



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3214 OF 2022

(Hindalco Industries Ltd., thr. its Works Head Mr. Anantha Bhat Vs. Parshuram R. Verma)

WRIT PETITION NO.3215 OF 2022

(Hindalco Industries Ltd., thr. its Works Head Mr. Anantha Bhat Vs. Sayyad Naushad Ali)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. H. V. Thakur, Advocate for Petitioner. [WP 3214/2022 & 3215/2022]
Mr. Ranjan N. Deshpande, Advocate for Respondent. [WP 3214/2022 & 3215/2022]

CORAM: ANIL S KILOR, J.

DATE: 21st AUGUST, 2023.

On dismissal of the respondent on the ground of misconduct proved in the inquiry, the respondent was dismissed from service by the petitioner – company.

2. The respondent approached the Labour Court by filing a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (for short, 'the Act of 1971').

3. The Labour Court partly allowed the complaint and thereby held that the dismissal of the respondent is illegal. Accordingly, the dismissal of the respondent was quashed and set aside.

4. The petitioner thereupon, filed a revision before

the Industrial Court which came to be dismissed vide judgment and order dated 12.10.2018.

5. This gave a cause to the petitioner to file writ petitions, namely, Writ Petition No.8498/2018 and Writ Petition No.8499/2018.

6. This Court vide judgment dated 09.10.2019, set aside the order of the Industrial Court dated 12.10.2018 and remanded the matter back to the Industrial Court to decide the revision applications afresh on their own merits.

7. Accordingly, the learned Industrial Court decided the revision applications vide impugned judgment and order dated 21.03.2022, dismissing the revision applications. The same is under challenge in this writ petition.

8. In the present matter, before deciding the complaint the Labour Court decided the preliminary issue Nos.1 and 2 in respect of fairness of the inquiry and perversity of the findings recorded by the Inquiry Officer and thereupon, vide order dated 14.06.2016 declared that, the inquiry conducted by the Inquiry Officer is legal and proper and further declared that the findings of the Inquiry Officer, are not perverse.

9. However, on perusal of the judgment and order passed by the Labour Court, it is evident that the Labour Court while allowing the complaint has not referred to the

findings recorded by the Inquiry Officer or even not considered the charge properly, which was held as proved.

10. For instance the Labour Court in its judgment and order dated 06.10.2017 while considering the charge against the respondent, has held thus:

“The past service record of the complainant has not been proved by the respondent by leading appropriate evidence. Even if it is considered that the past service record of the complainant was not clean and unblemished, the punishment of dismissal from the service awarded on the complainant appears to be disproportionate. The management witness Shri Vikrant V. Sardeshpande in para no. 3 of the evidence has deposed that the complainant was issued with warning on 19/06/2000 for proved misconduct it appears to me that even if it is considered that the complainant had committed misconduct on 19/06/2000, said misconduct was committed long back. It appears that the complainant had not committed any misconduct from the year 2000 till 25/03/2009. It cannot be said that the complainant was menace in the respondent industry on 25/03/2009, the complainant and other 50-60 co-workers had gathered in a hall and were absent from duties. They have not assaulted any officer of the respondent industry. They have not destroyed or had caused damage to the property of the respondent industry. Considering allegations levelled in the charge-sheet, it appears that the complainant and other 50-60 co-workers had gathered in peaceful manner. The seriousness in their misconduct is that they had gathered in the conference hall without prior permission and had not attended their duties. In my view, for

this misconduct, the punishment of dismissal is absolutely disproportionate.

11. Whereas, in the inquiry report the charge which was held to be proved is as under:

“The delinquent was charged for the act of misconduct that he has left the place of work without any prior permission and intimation on 25.3.09. It is alleged that on 25.03.09 he left the place of work without prior permission and/or intimation. In support of this allegation the management has examined four witnesses viz. Mr. Ajay Chavandke, Mr. Sumeet Sharma, Mr. Ramteke and Mr. Ujjal Kumar Kesh. The evidence of Mr. Ujjal Kumar Kesh, who is a Commercial Head of the undertaking and eye witness to the incident categorically stated that Mr. Parsuram Verma, the delinquent employee, was instigating the other workers and not allowing the works of ‘A’ shift to go out of the undertaking after completing their duty. He was giving provocative speeches and shouting slogans. He instigated the workers and assembled in the conference hall for about 1 ½ hour. He also instigated the workers for commission of act subversive of discipline. The evidence of Mr. Kesh, Commercial Head, further corroborates the evidence of Mr. Ramteke, Security Supervisor who categorically stated that shouting slogans. They were not paying any heed to the requests made by the superiors. The delinquent was not allowing the workers to go out of the factory premises at the end of the shift. It further corroborates the evidence of Mr. Sumeet Sharma, Manager (Operation) and Mr. Ajay Chavandke, Shift Engineer. Therefore, I find truth in the charges leveled against the delinquent in the

charge sheet, Exh.1, by the Management. As regards the reply submitted by the delinquent, the delinquent despite being provided an opportunity, failed to disprove the charges. He further failed to participate in the enquiry. I have, therefore, no hesitation to conclude that the charge leveled in the charge sheet, Exh.1, are duly proved. I would like to make it clear here that the delinquent was extended with full opportunity to defend the charges. All the documents and copies of proceedings of enquiry were supplied to the delinquent. He was allowed to bring the Defence Representative of his choice but the delinquent failed to participate in the enquiry and has adopted an adamant approach which resulted and constrained me to proceed ex-parte. I have, therefore, hold the delinquent guilty of the charges leveled in the charge sheet, Exh.1, of committing acts which constitute misconduct under the applicable model standing orders framed under the Bombay Industrial Relations Act, 1946, which read as under:

“24(a): Willful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of superior.”

“24(k): “Drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment”

“24(l) Commission of any act subversive of discipline or good behaviour on the premises of the establishment”.

12. Moreover without specifying the unfair labour practice covered under which clause of Item I of Schedule IV, the Labour Court had declared that the petitioner has engaged in unfair labour practice covered by Item I of

Schedule IV. Whereas, under Item I of Schedule IV there are clauses (a) to (g).

13. The learned Industrial Court despite the same upheld the judgment and order of the Labour Court. In the said backdrop when the writ petitions came up before this Court challenging the judgment and order passed by the Labour Court as well as the Industrial Court this Court has observed thus:

10. The Industrial Court has then recorded a finding that as the past service record was not liable to be taken into consideration, the punishment of dismissal as imposed was shockingly disproportionate. It is on that basis that the Court has proceeded to maintain the order passed by the Labour setting aside the order of dismissal of the workmen. It may be noted however that in paragraph 14 of its judgment the Industrial Court observed that though the workmen were liable to be punished, the punishment could not be dismissal from service. In the judgment of the Industrial Court however there is no finding recorded as to the nature of unfair labour practice committed by the employer. Unless the Court while entertaining the complaint under Section 28 of the Act of 1971 records a finding that the employer has committed an unfair labour practice under any of the items in Schedule IV of the Act of 1971, there would be no jurisdiction to grant relief in the complaint. In other words, it is imperative for the Court to record a finding that on account of a particular unfair labour practice being committed by the employer, the workman is entitled for relief. If there is no such finding

recorded by the Court before setting aside the action of the employer, the grant of relief would be an exercise beyond jurisdiction.

11. Under Item 1 of Schedule IV of the Act of 1971, there are various clauses indicating the nature of unfair labour practice that can be committed by the employer. Under Item I (a) dismissal by way of victimization is indicated. Since the present case the findings of the Enquiry Officer as regards commission of misconduct by the workmen has been upheld and as held in M/s. Bharat Iron Works (supra) proved misconduct would be an antithesis of victimization as understood in industrial relations. Under Item I (b), an order of dismissal if it is not in good faith but in colourable exercise of employer's rights would amount to unfair labour practice. In the present case after holding an enquiry, the order of dismissal has been passed. Under Item I (g) dismissal for misconduct of a minor or technical character without having any regard to the nature of misconduct or past record of service would amount to such punishment being shockingly disproportionate. Thus this clause would be attracted when the misconduct is of a minor or technical character. In the present case the misconduct as proved cannot be said to be of a minor or technical character.

In the aforesaid backdrop, therefore, it was necessary for the Industrial Court while exercising revisional jurisdictional to have recorded a finding as to the nature of unfair labour practice committed by the employer. Except for observing that the punishment of dismissal from service was shockingly disproportionate, there is no finding as to what was the unfair labour practice committed. Without indicating the unfair

labour practice committed, the order of dismissal has been set aside. The jurisdictional aspect that was raised before the Industrial Court has not been answered.

12. In these facts therefore I find that the order passed by the Industrial Court in exercise of revisional jurisdiction cannot be sustained. The Industrial Court can therefore be directed to reconsider the revision applications on merits in the light of the observations made hereinabove. The question whether an unfair labour practice has been committed shall first be answered. Therefore, it is open for the Industrial Court to consider whether the punishment as imposed is shockingly disproportionate. Contentions raised by the parties as regards the jurisdiction of the Court of its imposing punishment or refer the matter to the disciplinary authority in that regard is kept open for being urged before the Industrial Court.

14. After the remand the learned Industrial Court again committed the similar mistake as earlier committed. The learned Industrial Court while dismissing the revision application has held thus:

23. Moving ahead, if the observations of the learned Labour Court about the past service record of the complainant are perused, it appears that the learned Labour Court did not totally ignore the past service record. On the contrary, it observed in para no. 21 that only warning was issued to the complainant in the year 2020. Therefore, it cannot be said that the learned Labour Court went astray in recording the findings. What weighed in the mind of the learned

Labour Court in considering the quantum of punishment was that only allegations against the complainant is that on 25/03/2009, the complainant along with other 50-60 co-workers had gathered in conference hall and were absent from duty. They have not assaulted any officer of the industry nor caused damages or destructions to the property of the industry. In other words, they have gathered in peaceful manner. The only misconduct they committed was they assembled in the conference hall without prior permission and absented from duties. Therefore, the learned Labour Court reached the conclusion that the punishment of dismissal imposed upon him was absolutely disproportionate to the misconduct committed. Moreover, the learned Labour Court did consider the past service record of the complainant and felt that on the earlier occasions no major penalty had been imposed but only warnings were issued and therefore, it concluded that the past service record was not so grave as to be taken into account. This approach of the learned Labour Court cannot be said to be erroneous.

24. *Secondly, as far as the discrimination in imposing punishment is concerned, the learned Labour Court considered the fact that along with the complainant some other workers also faced departmental enquiry under same clause of Model Standing Orders, but those employees such as Bharat Mathura Singh, M. H. Wasnik and D. K. Oza were awarded only punishment of 4 days and therefore, it amounted to victimization of the complainant and the said act was not in good faith, but in colourable exercise of employer's right. In my opinion, though the Labour Court did not specially mention the particular clause of Item No. 1 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, the*

discrimination practiced by the respondent would fall within Item No. 1 (a) & (b) of Schedule IV of the M.R.T.U. & P.U.L.P. Act. Therefore, the approach adopted by the learned Labour Court in deciding the above complaint cannot be said to be erroneous or to suffer from any infirmity.

15. From the above referred observation made by the Industrial Court it is evident that the Industrial Court has not considered the charges levelled against the respondent and the findings recorded by the Inquiry Officer.

16. The Industrial Court has also not referred to the inquiry report and the evidence produced before the Inquiry Officer in the inquiry proceedings.

17. It is also apparent from the face of the impugned judgment and order that even the Industrial Court has not considered the findings recorded by this Court while remanding the matter, that, namely, the misconduct in the present case which is proved in the inquiry cannot be said to be of minor or technical character.

18. Moreover the Industrial Court has held that the petitioner has committed unfair labour practice under Item I (a) and 1 (b) of Schedule IV but without recording any findings justifying it.

19. Similarly, if the dismissal is after inquiry and after giving sufficient opportunity to the respondent, what is the

basis on which the learned Industrial Court has arrived at a conclusion that the dismissal was not in good faith but in colourable exercise of employer's rights.

20. In the circumstances, the Labour Court and Industrial Court both have committed error in ignoring the inquiry report and the findings recorded as regards the charges proved in the inquiry. Thus, I am of the opinion that the matter needs to be remanded back to the Labour Court for deciding the same afresh. Accordingly, I pass the following order:

- i] The writ petitions are partly allowed.
- ii] The judgment and order dated 21.03.2022 passed by the Industrial Court No.2, Nagpur as well as the judgment and order dated 06.10.2017 passed by the 3rd Labour Court, Nagpur are hereby quashed and set aside.
- iii] The matters are remanded back to the learned Labour Court to decide the same afresh after considering the observations made herein above.
- iv] The party shall appear before the learned Labour Court on 07.09.2023 at 11:00 a.m.
- v] The learned Labour Court is directed to

decide the complaint with six months from the date of appearances of the parties.

- vi] The amount deposited in this Court shall be transferred to the Labour Court.

(ANIL S. KILOR, J)