned finding and is required to be upheld on the following grounds.

6.1. He would submit that Respondent – workman had been working with the Petitioner – Company for 21 long years with a clean and unblemished record.

6.2. He would submit that it is the Petitioner's case that one bag containing the copper material was found under the seat on which the Respondent – workman was asleep in the bus. He would submit that

in the enquiry held by the Enquiry Officer the evidence of the Company's witnesses was not recorded in the presence of the Respondent – workman or his defence counsels and this fact has been noted by the Labour Court. He would submit that the Petitioner – Company's intention is to harass and victimize the Respondent – workman by issuing false and fabricated charge-sheet alleging theft. He would submit that the alleged incident is a totally fabricated charge which has never taken place at all and the same is evident when the star witness of the Petitioner – Company has admitted that no spot panchnama of the incident was prepared by them. He would submit that apart from the enquiry being vitiated, the termination of Respondent – workman is contrary to the statutory provisions of law. He would submit that no notice of termination was issued to the Respondent – workman nor he was given the mandatory one month notice or notice pay before terminating his services.

6.3. Lastly he would submit that Respondent – workman has been acquitted by the Judicial Magistrate First Class (JMFC), Satara in Regular Criminal Case No.390 of 2012 by judgment and order dated 17.11.2015, *inter alia*, pertaining to the alleged misconduct and once Respondent – workman has been exonerated and acquitted in the criminal case filed by the Petitioner – Company for the same charge / offence, the impugned Award deserves to be sustained on the basis of

the reasons given therein.

7. I have heard Mr. Joshi, learned Advocate for Petitioner - Company and Mr. Gaikwad, learned Advocate for Respondent - workman and with their able assistance perused the record and pleadings of the case. Submissions made by Advocates have received due consideration by the Court.

8. At the outset, it is seen that Respondent – workman was working with the Petitioner – Company as a Welder and had worked for almost 21 years before the said incident took place and his record was clean and unblemished. On the date of the incident, Respondent – workman was working in the second shift and the shift time was from 4.30 p.m. to 12.30 a.m.. After his second shift duty got over, Respondent – workman went and sat in the bus bearing No. MH-11-T-9343 which had come to the gate for departure. While Respondent was seated in the bus, between 12.45 and 01.00 a.m. he fell asleep on the seat of the bus. At that time, the security guard namely Mr. K.B. More entered the bus for checking and woke up the Respondent - workman and enquired with him as to whether the bag underneath his seat belonged to him since it contained 3 kilograms of copper material. Allegation is to the effect that since the bag was found below the seat on which the Respondent – workman was sleeping it belonged to him.

9. One of the crucial aspect which the Labour Court has considered after analyzing the evidence of the 5 witnesses before itself is the fact that there was no spot panchnama conducted by the security guard namely Mr. K.B. More of the incident and the bag having been found below the seat on which Respondent – workman was sleeping and most importantly the fact that the said bag indeed belonged to the Respondent. Mr. K.B. More, security guard called upon Respondent – workman to alight from the bus and took him to the security cabin when he was joined by another security guard namely Mr. J.B. Chavan. Deposition of Mr. J.B. Chavan is however critical as he categorically deposed that he did not know what had happened inside the bus and he further deposed that he did not know anything about the incident. The Labour Court while considering the deposition of the star witness of the Petitioner – Company namely Mr. K.B. More, the security guard in paragraph No.13 of the impugned judgment has returned the following finding:

“13. As per the deposition of witness Kakaso Baburao More who is a watchman in security department. On 02/06/2012 he was on third shift duty at main gate. Bus No. MH-11-T-1943 was stopped for security check. When he started checking the bus he found a bag beneath the seat where the Second Party was sleeping, when enquired the Second Party admitted that bag belongs to him. When the bag was opened 3 kg copper material of the company was found in it. It is to be noted here that this witness brought the Second Party workman along with bag at the gate. The bag was shown to the witness R.V. Shitole and Sanjay Pawar. According to him the Second Party admitted to commit theft of copper material. He denied the suggestion in the cross-examination that on 02/06/2012 other workers were also sitting in the bus. He nowhere stated in his statement how many persons were sitting in the bus and admitted that no

panchanama was prepared at the place where bag was found. He does not know how the bag came in the bus and specifically stated that witness Shri. Jaywant Chavan was shift incharge that time and he brought the Second Party from the bus on suspicious and handed over him to witness Shri. Shitole and Sanjay Pawar and the Second Party was handed over to Shri. Jaywant Chavan.”

9.1. From the above it is seen that Mr. K.B. More has himself stated that no panchnama was prepared by him at the place where the bag was found and the shift incharge at the then time was Mr. J.B. Chavan. He has deposed that he merely brought the Respondent – workman from the bus on suspicious and handed over him to Mr. J.B. Chavan, who was the shift incharge. He has stated that he did not know how many persons were there in the bus and did not ascertain as to how the bag was brought into the bus.

9.2. Mr. J.B. Chavan, second witness on behalf of the Petitioner – Company was the shift supervisor on the night shift on the date of the incident. He has deposed that he never entered the bus and did not know what had happened inside the bus. He has categorically deposed that he did not know about the incident and his statement of examination-in-chief at Exhibit-‘12’ was written by an Advocate and he merely put his signature on it.

9.3. On behalf of Respondent – workman, both his witnesses have deposed that Mr. K. B. More obtained their signatures on a blank paper and did not record the contents in their presence. Both

witnesses have stated that they were completely unaware of the incident which had taken place and they were not shown the alleged bag which was seized by Mr. K.B. More from the Respondent – workman.

9.4. After considering the totality of evidence, the Labour Court deduced that there is no evidence to presume that the property i.e. copper material was attempted to be stolen from the Petitioner – Company by the possession of Respondent – workman.

9.5. It is this finding of the Enquiry Officer which has been impugned and set aside by the Labour Court while returning its findings in paragraph Nos.14 of the impugned judgment.

10. The Labour Court has held that the Enquiry Officer had failed to record proper reasons as to how he had come to the conclusion that the property which was seized was due to an act committed by the Respondent – workman. He further failed to record the reasons as to why the defence raised by the Respondent – workman was discarded and the inconsistent evidence of Mr. K.B. More which was not supported and corroborated by the evidence of Mr. J.B. Chavan was believed and upheld for punishing the Respondent – workman. Another major reason which has weighed with the Labour Court to conclude that the findings drawn by the Enquiry Officer are perverse is the fact that Respondent – workman

was not alone in the bus after completing his second shift. There were other workers also, but incidentally none of them have been cited as witness. It was seen that the 2 witnesses namely Mr. Shitole and Mr. Sanjay Pawar whose signatures were obtained by Mr. K.B. More on blank paper as witnesses have not recorded their statement before him and were completely unaware about the incident.

11. In that view of the matter, the Labour Court has come to a categorical finding that the findings returned by the Enquiry Officer were not logical and were perverse. I find no reason whatsoever to interfere with the findings returned by the Labour Court in its judgment and order dated 01.03.2019 after considering the gamut of the enquiry proceedings and the evidence recorded. The learned Labour Court has given adequate and cogent reasons to hold that the departmental enquiry conducted against the Respondent – workman is legal and proper, but that does not mean that the conclusion arrived at by the Enquiry Officer has to be accepted. Depending upon the enquiry held and evidence on record, the learned Labour Court has correctly held that the findings of the Enquiry Officer were perverse. I agree with the findings returned by the Labour Court.

12. The findings arrived at by the Enquiry Officer are based on the enquiry held and material evidence placed before the Labour Court as also the findings recorded therein. Adequate reasons are given by

the learned Labour Court while determining the 2 preliminary issues namely (1) whether the enquiry conducted against the Second Party workman is legal and proper and (2) whether the findings drawn by the Enquiry Officer are proper or perverse. The findings contained in paragraph Nos.6 to 15 of the Award deserve to be upheld. The Award is a well reasoned judgment which does not call for any interference and is therefore upheld.

13. In view of the above observations and findings, Rule is discharged.

14. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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