

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12086 OF 2023

Kevin C. Hayward .. Petitioner
Versus
IMA-PG India Pvt Ltd .. Respondent

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- Ms. Jane Cox i/by Rahil Fazelbhoy for Petitioner
 - Mr. Sushant Anaokar for Respondent
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 12, 2023

P.C.:

1. By consent of the parties, Writ Petition is taken up for final hearing.

2. Heard Ms. Cox, learned Advocate for Petitioner and Mr. Anaokar, learned Advocate for Respondent and with their able assistance perused the impugned judgment dated 10.03.2023 passed by the learned Industrial Court in Revision proceedings as also the detailed judgment dated 26.09.2019 passed by the learned Labour Court while deciding and adjudicating Complaint (ULP) No. 101/2016.

3. Briefly stated in the present case, the distinction between the aforesaid two judgments pertains to proportionality of the punishment meted out to the Petitioner in the facts and circumstances of the present case. Pursuant to settlement, Petitioner was directed by his

superior while working in the third shift to work on two machines namely the CNC Machine and AMS Delight Machine simultaneously. Though under settlement, it was provided that one worker would work on two machines simultaneously as also individually and along with a co-worker, there are two issues which have been brought to my attention by the learned Advocate for the Petitioner which are relevant in this context. Firstly under the terms of settlement which I find at page No. 46 of the Petition, considering the skill required to operate the machines simultaneously, it has been clearly provided that training would be provided to the workman. The facts in the present case show that right from inception, Petitioner did not refrain or deny the instructions of his superior but sought himself to be trained to operate two machines simultaneously. Second aspect which requires consideration is that whether despite accepting the fact that he refused to work on the second machine simultaneously without being trained or without being offered training, can such an act be construed as a major misconduct or would it be within the realm of a minor misconduct.

4. After perusing the detailed judgement passed by the learned Labour Court dated 26.09.2019 what I find is that detailed and cogent reasons have been given by the learned Labour Court. However to overturn these reasons, learned Industrial Court in paragraph Nos. 10

and 11 of its judgment has held that the decision of the learned Labour Court is shockingly disproportionate to the misconduct concerned. I am not in agreement with the findings returned by the learned Industrial Court in paragraph Nos. 10 and 11 of the impugned especially in view of the fact that the learned Labour Court has returned reasoned findings in its judgment while deciding the Complaint. That apart, another issue which cannot be lost sight of is the issue of discrimination pleaded in the present case which has been completely ignored by the learned Industrial Court. Mr. Aanaokar is extremely fair to the Court when asked a question as to whether the Respondent Company had initiated any action against Mr. Mohan Ughade who was the co-worker of the Petitioner and who had also refused to work alone on both the machines after refusal by the Petitioner. He would submit that the Company did not initiate any action against Mr. Mohan Ughade in respect of the same incident. This issue has been considered by the learned Labour Court while deciding the Complaint in favour of the Petitioner / workman.

5. That apart it needs to be mentioned that the aforesaid incident indicting the Petitioner was one such singular incident and there is no other incident of any misconduct against the Petitioner in the past.

6. It is seen that the learned Labour Court while allowing the Complaint and quashing and setting aside the dismissal order dated 13.06.2016 directed reinstatement of Petitioner with continuity of service and 50% back wages payable to him from the date of dismissal with all consequential benefits. Ms. Cox would submit that the said order of grant of 50% back wages to the Petitioner has not been challenged nor does he intend to challenge the same. All that she would submit is that considering the issue at hand the proportionality of punishment awarded to Petitioner by dismissing him is extremely harsh.

7. For the reasons mentioned and alluded to herein above and more specifically in view of the cogent and reasoned findings given by the learned Labour Court in its judgement dated 26.09.2019, I am inclined to agree with the submissions made by the learned Advocate for Petitioner. In the facts and circumstances of the present case, deprivation of 50% back wages to the Petitioner workman while reinstating him with continuity of service is an adequate punishment. I say so because it has always been the stand of the Complainant Petitioner right from inception that if he would be trained and / or given training, he would have been ready and willing to undertake operation of the two machines simultaneously. It also needs to be mentioned that the Petitioner was a member of the Management

Committee of the recognized Union and also a signatory to the settlement with the Respondent Company.

8. In view of the above and considering the fact that this was a singular act on the part of the Petitioner, considering his tenure of service and his past record of service as also the fact that there was a clear case of discrimination with Petitioner, the punishment inflicted on the Petitioner of dismissal from service was shockingly disproportionate and has been rightly dealt with by the learned Labour Court. While reappreciating the evidence, learned Industrial Court has not considered the aforementioned issues in the facts and circumstances of the present case.

9. In view of the above, the impugned judgment in Revision dated 10.03.2023 is clearly unsustainable and is quashed and set aside. The judgment dated 26.09.2019 passed by the 4th Labour Court is upheld in its entirety.

10. Petitioner / workman is directed to calculate the claim amounts payable to him within a period of one week from today and handover the computation to the Respondent Company. On receipt of the said details and on verifying the same, Respondent Company is directed to pay the differential dues to the Petitioner within a period of two weeks thereafter.

11. With the above directions, Writ Petition is disposed.

Amberkar

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[MILIND N. JADHAV, J.]