

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11376 OF 2019

Dhananjay S. Kamodkar

Age: 45 years; Adult Indian Inhabitant,

Occu: Unemployed,

R/at: Manmad, Taluka: Nandgaon,

District: Nashik.

... Petitioner

Versus

M/s. Motor Industries Company Ltd.

Plot No.75, M.I.D.C., Satpur,

Nashik – 422 007.

... Respondent

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- Mr. R. V. Sankpal a/w. Ms. Pinki Chavan i/by R. V. Sankpal and Associates for the Petitioner.
- Mr. Kiran Bapat, Senior Advocate a/w. Mr. T. R. Yadav i/by M/s. Desai and Desai Associates for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 3, 2023

JUDGMENT:-

1. Heard Mr. Sankpal and Ms. Chavan, learned Advocates for Petitioner and Mr. Bapat, learned Senior Advocate for Respondent.

2. This Writ Petition is filed under the provisions of Articles

226 and 227 of the Constitution of India challenging the order dated 01.09.2015 passed under Exhibits “U-30” and “U-31” and Awards dated 23.11.2017 and 28.11.2018 passed in Reference (IDA) No. 44 of 2002 by the Labour Court, Nashik thereby upholding the termination of the Petitioner by the Respondent.

3. By consent of the learned Advocates appearing for the respective parties, Writ Petition is heard finally at the stage of admission.

4. Briefly stated the facts necessary for adjudication of the present case are outlined hereinunder:-

4.1. In the year 1990, Petitioner joined Respondent – Company as an Operator.

4.2. On 09.07.1998, Petitioner was issued first charge-sheet for unauthorised absenteeism of 16 days in the year 1997 – 1998. On 31.05.1999, Petitioner was issued second charge-sheet for unauthorized absenteeism of 40 days in the year 1998. On 02.09.1999, Petitioner was issued third charge-sheet for unauthorised absenteeism of 66 days in the year 1999. On 09.05.2000, Petitioner was issued fourth charge-sheet for unauthorised absenteeism of 119

days in the year 1999-2000.

4.3. In the interregnum during the year 1996-2001, Petitioner was warned by Respondent – Company on various occasions for habitual late attendance and loitering in the Respondent - Company.

4.4. On 17.05.2000, enquiry was conducted by Enquiry Officer on the basis of above 4 charge-sheets submitted to him and an equal and fair opportunity was accorded to Petitioner to defend his case. However, Petitioner chose not to file written statement or reply in the enquiry proceedings and rather categorically admitted his guilt of committing misconduct as stated in the charge-sheets. It is pertinent to note here that the Enquiry Officer in clear words asked the Petitioner if he admitted the charges levelled against him owing to any pressure or inducement, to which Petitioner categorically answered in the negative and replied that he accepted all charges of misconduct levelled against him out of his own free will. Therefore, Enquiry Officer filed his report dated 03.02.2001 thereby returning findings that evidence on record and the charges of misconduct levelled against Petitioner were accepted by him and therefore stood proved and forwarded the same to Respondent – Company for further action.

4.5. On the basis of findings returned by the Enquiry Officer, on 03.10.2001, Respondent – Company issued show – cause notice to Petitioner and enclosed the Enquiry Report alongwith it and gave one

more opportunity to Petitioner to offer his reasonable explanation. However, Petitioner once again failed to reply to said show-cause notice. Eventually on 10.10.2001, Respondent – Company issued termination letter to Petitioner and terminated his services on account of the above incidents of misconduct totalling to absenteeism of 357 days.

4.6. On 19.12.2001, Petitioner raised a demand seeking withdrawal of his termination and reinstatement with full back wages and continuity of service and sought intervention of the Labour Commissioner on the ground that he was induced to admit the charges levelled against him during the Enquiry proceedings. Since the dispute was not settled, same was referred to the learned Labour Court by Reference (IDA) No.44 of 2002.

4.7. Petitioner filed his Statement of claim at Exhibit “U-12” before the learned Labour Court praying for various reliefs i.e. reinstatement with continuity of service and full back wages. Petitioner’s subsequent defence was that he did not get his leave sanctioned from the Respondent – Company owing to his ill-health and subsequently he sent letters attaching Doctor’s medical certificate to justify his absenteeism from work at all times. Petitioner submitted on record various medical certificates issued by different Doctors to justify his absenteeism from work, however the same were not

exhibited. Labour Court framed preliminary issues below Exhibit “O-7”. Petitioner filed Application below Exhibit “U-30” supported by his affidavit below Exhibit “U-31” for permission to rely upon various documents in support of his case.

4.8. By order dated 01.09.2015, learned Labour Court dismissed his Application below Exhibit “U-30” holding that the additional documents i.e. material which was sought to be relied upon by Petitioner before the Labour Court was not produced by him before the Enquiry Officer and hence it could not be considered in deciding Part-I Award relating to the fairness, legality and propriety of the enquiry conducted by Enquiry Officer.

4.9. Petitioner led evidence of two witnesses in support of his case before the Labour Court namely himself and one Mr. Babulal Mahadu Jadhav, Member of the Trade Union in the Respondent – Company. Respondent – Company led evidence of one witness by filing Affidavit-in-lieu of evidence below Exhibit “C-21”. After hearing both parties, Labour Court passed Part-I Award on 23.11.2017 holding that the departmental enquiry conducted by the Enquiry Officer was fair, legal and proper and findings returned by him were not perverse.

4.10. After conclusion of trial and due consideration of the evidence led and material placed on record, on 28.11.2018, Labour Court passed Part-II Award thereby holding that punishment of

dismissal / termination awarded to Petitioner by Respondent - Company was not illegal or disproportionate and Petitioner was not entitled to any relief whatsoever.

4.11. Being aggrieved, Petitioner filed the present Writ Petition.

5. Mr. Sankpal alongwith Ms. Chavan, learned Advocates appearing for Petitioner would submit that during the enquiry proceedings conducted by Enquiry Officer, Respondent – Company's then Personnel Manager – Mr. S. B. Deshpande had assured the Petitioner that conduct of enquiry was a mere formality and no action would be taken against him if he admitted the charges. Hence Petitioner admitted and accepted the charges in the charge-sheets levelled against him. It is submitted that Petitioner never committed any misconduct of unauthorized absenteeism as alleged in the various charge-sheets, but he remained absent due to his illness and he filed timely Applications informing the Respondent - Company alongwith medical certificates issued by the treating Doctors. It is submitted that enquiry conducted was not fair and proper and in complete violation of the principles of natural justice.

6. It is further submitted that Petitioner was not accorded a fair opportunity to defend his case as his Application for production of

additional documents was dismissed by the Labour Court on the ground that he was relying upon documents which were not produced during the enquiry proceedings. Hence, according to Petitioner both Award Part-I dated 23.11.2017 and Award Part-II dated 28.11.2018 passed by the Labour Court deserved to be quashed and set aside and he be reinstated in service with continuity of service and full back wages from the date of his termination.

7. *PER CONTRA*, Mr. Bapat, learned Senior Advocate appearing for the Respondent - Company would submit that in the present case, no fault can be found with the Awards passed under Part-I and Part-II by the Labour Court, in view of the fact that Petitioner has been remaining absent repeatedly over the years and was issued 4 charge-sheets in conjunction over a period of 4 years for unauthorised absenteeism for work without intimation to the Company. He would submit that considering the nature of employment of Petitioner as a Machine Operator in the Respondent – Company such repeated and chronic absenteeism led to disruption of the production processes and it was detrimental to the Company's interest. He would submit that at all times Petitioner gave one and the same reasons i.e. about his illness. What is pertinent to be noted according to Mr. Bapat is the fact that at all times Petitioner remained

absent without intimation or even seeking permission on account of his alleged illness. He would submit that Petitioner was therefore warned on several occasions which is admitted fact. Next he would submit that during the enquiry proceedings Petitioner accepted and admitted his guilt and the charges levelled against him in the 4 charge-sheets. Hence he would submit that considering the fact that Petitioner had admitted his habitual and repeated unauthorised absenteeism from work. No fault can be found with the above Awards passed under Part-I and Part-II by the Labour Court. He would submit that there is absolutely no denial of the principles of natural justice in the Petitioner's case in all 3 forums namely before the Enquiry Officer and thereafter before the Labour Court during the proceedings under Part-I and Part-II Award having been passed. Hence he would submit that the impugned Awards deserves to be sustained and the Petition deserves to be dismissed with costs.

8. I have also perused the charge-sheets issued by the Respondent – Company to Petitioner. For the purpose of reference and convenience, only the last charge-sheet dated 09.05.2000 is scanned and reproduced below:-

MICO
NashikMr. Kamodkar D.S.
L.no.735244/5164005Ref.
PERDate
09.05.00

CHARGE SHEET

As you know and your record shows that you have been remaining absent without making any applications and without obtaining prior permissions from the Management for the period hereinafter set out. In the circumstances your said absence is treated as unauthorised absence and therefore a misconduct.

YEAR	MONTH	DAYS	DATES
1999	July	26	1,2,4,5,6,7,8,9,11,12,13,14,15,16,18,19, 20,21,22,23,25,26,27,28,29,30
	AUG	26	1,2,3,4,5,6,8,9,10,11,12,13,15,17,18,19, 20,22,23,24,25,26,27,29,30,31
	SEP	16	1,2,3,5,6,7,8,9,10,12,13,14,15,16,17,19, 20,21
	OCT	18	4,5,6,7,8,10,11,12,13,17,18,20,21,22,24 25,26,28
	NOV	14	1,8,14,15,16,17,18,19,21,22,23,25,29, 30
	DEC	17	1,3,7,8,9,10,12,13,14,15,16,19,20,22,23 25,27
	TOTAL	119	DAYS
YEAR	MONTH	DAYS	DATES
2000	FEB	06	13,24,25,27,28,29
	MAR	22	1,2,3,5,6,7,8,9,10,12,13,14,15,16,17,19, 20,21,22,23,24,26
	APR	13	2,3,4,5,6,17,18,20,21,23,24,25,26
	TOTAL	41	DAYS

The above act alleged to have been committed by you constitute the following misconduct viz.

1. "Habitual absence without permission."
2. "Absence without permission for more than ten consecutive days."

Under item 6 of the company's certified standing order no. 24 applicable to your category's of workmen of the company.

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(103)

(26)

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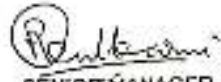
In the circumstances, it has been decided to hold a written enquiry into the charges alleged against you. The enquiry will be held at the factory in PER office on 17.05.00 at 03.00 p.m. When you are required to remain present without fail. Mr. S.S. Hinge has been appointed as Enquiry officer for the purpose of enquiry.

At the enquiry, you will be given full opportunity to defend your case by examining your witnesses and cross-examining company's witnesses.

You will also be permitted to be defended by your co-workmen or by an office bearer of the Union of which you are a member.

You may submit your written explanation on or before 15.05.00 if you so desire.

Should you fail to remain present as advised, the enquiry will be conducted ex-parte and in your absence and the decision of the same shall be binding upon you.


SENIOR MANAGER
(PERSONNEL & ADMINISTRATION)

Received
12.5.00
S.S. Hinge

9. As can be seen from the charge-sheet, Petitioner has remained repeatedly, continuously and unauthorisedly absent on several dates and it was Respondent - Company's case that such absenteeism has caused inconvenience in the working of the

department. Hence Petitioner was charge-sheeted under certified standing orders No.25 read with standing order No.24 for the misconduct i.e. “Habitual absence without permission or without sufficient ground or proper or satisfactory explanation” and “Absence without permission for more than ten consecutive days or without sufficient grounds or proper or satisfactory explanation”.

10. It is also seen that Petitioner has been given an adequate opportunity of presenting his case. It is seen that the charge-sheet dated 09.07.1998 has been issued for unauthorised absenteeism for 16 days in the year 1997 and 16 days in the year 1998. The charge-sheet dated 02.09.1999 has been issued for remaining absent on 66 days during the year 1999 thereafter charge-sheet dated 09.05.2000 has been issued for remaining absent on 41 days during the year. It is further seen that in so far as the attendance report of Petitioner for the year 2000 and 2001, he has remained unauthorised absent for 176 days in the year 2000 and 181 days in the year 2001.

11. It is seen that before the learned Labour Court Petitioner has submitted a chart in his Statement of Claim, stating the period, date and name of disease suffered by him and also name of Doctor under whom he was undergoing treatment. According to Petitioner, between 11.01.1996 to 27.09.2001 i.e. a period of five (5) years, he has remained absent on 23 occasions for various lengths of time. The

names of disease suffered by Petitioner are enteric fever, loose motion, severe pain in abdomen, allergic bronchitis, viral fever, abdominal colic, dysentery, fever, knee medication, influenza, infective hepatitis, malarial hepatitis, pneumonia and the list is endless. What is intriguing is the fact that Petitioner has been treated by at least 13 Doctors whose names have appeared (sometimes repeatedly) in the Statement of Claim. What is more intriguing is the fact that nothing prevented the Petitioner from placing on record the above medical documents before the Enquiry Officer during Enquiry proceedings. In that view of the matter, rejection of Petitioner's Application to subsequently rely upon multiple Doctor's certificates for treatment of various illnesses is rightly rejected by the Labour Court by order dated 01.09.2015 passed below Exhibit U-30 and U-31.

12. I have perused the Statement of Claim filed by Petitioner before learned Labour Court and it is seen that the entire burden and blame has been placed by Petitioner on the Management of Respondent – Company and the Union on ground that Petitioner thought that the Personnel Manager of the Respondent – Company would act as per the alleged assurances given by him to the office bearers of the Union of which Petitioner was a member. Such a stand of Petitioner deserves to be rejected at the outset as it is not only unbelievable but a mere camouflage to circumvent his unauthorised

absenteeism repeatedly as has been noted and alluded by this Court hereinabove.

13. In that view of the matter, the termination of Petitioner cannot be said to be illegal at all. The Respondent – Company has followed principles of natural justice at the time of Enquiry proceedings. The issues have been appropriately framed and correctly answered with cogent reasons by the Labour Court as enumerated in paragraph Nos. 7 to 16 of the Award dated 28.11.2018 which cannot be disregarded in the facts and circumstances of the present case. It is pertinent to note that whenever Petitioner remained absent, Petitioner never informed or sought sanction of his leave even after resuming at work. Petitioner derelicted and did not follow the rules as per the Standing Orders issued by the Respondent – Company for getting his leave sanctioned. The Leave cards were never denied by Petitioner and they form an important piece of evidence for consideration on record.

14. To sum up the above observations and findings, it is necessary to quote paragraph No.16 of the impugned Award dated 28.11.2018 which is self explanatory relating to chronic absenteeism of the Petitioner. Paragraph No.16 of the Award dated 28.11.2018 reads thus:-

16. The misconduct about absenteeism is proved by the first party in the enquiry by producing necessary documents which reveals that the second party remained absent for total 225 days in the year 1998, 1999 and in 2000 upto April. The first party while issuing the dismissal order dtd. 10.10.2001 to the second party have mentioned about the past record, it appears that on 5 occasions he was warned for habitual late attendance and further including the present 3 charge-sheets, another charge-sheet in the year 1998 was also issued for 40 days absenteeism from August to October and further that the second party again remained absent during the pendency of domestic enquiry in the year 2000 for 176 days and in the year 2001 for 181 days. Therefore, I do not find any reason to interfere in the punishment imposed upon the second party by the first party in view of such long absenteeism without prior sanction, punishment of dismissal cannot be said to be illegal or disproportionate, the second party is not entitled for any reliefs. The Authorities relied by the second party with due respect to the same, the facts in cited case are different than in present case. Therefore, in my view, the ratio cited case cannot be applied to the present case. Thus, issue No.3 and 4 stands replied in the negative.

15. The reasons given in both Awards dated 23.11.2017 and 28.11.2018 are not only cogent but also believable and stand proven in the facts and circumstances of the present case and also substantiated on the basis of the evidence on record. Hence no fault can be found with both, Award dated 23.11.2017 as well as Award dated 28.11.2018. The Awards are thus upheld.

16. In that view of the matter, the present Writ Petition deserves to be dismissed.

17. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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