



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6328 OF 2018

Ashok Sambhaji Kasbe

VERSUS

M/s Bajaj Auto Ltd Midc Waluj
Through Its General Manager

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Mr. B. U. Hosamath, Advocate for the Petitioner

Mr. Y. R. Marlapalle, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2024

PER COURT :

1. By consent of the parties, heard finally at admission stage.

2. The Petitioner is a workman who has been dismissed by the Respondent/Company after issuance of charge-sheet and after conducting domestic inquiry against him. The complainant being aggrieved by the said action of dismissal, filed Complaint ULP No. 131/1995. The said complaint was dismissed by the learned labour Court by passing order dated 23.04.2008. The complainant preferred Revision Application ULP No. 59/2008 challenging the said dismissal of the complaint. The said revision was allowed by the learned

Industrial Court with observations that the learned labour Court has failed to take into consideration the issue of proportionate of punishment awarded by the employer to the workman. By passing order dated 16.02.2012, complaint was remanded back to the learned labour Court for framing the additional issue with regard to the proportionality of the punishment. Learned labour Court after hearing both sides decided the said issue by passing order dated 15.03.2013 against the workman. It is held that the punishment imposed by the employer is not shockingly disproportionate. The said order was challenged unsuccessfully in Revision Application ULP No. 34/2013 before Industrial Court, Aurangabad. Being aggrieved by these orders, Petitioner/Workman is before this Court.

3. Learned Counsel for the Petitioner submits that learned labour Court has committed error in deciding the issue of proportionality of the punishment against the workman without taking into consideration his past record and length of service. It is further argued by him that having regard to the nature of misconduct of hurling abuses against officers of the

Company, the punishment of dismissal is not called for. So far as allegation of preparation of false medical certificates, he submits that owing to the long services rendered by him, the order of dismissal would be shockingly disproportionate.

4. Learned Counsel for the Respondent/Company opposed the said contention and stressed for the sustainability of the impugned orders on the ground that the Hon'ble Supreme Court has time and again held that the offence of abusing the officers of the employer is serious misconduct and the punishment of dismissal awarded for the said misconduct cannot be called as shockingly disproportionate. To support his submissions, he placed reliance on following judgments: Mahindra and Mahindra Ltd vs. N. B. Narwade, (2005) 3 SCC 134, New Shorrock Mills vs. Maheshbhai T. Rao, (1996) 6 SCC 590 & L. K. Verma vs. HMT Ltd and Anr, (2006) 2 SCC 269.

5. Thus, it is settled position of law by various judgments of Hon'ble Supreme Court that for the purpose of deciding the proportionality of the punishment

awarded to the workman, the Court has discretion to cause interference therein, and the said discretion can be exercised on certain factors like gravity of misconduct, existence of any mitigating circumstances such as past conduct/record of the workman.

6. In the instant case, as it appears from the judgment passed by the learned labour Court the said aspect with regard to the mitigating circumstances including the length of service, past conduct etc is not considered by the Court. Thus, order impugned is not in consonance of settled law, as such said order cannot sustain. Learned Industrial Court has also committed error by ignoring this vital aspect in the matter while deciding Revision Application.

7. As a result of the above, the impugned orders cannot sustain and same are set aside. Complaint ULP No. 131/1995 is relegated back to the learned labour Court to decide the issue of proportionality of the punishment afresh keeping in mind law settled by Hon'ble Supreme Court on the subject.

8. Since complaint is filed in the year 1995, the learned labour Court to decide the said issue finally within three months from today in accordance with law.

9. Petition is allowed in above terms.

(R. M. JOSHI, J.)

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