

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9612 OF 2017

Popat Sonaba Khare

... Petitioner

Versus

Proprietor, Ganesh Engineering Works

...Respondent

Mr. Mahendra M. Agavekar for the petitioner.

Mr. Uday P. Warunjikar a/w. Mr. Sumeet Kate for the respondent.

CORAM: G. S. KULKARNI, J.
DATED: 31 January 2023

P.C.

1. This petition challenges three orders, firstly the order dated 5 October, 2007 whereby the Labour Court at Sangli passed an order in the proceedings of Complaint (ULP) No. 25 of 2001 recording a finding on the preliminary issue that the enquiry which was held against the petitioner was fair and proper and that the findings are not perverse. The said complaint thereafter came to be taken up for adjudication. By the second order dated 1 February, 2013, the Labour Court rejected the complaint recording a finding that the misconduct as alleged against the petitioner in the disciplinary proceedings was proved as also that the punishment was not disproportionate, as also concluded that the respondent/employer has not engaged in any unfair labour practice. The third order assailed is an order dated 28 November, 2015 passed by the Industrial Court, Sangli rejecting the Revision Application as filed by the petitioner

against the order dated 1 February, 2013 passed by the Labour Court rejecting the said complaint. Thus, there are concurrent finding against the petitioner.

2. Some relevant facts are required to be noted. It is the case of the petitioner that in December, 1988 he joined the employment of respondent as a watchman. In August, 1997, he had preferred an application, being Application (IDA) No. 125 of 1997, under section 33(c)(2) of the Industrial Disputes Act, 1947 (for short “**the Act**”) before the Labour Court at Sangli for determination of the overtime dues alleged to be payable by the respondent. It is the case of the petitioner that on 21 November, 1997 notice/service of the said proceedings before the Labour Court was effected on the respondent; immediately thereafter his services were orally terminated with effect from 21 November, 1997. The petitioner assailed the oral termination by approaching the Labour Court in Complaint (ULP) No. 110 of 1997, in which respondent filed a written statement and alleged that the services of the petitioner were not terminated and that the petitioner has remained absent without leave or permission. It is the case of the petitioner that he had resumed duties but the respondent had refused to provide him work as a watchman and instead gave him the duties of a mazdoor. The petitioner contended that he worked for 5 days but thereafter due to his health conditions, ESI doctor advised that he be given light work, which was not provided to him. It is the petitioner’s case that

during the pendency of the Complaint (ULP) No. 110/97, the petitioner was issued a charge sheet on 8 March, 2000 on the ground of absenteeism from duty from 22 July, 1997. The petitioner filed a reply to the charge-sheet on 21 March, 2000. An Enquiry Officer was appointed and on the basis of report of the Enquiry officer, on 1 December, 2000, the petitioner came to be terminated.

3. On 22 December, 2000, the petitioner filed Complaint (ULP) No. 25 of 2001 in question, before the Labour Court at Sangli under section 28 of the M.R.T.U. & P.U.L.P Act alleging unfair labour practice on the part of the respondent under Item (a), (b), (d), (e), (f), (g) of Schedule IV of the Act. The said Complaint of the petitioner was contested by the respondent.

4. The learned Labour Judge has framed a preliminary issue as to whether the enquiry which was held by the respondent was fair and proper. Such preliminary issue came to be decided by the learned Labour Judge by an order dated 5 October, 2007 as assailed holding that the enquiry held against the petitioner by the respondent was fair and proper. It needs to be noted that the petitioner in fact did not participate in the enquiry much less to examine any witness or cross-examine the management witness. It also appears to be an admitted position that the respondent-employer had examined the witness and no opportunity to cross-examine such witness was availed by the petitioner.

5. After having held that the enquiry was fair and proper and the finding of the Enquiry Officer was not perverse, by the impugned order dated 1 February, 2013 the Labour Court rejected the petitioner's complaint observing that the misconduct against the petitioner was proved and punishment was not disproportionate. It was observed that there was no unfair labour practice as indulged by the respondent. The finding of the Labour Court is confirmed by the Industrial Court by dismissing the Revision Application filed by the petitioner by the impugned order dated 28 November, 2015.

6. Learned counsel for the petitioner has limited submissions to assail the concurrent findings as noted above. The first contention is that the charge-sheet itself could not have been issued to the petitioner, inasmuch as the Complaint (ULP) No. 110 of 1997 was filed by the petitioner against the oral termination which was pending before the Labour Court at Sangli. The second contention is that the charges as contained in the charge-sheet were stale charges and hence on that ground itself, it ought to have been held that the enquiry initiated against the petitioner was illegal. In support of such contention, learned counsel for the petitioner has drawn the Court's attention to the various documents as placed on record as also the findings recorded by the Labour Court as well as by the Industrial Court to contend that the findings be interfered by this Court in the present proceedings.

7. Mr. Warunjikar, learned counsel for the respondent in supporting the impugned order would submit that none of the contentions as urged on behalf of the petitioner are tenable and need to be entertained. His contention is that undisputedly proper procedure has been followed. The petitioner did not participate in the enquiry and never bothered to lead any evidence and in these circumstances, no perversity was found in the Enquiry officer making a report on the misconduct of the petitioner being proved in the enquiry proceedings. The submission is that the Labour Court has rightly examined the materials on record and has come to a conclusion that the complaint ought not to be entertained and such findings have been now confirmed by the Industrial Court. Mr. Warunjikar has referred to the reply affidavit to contend that even previously in Complaint before the Labour Court, the Labour Court has recorded a categorical finding that the respondent had proved that the petitioner had left service since 21 November, 1997. It is his contention that right from the inception, it was clear that the petitioner was never interested to discharge his employment. He, accordingly, prayed for dismissal of the petition.

8. Having heard learned counsel for the parties and having perused the record, in my opinion, none of the contentions as urged on behalf of the petitioner would deserve acceptance, as there is nothing on record which

would persuade this Court to take a view that the findings recorded by both the Courts below are in any manner perverse requiring interference and is not based on the material on record. It appears to be also quite clear that the enquiry proceedings were held as per the procedure where opportunity was made available to the petitioner to participate, however, the petitioner did not avail of such opportunity. The Labour Court had recorded that the management had examined its witness to prove the misconduct or absenteeism as alleged in the charge-sheet. Such evidence as led on behalf of the respondent-management has gone uncontroverted. There is no material to accept the case of the petitioner that merely because the charge-sheet was issued on 8 March, 2000 and which pertains to absenteeism that it should be held that the enquiry is illegal. It also cannot be accepted that merely because the Complaint (ULP) No. 110 of 1997 against termination was pending, there was any embargo on the respondent to issue a charge-sheet on 8 March, 2000 in regard to the subsequent conduct of the petitioner, namely, unauthorized absenteeism and which has stood proved. Thus, on the aforesaid circumstances, in my opinion, no case has been made out for interference in the concurrent findings as recorded by the Courts below. The petition is devoid of merits. It is accordingly disposed of. No costs.

(G. S. KULKARNI, J)