

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13577 OF 2022

M.B. Mokal

...Petitioner

Versus

Rathi Dye Chem Pvt. Ltd. & Ors.

...Respondents

...

**Ms. Divya Wadekar** i/by Mr. Vaibhav Jagdale, for Petitioner.

**Ms. Satyapriya Rao** a/w Mr. Vaibhav Patankar & Arjun Kulkarni i/by Mr. Patankar & Associates, for Respondents.

...

**CORAM : SANDEEP V. MARNE, J.**

**DATE : OCTOBER 26, 2023.**

**P.C.:**

1. Petitioner challenges orders dated 12 February 2015 and 31 March 2016 passed by Labour Court Mahad in Complaint (ULP) No.33 of 2009 as well as the Judgment and order dated 29 July 2020 passed by the Industrial Court, Thane in Revision Application (ULP) No.47 of 2016. Both the Labour Court as well as the Industrial Court have rejected Petitioner's Complaint/Revision challenging the penalty of dismissal from service imposed on him vide order dated 27 November 2009.

2. I have heard the learned counsel appearing for the Petitioner. She

would submit that the penalty imposed on the Petitioner is disproportionate for the misconduct of unauthorized absence. That there is no past misconduct on the part of the Petitioner. That the charge-sheet was issued in a vindictive manner after Petitioner joined Union in December 2008. That several similarly placed employees who were dismissed from services were subsequently taken by and Petitioner is given discriminatory treatment. She would further submit that Petitioner offered adequate explanation for his absence. That in June 2008 Petitioner was suffering from an eye problem and in May 2019 his wife was unwell. The proper intimations with regard to absence supported by requisite medical certificates were sent to the employer and that therefore the absence cannot be treated as unauthorized. She would submit that in respect of various periods of unauthorized absence, leave has already been granted. She would submit that the absence in respect of past period since 2007 to 2009 was deliberately included with a view to ensure maximum possible punishment to the Petitioner.

3. The Learned counsel appearing for the Respondent would oppose the Petition and support the orders passed by the Labour Court and Industrial Court. She would submit that the Labour Court has taken into consideration the past record of the Petitioner in the form and several show cause notices,

which were produced during the course of inquiry. That the penalty imposed by the respondents is proportionate to be misconduct alleged.

4. Having considering the submissions canvassed by the learned counsels appearing for the parties, it is seen that the allegations levelled against the Petitioner in charge-sheet dated 23 June 2009 was remaining unauthorizedly absent for a period of 64 days during 6 March 2007 to 31 May 2009. The unauthorized absence on the part of Petitioner is as under :

| वर्ष / महिना   | गैरहजर दिनांक                                  | एकुल गैरहजर दिवस |
|----------------|------------------------------------------------|------------------|
| मार्च - 2007   | 6, 9, 10, 12                                   | 04               |
| जून - 2007     | 27, 30                                         | 02               |
| जुलै - 2007    | 1, 13                                          | 02               |
| ऑक्टो - 2008   | 24                                             | 01               |
| नोव्हें - 2008 | 1                                              | 01               |
| जाने - 2009    | 6, 16, 19                                      | 03               |
| फेब्रु - 2009  | 5                                              | 01               |
| मार्च - 2009   | 28                                             | 01               |
| एप्रिल - 2009  | 6, 11, 18, 28, 29                              | 05               |
| मे - 2009      | 13, 15, 16, 17, 19, 20, 22, 23, 24, 27, 29, 30 | 12               |

5. The above chart would indicate that during the month of June

2008, Petitioner remained unauthorized absent for a period of 9 days, similarly in May 2009 he remained absent for 12 days. These days of absence are in addition to weekly offs, holidays and sanctioned leaves. The above chart would indicate that the Petitioner was repeatedly remaining absent almost every month.

6. Though unauthorized absence of 64 days during the period of 2 years may not ordinarily constitute a grave misconduct, however, it has to be borne in mind that the Petitioner was remaining habitually absent almost every month. The charge-sheet was apparently triggered on account of his absence for 12 long days in the month of May 2009. It has been proved in the inquiry that the Petitioner did not take prior leave for remaining absent for 64 days. The inquiry has been conducted after affording full opportunity of defence to the Petitioner. At the end of the inquiry, the Inquiry Officer has considered the entire evidence on record and has arrived at a conclusion that the charge against the Petitioner is proved except the two days of 28.03.2009 to 06.04.2009. The findings recorded by the Inquiry Officer are well supported by evidence on record. They cannot be termed as perverse in any manner.

7. Coming to the issue of proportionality of penalty, the Labour

Court has taken into consideration the fact that Petitioner was issued show cause notice dated 07.12.2007 in respect of his absentism during September, October and November 2007. He was placed under suspension vide letter dated 28 December 2005 for two days. A warning letter was issued to him on 21 September 2005 for remaining absent for 24 days during April 2005 to September 2005. Few more warning letters dated 11.05.2005 & 30.10.2004 were issued in respect of absenteeism. The entire service record of the Petitioner appears to be full of show cause notices/warning letters. It appears that the Petitioner had become an incalcitrant employee, who was habitually remaining absent without any improvement. In such circumstances, it cannot be stated that the penalty of dismissal from services imposed on the Petitioner would shock the conscience of this Court. It is well settled law that Courts cannot interfere in the quantum of penalty unless the penalty is found to be shockingly disproportionate to the misconduct proved. In my view, considering the conduct of the Respondent, the penalty of dismissal would not shock the conscience of the Court.

8. The Labour and Industrial Court have rightly appreciated the entire matter and have correctly dismissed Petitioner's complaint and revision application. No error cannot be traced in the approach of the Labour Court

and the Industrial Court. Writ Petition being devoid of merits, is dismissed without any order as to costs.

**(SANDEEP V. MARNE, J.)**