

Santosh

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

WRIT PETITION NO. 6834 OF 2022

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Pune Mahanagar Parivahan Mahamandal
Ltd.

...Petitioner

Versus

Sikandar Aziz Maner

...Respondent

Mr. Rohit Sakhadeo, for the Petitioner.

Mr. Sachin Hande, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 25th JULY, 2023

PC:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 15th February, 2022 passed by the learned Member, Industrial Court, in Revision Application (ULP) No.5 of 2022 in Complaint (ULP) No.146 of 2019, whereby the revision application was allowed by setting aside the order below Exhibit-2 in Complaint (ULP) No.146 of 2019 passed by the learned Judge, Labour Court, Pune and the petitioner – employer was restrained from acting on the final show cause notice till the final disposal of the complaint.
3. The respondent – employee had filed complaint alleging unfair labour practices under Item 1(a)(b)(d)(f) and (g) of

Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the Act, 1971”), upon being served with a final notice dated 24th December, 2019, pursuant to an enquiry report, calling upon the respondent to show cause as to why the respondent be not dismissed from service for having been found guilty of the alleged misconduct.

4. The learned Judge, Labour Court, was of the view that no *prima facie* case was made out to restrain the employer from proceeding with and concluding disciplinary proceeding as the respondent had given reply to the final show cause notice and on the very day moved to the Court with a complaint of an unfair labour practice.

5. The learned Member, Industrial Court, was persuaded to interfere with the order of the Labour Court opining that *prima facie* enquiry was conducted in haste and disregarding the principles of natural justice, and not in good faith. Thus, the petitioner was restrained from acting upon the final show cause notice.

6. The learned Counsel for the petitioner submits that, in the intervening period, the learned Judge, Labour Court, has passed an order on 8th March, 2023 on preliminary issues and

declared that the enquiry conducted against the respondent is fair and proper and the findings recorded by the Enquiry Officer are not perverse.

7. This final adjudication by the learned Judge, Labour Court, post appraisal of the evidence on record, renders the continuation of the interim order, restraining the employer from proceeding further with the inquiry and passing an appropriate order, untenable. Since the said order dated 8th March, 2023 has not been assailed by the respondent workman, nothing survives in Complaint (ULP) No.146 of 2019. What can be assailed now is the legality and proportionality of the punishment in the event the disciplinary authority passes an order of punishment based on the enquiry report and the reply thereto filed by the respondent.

8. In the circumstances, the petition stands allowed.

9. The impugned order passed by the learned Member, Industrial Court, stands quashed and set aside.

10. The petitioner – employer is at liberty to pass an appropriate order in accordance with the Rules.

11. Since the interim protection is in operation, in the event an adverse order is passed against the respondent – workman,

the same shall not be given effect to, for the period of one week from the said order.

12. Complaint (ULP) No.146 of 2019 also stand disposed.

[N. J. JAMADAR, J.]