

pvr

13wp11978-16

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11978 OF 2016

Nijam Mohamad Mulani

... Petitioner

Versus

Transport Manager, Pune Mahanagar
Pariwahan Mahamandal Ltd.

...Respondent

Mr.Anand S. Kulkarni, for the Petitioner.

None for the Respondent.

CORAM: G. S. KULKARNI, J.
DATED: JANUARY 03, 2023

ORAL ORDER

1. This petition under Article 227 of the Constitution of India assails the judgment and order dated 13 January 2016 of the Industrial Court at Pune, whereby the Revision Application (ULP) No. 66 of 2014 filed by the petitioner has been dismissed, confirming the judgment and order dated 30 July 2014 rendered by the 2nd Labour Court, Pune on Complaint (ULP) No.129 of 2008 whereby the petitioner's complaint alleging unfair labour practice by the respondent also was rejected.

2. Briefly the facts are: It is the petitioner's case that he was employed by the respondent-Pune Mahanagar Pariwahan Mahamandal Ltd. with effect from 30 November 1991 as a bus driver. He was a permanent employee with the respondent establishment working at the Swargate Bus Depot. On 19 April 2008 a chargesheet came to be issued to the petitioner in contemplation of a disciplinary enquiry to be conducted against the petitioner alleging a misconduct of an

unauthorized absenteeism during the period 1 June 2007 to 31 May 2008. The petitioner filed his reply to the chargesheet. An enquiry officer was appointed. Perusal of the record indicates that complete opportunity was granted to the petitioner to participate in the inquiry proceedings as also of being represented before the Enquiry officer. There was no material whatsoever in the reply to justify the unauthorized absenteeism for the said period of 142 days. It also appears from the record that the reply to the chargesheet was not only dissatisfactory but depicted an arrogant approach of the petitioner. Also no documents like medical report, certificate of doctor, case papers of hospital, etc., were annexed to the petitioner's reply to the chargesheet.

3. It also appears that when the disciplinary enquiry commenced on 4 June 2008, the petitioner remained absent, hence, the enquiry officer was required to proceed ex-parte against the petitioner. The enquiry officer recorded evidence of Mr.Deokar, Senior Time Keeper-Swargate Bus Depot. The petitioner was also furnished with a copy of the evidence alongwith a letter dated 4 June 2008 of the enquiry Officer. Such letter also intimated the next date of inquiry which was fixed on 16 June 2008.

4. On 16 June 2008, the petitioner admitted that he had received all the notices however, he stated that he could not attend the enquiry due to personal difficulties. The Enquiry Officer in good faith and in order to afford another opportunity to the petitioner, so as to adhere to the principles of natural justice, adjourned the enquiry proceedings. However, the petitioner again did not turn up on the adjourned date of hearing. Ultimately the Enquiry Officer was required to close the enquiry. The Enquiry Officer rendered his findings recording that the

charges as levelled against the petitioner on his unauthorised absenteeism for 142 days had stood proved in the enquiry proceedings. The findings of the Enquiry Officer were submitted to the Disciplinary Authority. The Disciplinary Authority, after examining the record of the enquiry proceedings, by following the lawful procedure, issued a show cause notice dated 14 July 2008 to the petitioner, calling upon the petitioner as to why a punishment of termination from service be not imposed on him. The show cause notice, however, was returned with the postal remark "*addressee left*", as the petitioner had failed to communicate the changed address to the respondent. In these circumstances, with no other alternative, the respondent issued an order dated 6 September 2008 dismissing the petitioner from its services. The said order was also displayed on the notice board of the respondent establishment. It however appears from the record, that the petitioner received the termination order on 23 September 2008, which was when, for the first time he informed the respondent of his new address.

5. In the above circumstances, being aggrieved by the termination of his services, the petitioner approached the Labour Court with the Complaint (ULP) in question. In the proceedings of the complaint, a preliminary issue came to be framed as to "whether domestic enquiry conducted against complainant was fair, proper and as per principles of natural justice?" The issue was decided by the Labour Court by a well reasoned order dated 11 May 2012 in which it was observed that the domestic enquiry held against the petitioner was fair, proper and in accordance with the principles of natural justice. Thereafter, the Labour Court proceeded to decide the petitioner's complaint on merits on the other issues. In the course of such adjudication, the Labour Court

framed the following issues and rendered its findings thereon:-

	Issues	Findings
1	Whether complainant proves that respondent was and is engaged in unfair labour practice under item 1(a)(b)(d)(e)(f) and (g) of Sch.IV of the MRTU & PULP Act ?	No
2A	Whether findings of enquiry officer are perverse? If yes, whether misconduct of complainant proved before the Court?	No
3	Is complainant entitled for reinstatement with full back wages?	No

6. The Labour Court considering the materials on record, was not persuaded to accept the case of the petitioner so as to justify his absenteeism, that there was some incident of fire, to the bus the petitioner was plying, which took place sometime in November 2006, and in which the petitioner had suffered some burn injuries on his hands, which had prevented him from offering the duties/work. It was observed that the petitioner's case to justify his unauthorised absence on such reasons could not, at all be accepted. The Labour Court observed that the unauthorized absence was for a period which was much subsequent to such incident i.e. 1 June 2007 to 31 May 2008. It was observed that even otherwise the incident pertained to a period for which special medical leave had already been availed by the petitioner. The Labour Court also observed that the petitioner had not adduced any evidence and/or medical certificate for absence for the period subsequent to 13 January 2008. The relevant observations of the Larbour Court are required to be noted which read thus:-

“From the above evidence, it appears that it was admitted to complainant that he was remained absent but he tried to give justification that due to ill health and due to family dispute he

could not remain present. So far as the absence period mentioned in charge-sheet is concerned, it is from 13/1/2008 to continue and so far as the complainant has sustained injury is concerned, it is caused on 29/11/2006 and for that he has availed special medical leave on 30/11/2006 to 24/12/2006. Therefore it appears that there is no concern with the injury sustained in the year 2006 and remaining absent from 13/1/2008. So also complainant has not adduced any evidence/medical certificate regarding ill health for the period 13/1/2008 to continue. At the same time complainant tried to justify his absence on the ground that due to family dispute he could not remain present. However there is no such evidence to that effect adduced by complainant either before enquiry officer or before this court. Further it is defence of complainant that due to his active participation in the work of Union respondent has conducted false enquiry against him. However complainant has not adduced any such evidence before enquiry officer and before this court to show that he has active participation in the work of Union.”

7. The Labour Court also observed that considering the facts of the case and the applicable principles of law, the misconduct of the petitioner having been proved, the punishment of dismissal as awarded to the petitioner, was not disproportionate. It was also observed that there was nothing on record to accept the case of the petitioner of any unfair labour practice being indulged by the respondent-employer.

8. Further, the findings as rendered by the Labour Court have also been confirmed by the Industrial Court by its judgment and order dated 13 January 2016. In dealing with the case of the petitioner in regard to the punishment being disproportionate, the learned Member of the Industrial Court has observed that the punishment could not be said to be shockingly disproportionate. The petitioner could not prove that his absenteeism was not intentional, and/or was for a genuine reason or for any reasons beyond his control. It was observed that while dealing with

the complaint of unfair labour practice, the jurisdiction of the Labour Court was limited inasmuch as the Labour Court could not interfere in the disciplinary action unless an unfair labour practice was established. It was observed that in the facts of the case the Labour Court had taken a possible view. There being no perversity in the findings of the Labour Court, the Industrial Court dismissed the revision filed by the petitioner.

9. Learned Counsel for the petitioner in assailing the concurrent findings, has limited submissions. His endeavour is to connect the incident of fire which, according to him, had taken place in a bus plied by the petitioner in November 2006 so as to be a justification for his unauthorised absence for the period from 1 June 2007 to 31 May 2008. In my opinion, such argument appears to be an argument in desperation. It appears to be absolutely clear from the record that the unauthorized absence of the petitioner was for the period from 1 June 2007 to 31 May 2008, to justify the same, there was no material whatsoever much less any acceptable justification either on the record of the enquiry proceedings or before the Labour Court. Thus, there was no material as to why he remained absent from duties, for such long period without authorization. In fact, it appears from the record that the tenor of the petitioner's defence in the enquiry proceeding was not of a reasonable and bonafide person. Further the petitioner was demonstrably negligent and callous as he failed to attend the enquiry proceedings despite notices served on him at every stage of the proceedings. The petitioner also did not examine any witness and/or did not produce any tangible material on record so as to justify his unauthorized absenteeism.

10. The second submission as made by the learned Counsel for the petitioner is that the punishment of dismissal awarded to the petitioner, be held to be disproportionate. In the context of the proportionality of punishment, the principles of law are well settled. The authority to impose punishment in disciplinary proceedings vests with the disciplinary authority and/or the appellate authority, as the powers of the appellate authority are co-terminus with the powers of disciplinary authority. When any such decision, either of the disciplinary authority or of the appellate authority, falls for consideration of the Court including in exercise of powers of judicial review, in such a situation the normal rule is that the Courts would not lightly interfere with the discretion of the disciplinary authority in imposing a penalty or punishment. However, there is an exception to this rule. The exception being when the penalty or punishment imposed is so disproportionate to the misconduct of the delinquent employee, that no reasonable body of persons can come to a conclusion to impose such punishment/penalty, only in such situation the Courts would step in by invoking the doctrine of proportionality and by applying the well settled principles of Wednesbury unreasonableness interfere in the award of such disproportionate punishment. Thus, in interfering with the punishments the Court would be guided not merely on the fact that the punishment is to some extent disproportionate but it should be egregiously disproportionate to warrant interference of the Court, inasmuch as perversity or irrationality and / or the disproportionate nature of the punishment is abundantly reflected in the orders imposing punishment, for the Court to come to a conclusion that the punishment is outrageously disproportionate as compared to the gravity of misconduct. (See: (i) **Chairman & Managing Director, V.S.P. and Others v. Goparaju**

Sri Prabhakara Hari Babu [2008 (5) SCC 569] ; (ii) U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal [(2006)8 SCC 108; (iii) Union of India & Ors. Vs. Subrata Nath (2022 SCC OnLine SC 1617). Applying the above principles to the facts of the present case the contention as urged on behalf of the petitioner that the punishment as imposed on the petitioner was disproportionate cannot be accepted. The Labour Court has rightly rejected such contention of the petitioner that in the facts of the case, the punishment on such count could not be said to be disproportionate. Further, the same was appropriately confirmed by the Industrial Court. Thus, no case has been made out by the petitioner for this Court to come to a conclusion that the punishment as imposed on the petitioner was in any manner disproportionate. Thus, findings of both the forums below on such count, cannot be regarded as perverse or illegal.

11. In the light of the above observations, the petition lacks merit. It is accordingly rejected. No costs.

G. S. KULKARNI, J .