

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4478 OF 2017

Shri. Hari Madhu Thorve

..Petitioner

Vs.

Metal Arts

...Respondent

Mr.Abhijeet A. Desai with Mr.Dilip Jadeja, for Petitioner.

Mr.Anand Pai with Mr.Saurabh Pakale, with Mr.Vipul Patel i/b. Haresh Mehta & Co., for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : JANUARY 24, 2023

P.C.:

1. This is a petition filed under Article 227 of the Constitution of India which assails the Part II Award rendered by the learned Presiding Officer, 4th Labour Court, at Pune, rejecting reference (I.D.A. No.376 of 2005), the subject matter of reference being reinstatement with continuity of service with full backwages in relation to the service of the petitioner, with the respondent.

2. The petitioner since the year 1979 was employed with the respondent as a 'Spray Painter' and was a permanent worker. Between the period 1990 to 1993, there were legal proceedings between the parties, however, it is not relevant to discuss these proceedings, suffice it to observe that insofar as the present proceedings are concerned, the genesis is a chargesheet dated 7 June 2004 which was issued to the petitioner by the respondent. The charges against the petitioner as contained in the chargesheet were to the effect that the petitioner had

remained absent from the duties on several occasions without prior permission; that he did not behave in a disciplined manner when at the work shop; he attended duties at late hours; he was involved in insubordination and used offensive language with the partners of the establishment; during working hours he spent time with the friends and relatives; without permission he left the place of work; after lunch hours he resumed duties very late. The details of the absenteeism and all other relevant details in regard to the charges as specified, were furnished to the petitioner. The petitioner was also called upon to give explanation on the charges levelled against him. After receipt of the chargesheet, the petitioner submitted his explanation denying the charges. The charges framed against the petitioner were under clauses 24(A), 24(F), 24(G), 24(K) and 24(L) of the Standing Orders. Hence, an enquiry officer Shri. P. K. Mehra came to be appointed by the respondent. During the initial period of enquiry, the petitioner was present. He was also allowed to appoint a co-employee as his defence representative, however, the petitioner did not avail of such opportunity. The enquiry officer proceeded to record the evidence of the respondent's witnesses. In the disciplinary enquiry, the respondent examined Shri. P. H. Parekh, partner of the respondent, Shri. K. K. Keshavan, Shri. Bhanu, Shri. B. Pavitran, Shri. P. Shivanandan. The petitioner however, did not cross examine any of the respondent's witnesses. The petitioner in fact remained absent on several occasions and for such reasons the enquiry proceedings were required to be adjourned. The Enquiry Officer has observed that in fact the petitioner had avoided the enquiry proceedings. In these circumstances, the Enquiry Officer after granting an opportunity to the petitioner to defend himself, adhering to the principles of natural justice, submitted to the respondent an enquiry report recording his findings on the basis of the materials on record of the enquiry proceedings which comprised of the evidence led on behalf of the

respondent-employer. The respondent considering the entire report by an order dated 31 December 2004, terminated the services of the petitioner.

3. Being aggrieved by such termination, the petitioner applied to the Deputy Labour Commissioner to make a reference in regard to his alleged illegal termination. The Deputy Labour Commissioner accordingly made a reference to the Labour Court to the effect “*whether the services of the second party (petitioner) were illegally terminated by the first party (respondent) with effect from 31 December 2004, and if yes, whether the second party is entitled to the reliefs of his reinstatement with continuity of service and full backwages from the first party under Section 10 of the Industrial Disputes Act*”.

4. In adjudicating the reference, the learned Labour Judge framed two preliminary issues namely “*whether the enquiry conducted by the first party (respondent) was illegal, unfair and improper*”; and secondly, “*whether the evidence led before the Labour Court was insufficient to prove the misconduct and whether the findings of the enquiry officer were suffering from perversity*.” Such preliminary issues were decided in the negative by the learned Labour Judge by an order dated 10 October 2014. The learned Labour Judge in passing such order observed that the enquiry against the petitioner was conducted in a fair, proper and legal manner, in which, the petitioner has granted full opportunity of being represented. It was observed that despite several opportunities, the petitioner did not cross examine the respondent’s witnesses. It was observed that, in fact, the petitioner had abandoned the enquiry proceedings. It was observed that, in order to ascertain as to whether there was any haste in granting an opportunity to the petitioner, a careful scrutiny of the enquiry proceedings was undertaken by the

learned Labour Judge to record a finding that the petitioner had not participated in the enquiry, as also that he had failed to file his statement of defence and had remained absent although opportunities were available to him. The learned Labour Judge also observed that it was clear from the enquiry proceedings that the Enquiry Officer had granted full opportunity to the petitioner to defend himself and no illegality was noticed in the enquiry as conducted. It was observed that the petitioner was initially present in the enquiry on some dates and thereafter he remained absent. Further a copy of the Enquiry Report was sent to the petitioner on which he submitted his explanation. The learned Labour Judge observed that the petitioner had asserted a case that the finding drawn by the Enquiry Officer was perverse, however, such assertion of the petitioner was not correct as record of the enquiry proceedings revealed that the findings were drawn essentially on the oral and documentary evidence on record. The learned Labour Judge accordingly declared that the enquiry held against the petitioner was legal, fair and proper and in accordance with the principles of natural justice.

5. Thereafter, the learned Labour Judge proceeded to adjudicate the complaint on merits and in such course of further adjudication the following issues came to be framed with the findings recorded thereon:-

	ISSUES	FINDINGS
3.	Whether the evidence before the Court is sufficient to prove the misconduct? If yes, whether the punishment is shockingly disproportionate to the misconduct ?	.. Does not survive
4.	Whether the second party has prove that the first party has illegally terminated to him from services ?	.. Negative
5.	Whether the second party is entitled for the reliefs against first party as prayed for ?	.. Negative
6.	What Award ?	.. As per final order

6. By the impugned judgment and order the learned Labour Judge considering the materials on the record, has dismissed the reference interalia observing that even before the Labour Court, the petitioner had obtained various adjournments to lead evidence on one pretext or the other, despite sufficient opportunities granted to him. It was observed that the respondent had established before the Enquiry Officer that the petitioner had remained absent on duty without prior permission, that he behaved in an indisciplined manner that he was involved in insubordination and used offensive language etc. leading to his dismissal from the service of the respondent. The learned Labour Judge has taken into consideration the law as laid down in the decisions in (i) *Biecco Lawrie Ltd. & Anr. Vs. State of West Bengal and Anr.* [2010(124)FL.R.,108(S.C.); (ii) *Sahil Khan vs Hashmat & Co.* [(112), FL.R. 618 (Bom.); (iii) *Premier Automobiles Ltd. vs. H.S.T. Hegde & Ors.* [2007(114) FL.R.446 (Bom.) in the context of verbal abuses and/or offensive language being used by the petitioner, to reach to a conclusion that the punishment which was awarded to the petitioner, was in no manner, arbitrary and illegal. The learned Judge observed that the misconduct was of a grave nature, hence, the punishment as imposed could not be said to be shockingly disproportionate considering the degree of the guilt of the petitioner. It was also observed that there were no mitigating circumstances brought on record by the petitioner which required reduction of the punishment imposed upon the petitioner. It was thus observed that for such reasons, there was no question of the Labour Court interfering in the punishment.

7. Mr.Desai, learned Counsel for the petitioner in assailing the impugned judgment and order passed by the Labour Court, has limited submissions. He submits that before issuance of the chargesheet, the petitioner should have been issued a show cause notice in regard to his

conduct, which was necessary so as to fulfill the requirement of the principles of natural justice. The second contention as urged by Mr.Desai is that considering the facts of the case, the petitioner would be entitled to the payment of backwages and hence, interference is called for in the present proceedings. In supporting such submissions, Mr.Desai has taken the Court through to the impugned award as also the depositions as recorded before the Enquiry Officer. Mr.Desai has no other submissions to be made.

8. On the other hand, Mr.Pai, learned Counsel for the respondent – employer has submitted that there is no question of any interference in the impugned judgment and order passed by the Labour Judge much less on the points as urged on behalf of the petitioner. He submits that this is a clear case where the respondent had conducted a lawful enquiry. The respondent has adhered to the principles of natural justice, all opportunity to defend the enquiry proceedings was granted to the petitioner. He submits that not only before the Enquiry Officer, but also before the Labour Court the petitioner had failed to avail of the several opportunities available to him. He submits that considering the nature of the charges, the view taken by the Labour Court in rejecting the reference by the impugned award cannot be in any manner held to be perverse calling for interference of this Court. Insofar as Mr.Desai's submission are concerned, he submits that such contentions, not only on the facts but also on law are untenable as there is no requirement whatsoever under any Standing Order or under general principles of law that prior show cause notice is required to be given before issuance of chargesheet.

9. Mr.Pai would submit that none of the grounds as raised in the memo of the petition, can be said to be the grounds to assail the

impugned award as the grounds in fact assail the Part I award on preliminary issues which is not the subject matter of challenge. According to him, on this count itself the petition does not deserve any interference.

10. Having heard learned Counsel for the parties and on a perusal of the impugned award as also the record, in my opinion, none of the contentions as urged by Mr.Desai deserve any acceptance. Before the Enquiry Officer a complete opportunity was granted to the petitioner to defend the charges, however, the petitioner failed to cross examine any witness and failed to diligently participate in the enquiry proceedings. Even before the Labour Court the petitioner did not lead any evidence despite several opportunities being granted to him as set out in the impugned order. Thus, it cannot be said that there is any perversity in the findings as recorded by the learned Labour Judge which are based on the basis of proved facts based on materials on record in the enquiry proceedings as also the reference. There is no basis whatsoever to come to a conclusion that the charges against the petitioner for any reason were not proved or the enquiry proceedings were in any manner vitiated.

11. In so far as Mr.Desai's contention that a show cause notice ought to have been issued to the petitioner before issuance of the chargesheet, is totally untenable and without any foundation in law. He is not able to support such contention on the basis of any authoritative pronouncement on such proposition much less this would apply to the facts in hand. It cannot be conceived that the employer is precluded from issuing a chargesheet to an employee when the employee has committed an act of misconduct. Once a misconduct is committed, there is neither a logic nor any reason or purpose which can be achieved in

simplicitor issuing a show cause notice. In any event, once a chargesheet is issued, it needs to be answered and based on which, it may be followed by an enquiry to be held against the delinquent employee, adhering to the principles of natural justice. Thus, there are adequate safeguards provided to protect the interest of the employee. Considering such well established position in law in regard to the procedure to be followed in disciplinary proceedings, there is no warrant to accept Mr.Desai's contention that a show cause notice was required to be issued before issuance of a chargesheet.

12. The next contention of Mr.Desai that this is a case where the petitioner would be required to be granted backwages, is totally untenable as the backwages could be awarded provided the first hurdle was to be crossed by the petitioner namely that the punishment as awarded to the petitioner was bad and illegal and if the punishment was to be set aside only then the petitioner could have become entitled to the backwages. However, no case whatsoever is made out by the petitioner that the punishment which was awarded, was in any manner arbitrary or illegal or based on no evidence. A feeble attempt on the part of Mr.Desai to contend that the evidence of Shri. P. H. Parekh, partner of the respondent, is not satisfactory and relevant, is also of no assistance inasmuch not only the evidence of Mr.Parekh before the Labour Court but also the evidence of other witnesses was relevant. Even otherwise, if such contention of Mr.Desai is to be considered, what is clearly seen from the evidence of Mr.Parekh is that he had categorically stated that the petitioner had participated in the domestic enquiry and was granted full opportunity to defend the charges levelled against him in the enquiry proceedings. He also stated that the Enquiry Officer had submitted his report to the respondent/employer on 13 December 2004 and subsequent to which the respondent/employer had terminated the

petitioner, with effect from 31 December 2004. He has also stated that the past record of the petitioner was dismal as he was warned on number of occasions, on his willful mistakes, acts subversive of discipline, threats, instigating other employees to give less production absence etc.. It is seen from the evidence of Mr.Parekh that there is no cross examination whatsoever on such vital issues of his deposition and more particularly, as to what was stated by him in paragraphs (5) and (9) of the examination in chief. Thus, Mr.Desai's contention making a grievance that Mr.Parekh's evidence would be irrelevant, is totally untenable.

13. In the light of the above discussion, there is neither any infirmity nor perversity in the impugned award rendered by the Labour Court. Thus no interference is called for by this Court in its limited jurisdiction under Article 227 of the Constitution. The petition is certainly devoid of any merit. It is accordingly rejected. No costs.

[G.S. KULKARNI, J.]