

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

WRIT PETITION (WP) NO. 4345/2010

1. Maharashtra State Electricity
Distributiojn Company Ltd.
Through the Superintending
Engineer (O & M) Circle,
M.S.E.D.C.L. Gondia Tah and Dist. Gondia.
 2. Suprintending Engineer, MSEDCL
(O & M) Circle, Gondia, Tah and
Dist. Gondia.
 3. Assistant Engineer, M.S.E.D.C.L.
(O & M) Circle, Gondia, Tahsil
And Dist. Gondia.
 4. Superintending Engineer,
MSEDCL (O & M) Circile, Bhandara
Tahsil and Dist. Bhandara.
 5. Executive Engineer, MSEDCL
(O & M) Division, Parbhani,
Tah. And Dist. Parbhani.
- PETITIONER(S)

// VERSUS //

1. Vijay Bahadur Gupta
Aged 46 years
R/o. Ramnagar, Gondia,
Tah. and Dist. Gondia.
 2. Industrial Court, Bhandara
- RESPONDENT(S)

Mr. R.E. Moharir, Advocate for the petitioners
 Mr. G.G. Bade, Advocate for respondent no. 1
 Mr. H.D. Dubey, AGP for respondent no. 2

CORAM : A.S. KILOR, J.
DATED : 08/06/2023

ORAL JUDGMENT :

Heard.

2. This writ petition takes an exception to the judgment and order dated 12.01.2010 passed by the Industrial Court, Bhandara in Complaint ULP No. 123/2006 allowing the complaint preferred by the respondent no. 1 and thereby declaring that the petitioners are engaged in unfair labour practice under Item-9 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short the “MRTU & PULP Act”) while issuing the punishment order dated 30.09.2006 whereby, the recovery was directed against the respondent no. 1 for an amount of Rs.2,73,155/- by withholding one yearly increment for one year.

3. The respondent no. 1 filed a complaint under Section 28 read with Items- 5, 6, 9 and 10 of Schedule-IV of the MRTU & PULP Ac” in the Industrial Court against the order of punishment dated 30.09.2006.

4. It is the case of the respondent no. 1 that initially, he was appointed as a Sub-Engineer and thereafter, promoted as a Junior Engineer w.e.f. 01.07.2005. While working in Gondia Sub-Division the petitioner no. 4 in pursuance of summary charge-sheet imposed punishment on the

complainant, by order dated 30.09.2006. According to the respondent no. 1, the charges levelled in the summary charge-sheet were false, bogus and imaginary. It is stated that all such charges were denied by the respondent no. 1 by submitting explanation. Thereupon, he received a show cause notice dated 31.07.2006 to which he filed a reply on 28.08.2006 raising preliminary objection regarding competency of the petitioner no. 4 in issuing show cause notice.

5. The charge-sheet was issued on the basis of preliminary inquiry made by one Mr. Gedam, an Officer of Vigilant Department. The order of punishment was issued only on the basis of charge nos. 4 and 7. The charge no. 4 is in respect of providing three new connections at the resident of Mr. Madanlal Rathi whereas, the charge no. 7 was in respect of shifting of load and providing industrial electric supply to one Maa Shakti Rice Mill.

6. The complaint was initially decided by the order dated 12.03.2007 against which the writ petition was preferred namely Writ Petition No. 4844/2007 which was decided vide order dated 20.10.2008. This Court while setting aside the order dated 12.03.2007 remanded the matter back to decide the same after giving an opportunity to the petitioners to prove misconduct of the respondent no. 1 in the Court.

7. Accordingly, the evidence was laid by both the parties and after scrutiny of the said evidence as well as documentary evidence, the learned Industrial Court passed the impugned judgment and order on 12.01.2010 allowing the complaint preferred by the respondent no. 1 and thereby, setting aside the impugned order of punishment dated 30.09.2006. The said judgment and order is subject matter of the present writ petition.

8. I have heard the learned Counsel for the respective parties.

9. Mr. Moharir, the learned Counsel for the petitioners submits that the learned Industrial Court has committed error by allowing the complaint in favour of the respondent no. 1. It is submitted that the Assistant Vigilance Officer, Mr. Gedam, was examined by the petitioners to establish and prove the charge nos. 4 and 7 against the respondent no. 1. It is submitted that sufficient documentary evidence was produced by the petitioners to establish the guilt of the respondent no. 1. He, therefore, submits that the learned Industrial Court has wrongly set aside the order of punishment.

10. Mr. Moharir, the learned Counsel for the petitioners has drawn attention of this Court to various documents and thereby tried to canvass that the respondent no. 1 has committed illegalities and thereby,

caused damages to the petitioners to the tune of Rs.1,68,614/- which was rightly directed by the petitioner no. 4 to be paid by the respondent no. 1 alongwith penalty. Accordingly, he submits that no error has been committed by the petitioners in issuing the order dated 30.09.2006 and directing recovery of Rs.2,73,155/- against the respondent no. 1.

11. On the other hand, Mr. Bade, learned Counsel for the respondent no. 1 submits that except Mr. Gedam no other witness was examined by the petitioners to establish the amount of damages and also alleged illegality. It is submitted that the learned Industrial Court has rightly allowed the complaint as the petitioners failed to prove and establish the charges namely, charge nos. 4 and 7 against the respondent no. 1. He, therefore, prays for dismissal of the present writ petition.

12. In the light of the rival contentions of the parties, I have perused the record and the impugned judgment and order dated 12.01.2010. From the record, it is evident that the preliminary inquiry was conducted by one Mr. Gedam working in the petitioner no.1's company as Assistant Vigilant Officer in pursuance to the complaint made by one Mr. N.G. Gajbhiye.

13. In the report submitted by Mr. Gedam, he has held that the respondent no. 1 has caused damages to the petitioner no. 1 - company to the tune of Rs.1,68,614.

14. Indisputably, though in the report and also in examination-in-chief of the witness, Mr. Nana Gedam, of the petitioners,, it has come on record that the estimate submitted by the respondent no. 1 was approved by the Executive Engineer, except Mr. Gedam, Assistant Vigilant Officer, no Officer including Executive Engineer, who approved the estimates, was examined to establish the charge nos. 4 and 7.

15. As far as the damages are concerned, though it has come in the evidence of Mr. Gedam, that the company has caused losses to the tune of Rs.1,68,614/-, in cross-examination, he has categorically admitted that he has not acquired any technical qualification. He further admitted that estimates, in respect of any work carried out by M.S.E.B., are prepared by Officers having technical qualification.

16. Mr. Gedam further says that no person by name Mr. N.G. Gajbhiye, the complainant was found during inquiry.

17. Thus, it is evident from the cross-examination of the only witness of the petitioners, that he does not possess any technical

knowledge of assessment and despite this, he has deposed that the petitioners have incurred losses of Rs.1,63,614/-.

18. Moreover, the documents which are filed on record by the petitioners to show the losses incurred by the petitioner-company, indisputably, the concern Executive Engineer or any other Officer was not examined. The learned Industrial Court, therefore, has arrived at a conclusion that the petitioners have failed to prove the charge nos. 4 and 7 and accordingly, the order of punishment dated 30.09.2006 was quashed.

19. Thus, considering the material available on record, I am of the view that the learned Industrial Court has rightly held that the petitioners have failed to prove the charge nos. 4 and 7 against the respondent no. 1.

20. In the circumstances, as there is no perversity or legal infirmity committed by the learned Industrial Court in allowing the complaint preferred by the respondent no. 1, I do not find any merit in the present writ petition, accordingly, it is **dismissed** with no order as to costs.

(JUDGE)