

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16092 OF 2022

Sandoz Private Limited, Having
Registered Office at : Plot
No.8A/2 and 8B, TTC Industrial
Area, Kalwe Block, Village-
Digha, Navi Mumbai-400- 708
Previously Manufacturing Plant
at R-1, MIDC, Mahad, Taluka-
Mahad, District-Raigad, Pin-402
301.

....PETITIONER

V/s.

Mahadeo Gajanand Narale At
and Post-Parayani, Taluka-Man,
District-Satara.

....RESPONDENT

APPEARANCES :

Mr. Avinash Jalisatgi a/w. Mr. Divya Wadekar i/by. Mr. Satish C.
Hegde, for the Petitioner.

Mr. Suresh Kamble, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Resd. On : 26 September 2023.

Pron. On : 3 October 2023.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, taken up for final disposal.

2. By this petition, Petitioner challenges judgment and order dated 11 September 2019 passed by the Industrial Court, Thane in Revision Application (ULP) No. 10/2017. By that judgment, the Industrial Court, while allowing the Revision Application filed by the Respondent-Workmen, has set aside the Labour Court's orders dated 3 March 2015 of Part-I and 27 December 2015 of Part-II and has held that the enquiry conducted against the workman is illegal. The complaint has been remanded to the Labour Court for a fresh decision.

3. Briefly stated, facts of the case are that the Respondent was initially employed by M/s. Ciba CKD Biochem Ltd. as Skilled Grade-II employee w.e.f. 25 August 1997. Petitioner-Company took over the manufacturing plant of M/s. Ciba CKD Biochem Ltd at R-1, MIDC, Taluka-Mahad, District-Raigad and this is how the Respondent became Petitioner's workman. Petitioner initiated domestic enquiry against the Respondent by issuing chargesheet dated 21 October 2009 alleging that the Respondent was unauthorisedly absent from 27 September 2009 till the date of issuance of chargesheet. Additionally, it was also alleged that he remained absent on various dates total adding upto 70 days during

the period from July 2007 till October 2009. In the chargesheet itself, Respondent was communicated the date of enquiry as 30 October 2009. Respondent received the chargesheet, but failed to participate in the enquiry proceedings. In absence of the Respondent, enquiry was conducted by the Petitioner from 30 October 2009 to 10 February 2010 by holding six sittings. Petitioner dispatched notice of each date of enquiry at the address of the Respondent available with the Petitioner. However, the envelopes containing the said notices were returned with an endorsement that 'the addressee had left the address'. Some of the letters were returned with remark "refused to accept". In addition to not participating in the enquiry, Respondent also continued to remain absent from duties. The Enquiry Officer submitted his report on 25 February 2010 holding that the charge levelled against the Respondent was proved. The said report was dispatched to Respondent vide letter dated 10 April 2010. However, the same was returned with the remark 'left address not known return to sender'. The Disciplinary Authority thereafter passed order imposing the punishment of dismissal from service on the Respondent on 25 May 2010.

4. The Respondent approached Labour Court, Mahad by filing Complaint on 7 July 2010 under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 challenging the order of his dismissal. Petitioner resisted the complaint by filing its Written Statement. The Labour Court framed issues regarding fairness and propriety of enquiry and

perversity in the findings of the Enquiry Officer. On those issues, Respondent examined himself as a witness. Petitioner examined the Enquiry Officer and its Production Manager. The Labour Court thereafter passed Part-I Award dated 3 March 2015 holding that the enquiry conducted against the Respondent was fair and proper and that the findings of the Enquiry Officer were not perverse.

5. Respondent did not challenge Part-I Award and the same attained finality. The Labour Court thereafter proceeded to try and decide other issues. Here again, Respondent examined himself as a witness and Petitioner examined Mr. Arun Keshav Kamat, Head-Industrial Relations as it witness. The Labour Court thereafter proceeded to deliver Part-II Award dated 27 December 2015 dismissing the complaint.

6. Respondent challenged both Part-I and Part-II Awards before the Industrial Court, Thane by filing Revision Application (ULP) No.10/2017. The Industrial Court delivered judgment dated 11 September 2019 setting aside Part-I Award dated 3 March 2015, as well as Part-II Award dated 27 December 2015 holding that the enquiry conducted against the Respondent was illegal. Complaint (ULP) No.14/2010 has been remanded to the Labour Court for decision in accordance with law. The remand is made apparently on account of the right reserved by Petitioners to lead evidence in case the enquiry was held to be vitiated. Respondent is aggrieved by the

judgment and order of the Industrial Court dated 11 September 2019 and has filed the present petition.

7. Mr. Jalisatgi would appear on behalf of Petitioner and submit that the findings recorded by the Industrial Court for setting aside Part-I and Part-II Award of the Labour Court are totally perverse. That the domestic enquiry has been conducted by Petitioner after following the principles of natural justice by dispatching notice of each date of enquiry. That it was Respondent's responsibility to communicate his new address to the employer, if he had changed his address. That the employer cannot be faulted if the notices of enquiry are returned on account of alleged change of address of the Respondent. That Respondent received the chargesheet, as well as dismissal order dispatched at the same address where other notices of enquiry were dispatched. That Industrial Court has erred in holding that the Enquiry Officer ought to have published notice in the newspapers. That remand of enquiry at such distant date would prejudice the Petitioner where all witnesses are not available for leading evidence to prove charge before the Labour Court. He would therefore submit that the order of the Industrial Court deserves to be set aside.

8. *Per-contra*, the learned counsel appearing for the Respondent would oppose the petition and support the order passed by the Industrial Court. He would submit that the enquiry has been conducted in gross violation of principles of natural justice. He would

invite my attention to the findings recorded by the Industrial Court in paras-11 and 12 of its judgment. He would submit that the Industrial Court has rightly held that in Part-I Award, the Labour Court ought to have decided two issues of legality of enquiry and perversity separately, though through a common judgment. That the Labour Court had taken into consideration only oral evidence of the workmen instead of referring to the documents of enquiry. He would submit that no interference by this Court is warranted where the Industrial Court has merely remanded the proceedings to Labour Court where the employer would get an opportunity to prove the misconduct by leading evidence. He would pray for dismissal of the petition.

9. Rival contentions of the parties now fall for my consideration.

10. In the present case, the Labour Court had delivered both Part-I and Part-II Awards against the employee. The Labour Court thus held that the enquiry was conducted legally and that there was no perversity in the findings recorded in the enquiry. The Labour Court thereafter proceeded to dismiss the complaint by rendering Part-II Award. The Industrial Court has proceeded to set aside both Part-I and Part-II Awards essentially on the ground that the enquiry was not conducted legally and that there was violation of principles of natural justice. Since the enquiry itself is held to be illegal, the Industrial Court did not go into the issue of perversity. Since the

Petitioner-employer had reserved its right in the Written Statement to lead evidence in the event of enquiry being held to be vitiated, the Industrial Court has remanded the proceedings to the Labour Court so that the employer avails the said liberty.

11. The moot issue that therefore arises for my consideration is whether the findings of the Industrial Court about enquiry being not held in a fair and proper manner can be sustained. In the present case, the Respondent faced the charge of remaining unauthorisedly absent from 27 September 2009 onwards till the date of issuance of chargesheet dated 21 October 2009. Additionally, charge of intermittent absence during the past period from July 2007 to October 2009 was also levelled. Before issuing the chargesheet, the Respondent was issued a show-cause notice dated 10 October 2009 alleging the said misconduct. The Notice was received by Respondent, and it appears that he gave his explanation on 17 October 2009. However, after chargesheet was issued on 21 October 2009, receipt of which is not denied by the Respondent, he did not respond to the chargesheet. Respondent has admittedly received the chargesheet dated 21 October 2009. The chargesheet communicated the date of enquiry which was scheduled to be held on 30 October 2009 at 3.30 p.m. Since the chargesheet is received by Respondent, he also acquired knowledge of the date of enquiry, which was scheduled to be held on 30 October 2009. However there is no explanation as to why the Respondent failed to attend the enquiry on 30 October 2009. He remained absent in the enquiry on 30 October

2009. The enquiry was thereafter held on 13 November 2009, 10 December 2009, 30 December 2009, 13 January 2010 and lastly on 10 February 2010. It appears that intimations of all these dates were dispatched by Petitioner by way of letters addressed at the known address of the Respondent. It appears that Respondent had communicated his address in the records of the employer as "At Post-Parayani, Taluka-Man, District-Satara". The show-cause notice dated 10 October 2009 was also dispatched at the same address and the acknowledgement produced alongwith the said show-cause notice shows that the Respondent received the same. Even the chargesheet dated 21 October 2009 is received by the Respondent. Therefore, it becomes incomprehensible as to why the notices intimating the dates of enquiry after 30 October 2009 were returned by the postal authorities. There is also no dispute to the position that the Respondent has received the dismissal order dated 25 May 2010. Even that order was dispatched at the same address (At Post-Parayani, Taluka-Man, District-Satara). Therefore, it becomes slightly difficult to believe that the Respondent had really changed his address. Even if he was to change his address, he ought to have given intimation to the employer, which he has failed to do.

12. Be that as it may, it is not really necessary to delve deeper into this aspect of return of notices intimating dates of enquiry. It is an admitted position that Respondent received the chargesheet and was intimated the date of enquiry which was scheduled on 30 October 2009. Having received the chargesheet with the intimation

of date of enquiry, he ought to have presented himself for the enquiry on 30 October 2009. Even if it is assumed that he was prevented by any sufficient cause from not attending the enquiry on 30 October 2009, the Respondent ought to have made some enquiry with the employer about the progress of enquiry after 30 October 2009. The records indicate that Respondent did not bother to make any enquiry with the employer nor addressed even a single letter to the employer till he was dismissed from service on 25 May 2010. More importantly, apart from failure to attend dates of enquiry, the Respondent remained continuously absent even during the progress of enquiry during 21 October 2009 to 25 May 2010.

13. Considering the above circumstances, I am of the view that the Petitioner-employer has conducted the enquiry by observing the principles of natural justice to the hilt. It is Respondent, who was not only negligent in remaining absent from duties, but also did not probe enquiry about the progress of enquiry despite the receipt of chargesheet.

14. The findings of the Industrial Court that “the Enquiry Officer did not even take pains to publish the notice in the newspapers as the address of the applicant was not known” is totally perverse and unsustainable. The Respondent cannot expect the employer to run behind him to locate his changed address when the Respondent himself is responsible for failure to communicate his alleged changed address. Secondly the Respondent has received some

of the communications at the very same address which aspect is not explained in any manner, nor dealt with by the Industrial Court. The Respondent has thus selectively received some of the communications/orders and feigns ignorance about the dates of enquiry. As observed above, it is not necessary to go into the issue of change of address as Respondent was communicated the first date of enquiry and it was his duty to find out the progress of enquiry. In my view, therefore the findings of the Industrial Court that the enquiry is conducted in violation of principles of natural justice is totally perverse and cannot be sustained.

15. The Respondent has remained unauthorisedly absent for unduly long period of time without issuing even a single intimation to the employer, except replying to the show-cause notice dated 10 October 2009 on 17 October 2009. The Respondent has thereafter not bothered to send even a single communication to the Petitioner. If he was indeed not keeping well, he ought to have communicated the said factum to the employer which he admittedly failed to do. In such circumstances, grant of any relief to Respondent would be putting a premium on his negligent acts. The Respondent has also not stated the exact reason why he remained unauthorisedly absent. He has given various reasons such as 'domestic and financial crises', 'mental sickness' etc. While he contends that he was suffering from mental disorder till 1 June 2010, he was quick enough to approach the Labour Court challenging his dismissal by filing a complaint on 7 July 2010. He thereafter adduced evidence twice before the Labour Court.

Therefore, the justification of mental disorder for absence sought to be put forward by the Respondent does not inspire confidence.

16. In his evidence, Respondent has given various admissions that his permanent address at his local village is “Village-Parayani, Taluka-Man, District-Satara’. That he did not give any intimation about change of his residence to the employer. That he received the chargesheet and also intimation of date of enquiry. That he never gave intimation to the employer about his sickness. That even the report of the Enquiry Officer was dispatched to him. Considering the evidence of the Respondent, it is difficult to hold that there has been any breach of principles of natural justice in conducting the enquiry.

17. Resultantly, I find that the judgment and order passed by the Industrial Court is indefensible and is liable to be set aside. Accordingly, the Writ Petition is **allowed**. Judgment and order dated 11 September 2019 passed by the Industrial Court in Revision (ULP) No. 10/2017 is set aside. Rule is made absolute.

NEETA
SHAILESH
SAWANT

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SANDEEP V. MARNE, J.