

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4541 OF 2017

The Commissioner, Kolhapur Municipal Corporation ... Petitioner

Versus

Ganpati Shankar Ghatage & Anr. ... Respondents

Mr. Sagar A. Mane for the petitioner.

Mr. Kedar P. Lad for respondent nos. 1 and 2.

CORAM: G. S. KULKARNI, J.
DATED: 10 January 2023

P.C.

1. Heard Mr. Mane, learned counsel for the petitioner and Mr. Lad, learned counsel for the respondents.

2. There are two orders, which are assailed in the petition. The first order is dated 30 January, 2016 whereby the Industrial Court, Kolhapur has decided a preliminary issue in Complaint (ULP) No 115 of 2010 filed by the respondents/employees in favour of employees, namely, that the enquiry conducted by the petitioner against them is in violation of principles of natural justice. The second order is dated 15 March, 2016 by which on merits the said complaint as filed by the respondents/employees has been allowed by the Industrial Court in the following terms:

“ORDER

“(i) *The complaint is hereby allowed.*

(ii) It is hereby declared that respondent engaged in unfair labour practice under item nos. 5, 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971.

(iii) The respondent is hereby directed to cease and desist from engaging said unfair labour practice forthwith.

(iv) The enquiry is illegal and findings drawn by enquiry officer are perverse.

(v) It is hereby declared that order of stoppage of increments dt.19/06/2010 is illegal and bad in law and it is quashed and set aside.

(vi) The respondents are hereby directed not to take action as per the order dt. 19/06/2010 against the complainants.

(vii) No order as to costs.”

3. Briefly the facts are that respondent nos. 1 and 2 were appointed as Zadu Kamgars (sweeper) by the petitioner-Municipal Corporation in the year 1983 and 1986 respectively. They were part of the team of Municipal Corporation for removal of encroachment which appears to have been objected by one Corporator Mr. Ashok Jadhav. He made a complaint against respondent nos. 1 and 2 that respondent nos. 1 and 2 were arrogant towards him. It is on the basis of such complaint, the Municipal Corporation decided to issue show cause notice and issued a charge-sheet against respondent nos. 1 and 2 thereby alleging misconduct. An Enquiry officer was appointed, who conducted an enquiry by following the usual procedure and in compliance of principles of natural justice. On the basis of enquiry report, the designated officer of the Municipal Corporation imposed punishment on respondent nos.

1 and 2 withholding one increment for one year in respect of respondent no. 1 and permanently withholding two increments of respondent no. 2.

4. Being aggrieved by such punishment, respondent no. 1 filed Complaint (ULP) No. 115 of 2010 before the Industrial Court, Kolhapur as to whether the enquiry conducted by the petitioner against respondent nos. 1 and 2 was undertaken by following the principles of natural justice. Such issue was answered in favour of respondent no. 1 by holding that there was a gross breach of principles of natural justice in the conduct of the enquiry. In deciding such issue, the Industrial Court observed that no opportunity was given to respondent nos. 1 and 2 to defend themselves. It was observed that the documents demanded by respondent nos. 2 and 3 were not placed on record and were not made available to them, which has caused a serious prejudice to the defence of respondent nos. 1 and 2. It was observed that a copy of enquiry report was also not provided to respondent nos. 1 and 2. Most importantly, it was observed that the complainant, namely, Ashok Jadhav himself was not examined so as to prove his complaint that respondent nos. 1 and 2 were insulted and had spoken with him in an abusive language, which was the charge of serious misconduct against the respondent as levelled by the petitioner. It was also observed that the petitioner had failed to produce the enquiry proceedings on record. The Industrial Court accordingly concluded that respondent nos. 1 and 2 did not have a fair opportunity to defend

themselves in enquiry proceedings including on the point of punishment, as also a copy of enquiry report itself was not furnished to the respondents.

5. After having coming to the above conclusion that the enquiry itself stood vitiated and was against the principles of natural justice, the Industrial Court proceeded to adjudicate the complaint on merits. The situation before the Industrial Court was not different. None of the lacunas, deficiencies as pointed out in the preliminary order was sought to be removed by the petitioner, as the petitioner did not avail of any opportunity to lead further evidence and in fact the petitioner filed a pursis that the petitioner does not want to lead any evidence.

6. Be that as it may, from the perusal of record, it appears that again the petitioner referred to enquiry proceedings as brought on record. The Industrial Court was compelled to look into only such limited materials and no further/fresh material was brought on record. The only case canvassed by the petitioner-Municipal Corporation in the adjudication of the complaint, was a solitary statement as made in the cross-examination of respondent no. 2 that he was given sufficient opportunity to cross-examine and participate in the proceedings. It is on such contention which was canvassed before the Industrial Court, it was contended that the enquiry was lawfully undertaken and was justified. The Industrial Court, however, was not inclined to accept

such contention and observed that there were major flaws in the enquiry proceedings as also pointed out in the impugned order. An observation is also made that the petitioner had failed to conduct enquiry in accordance with law as also has failed to produce complete enquiry proceedings before the Industrial Court, hence the Industrial Court could not come to the conclusion that the misconduct as alleged against respondent nos. 1 and 2 was in any manner true. The Industrial Court also observed that Ashok Jadhav himself was not examined and thus the enquiry as initiated against respondent nos. 1 and 2 itself was not in consonance with the compliance of principles of natural justice. It was also observed that there was no uniformity in imposing punishment on respondent nos. 1 and 2. Accordingly, on such reasoning, the Industrial Court allowed the complaint as filed by respondent nos. 1 and 2 as noted above.

7. Mr. Mane, learned counsel for the petitioner has limited submissions to make in assailing the impugned order. His submission is not different from the submissions which were urged before the Industrial Court. He submits that in view of the admission of respondent no. 2 in the cross-examination that he was given opportunity to participate in the enquiry and the enquiry was fair, the Industrial Court should not have come to a conclusion that the enquiry is vitiated and in breach of principles of natural justice. The contention as urged by Mr. Mane is also that there was no pleading that the petitioner had engaged

in unfair labour practice under Item nos. 5, 9 and 10. Mr. Mane has no other submissions to assail the impugned order.

8. Having perused the record as also both the impugned orders as also the considering the contentions as made by Mr. Mane, I am not persuaded to accept any of the contentions as urged by Mr. Mane. It is quite glaring from the record that the enquiry itself was conducted in an illegal manner. It was conducted in total breach of the principles of natural justice as rightly observed by the Industrial Court in its first order dated 30 January, 2016. It is also quite clear that the enquiry report was not made available to respondent nos. 1 and 2. Also the proceedings of enquiry were not placed on record of the Industrial Court. Despite of these infirmities, it is Mr. Mane's contention that mere statement as made by respondent no. 2 that he was given an opportunity to participate in the enquiry ought to be held by the Court to hold that the enquiry was not vitiated and in breach of principles of natural justice. Such submissions of Mr. Mane needs to be outrightly rejected. Once a fair opportunity was not made available to the respondent/employees to participate in the enquiry as also a copy of the enquiry report itself was also not made available, there can be no other conclusion, except that the enquiry itself stood vitiated and in breach of the principles of natural justice and hence was nullity. However, such basic infirmities were also decided not to be cured by the petitioner before the Industrial Court when a complaint itself was taken to be

decided on merits. The petitioner in fact filed pursis that the petitioner is not interested to examine any witness so as to prove that the charges which was leveled against respondent nos. 1 and 2 were justified. Moreover, the basic infirmity appears to be that the complainant himself is a Corporator and in the enquiry, he was not examined. He was never intended to be examined before the Industrial Court. Thus, Mr. Mane's submissions that the Industrial Court ought to have held that the enquiry was not vitiating, cannot be accepted.

9. The next contention of Mr. Mane that there is no pleading on behalf of respondent nos. 1 and 2 that there was unfair labour practice under Item No. 5 and 10 engaged by the petitioner, also cannot be accepted. A copy of the complaint has been annexed and perusal of the complaint clearly shows that there are sufficient averments to indicate that the petitioner has acted or conducted in a manner which would attract the provisions of Item no. 5, 9 and 10 as rightly observed by the Industrial Court. In fact the case of respondent nos. 1 and 2 of patent discrimination in imposing unwarranted enquiry against the respondents would squarely fall under Item 5. Item 5 clearly provides that none of the employees can be meted out any partiality. The basic case of the petitioner itself was wrong inasmuch as there was no basis to accept such allegations as levelled under the charge-sheet. It was allegedly a complaint of the Corporator Ashok Jadhav.. Such complaint itself was not proved. Mr. Ashok Jadhav, himself was not examined. Thus it is not possible to accept the

case of the petitioner that the contents of item 5 were not attracted in the present case.

10. In the aforesaid circumstances and taking an overall view of the matter, the punishment as imposed on respondent nos. 1 and 2 of stoppage of increment by order dated 19 June, 2010 is rightly quashed and set aside by the Industrial Tribunal.

11. In the light of the above discussion, no interference is called for. This petition is summarily rejected.

12. The petitioner-Corporation is directed to make payment of increment and any backwages in relation to such increment within a period of four weeks from today. There shall not be any further extension for payment of amounts.

13. No costs.

(G. S. KULKARNI, J)