



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4919 OF 2024

THE CHIEF EXECUTIVE OFFICER JALGAON
VERSUS
MAYA TUKARAM SONAWANE

Mr. V. V. Gujar, Advocate for the petitioner
Mr. Parikshit Mantri h/f Mr. P. V. Barde, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 30th JULY, 2024

PER COURT :-

1. This petition takes exception to the judgment and order dated 12th April, 2024 passed by Industrial Court, Jalgaon in Revision Application (ULP) No. 4 of 2024.

2. The facts which led to the filing of the petition can be narrated in nut shell as under:

(i) The parties are referred to as Zilla Parishad and workman for the sake convenience.

(ii) The petitioner is Zilla Parishad. The workman was working as 'Auxiliary Nurse Midwife' (ANM) since 11/10/1998. It is alleged that during the service period she had committed serious irregularities by not distributing medicines within time, maintaining expiry dated medicines,

causing assault on the co-employees, disobeying supervisory authority etc. On 27/07/2010 she was suspended from duties after giving show cause notice. Since her explanation was not found satisfactory she was subjected to disciplinary action and charge-sheet dated 10/03/2010 was served upon her. An inquiry was conducted by Assistant Commissioner Inquiry at Divisional Commissioner Office, Nashik. According to the findings of the Inquiry Officer charges levelled against her were proved. A major punishment was recommended by the Inquiry Officer. On the basis of the findings of the inquiry final show cause notice was issued to the workman on 15/01/2013. She submitted explanation which was not found satisfactory and hence she was dismissed from service by order dated 31/07/2013.

(iii) The workman filed complaint before the Labour Court being Complaint (ULP) No. 21/2013. The said complaint was allowed by the Labour Court by passing order dated 2nd January, 2014 whereby the stay was granted to the order of dismissal. This order was challenged by the Zilla Parishad by filing Revision Application (ULP) No. 3 of 2014. The revision came to be dismissed by order dated 20/06/2014. Since Zilla Parishad was aggrieved by the said decision of in the said Court, Writ Petition bearing No. 6419/2014 was filed. This Court by order dated 17/06/2015 directed the Labour Court to consider in the event domestic

inquiry is set aside for any reason the issue of conducting a de novo inquiry shall be considered by the Labour court strictly in accordance with the judgment of Hon'ble Supreme Court in case of ***Karnataka State Road Transport Corporation Vs. Laxmidevamma and another, 2001(II) CLR 640***. Thereafter Labour Court decided Complaint (ULP) No. 21/2013 by passing order dated 01/03/2021. While deciding preliminary issues it is concluded that the department inquiry conducted against the workman is proper and also the findings the inquiry. Being aggrieved by this judgment the workman filed revision application before Industrial Court wherein the judgment of the Labour Court came to be set aside and matter was remanded back to the Labour court for decision afresh on the point of fairness of inquiry and correctness of the findings of the Inquiry Officer. On remand Labour court quashed and set aside order of dismissal dated 31/07/2013 directed reinstatement of the workman in service with back wages. Revision Application (ULP) No. 4/2024 was filed against the said judgment of the Labour Court. Since the said revision is rejected by the Industrial Court by order dated 12/04/2024, this petition.

3. Learned counsel for the Zilla Parishad took exception to the impugned judgment amongst other submissions on the ground that there could not be reinstatement of the workman as if the inquiry is found to be not fair and proper, in that case de novo inquiry ought to have been

directed. Learned counsel for the workman supported the impugned judgment contending that the charges are not proved against the workman and for want of any specific plea being raised by the Zilla Parishad for leading evidence to prove the said charges before the Labour Court, it was not open for the said Court to permit examination of witnesses to prove charges.

4. In the instant case complainant has led her evidence by filing affidavit of affidavit-in-examination in chief. Her evidence has gone unchallenged for want of cross examination. So also the Zilla Parishad has failed to lead any evidence in spite of opportunities being granted by the Labour Court. It is also seen from record that none appeared for the Zilla Parishad even to make submissions before Labour Court. Even though Labour Court has passed order on 02/11/2023 giving final opportunity to the Zilla Parishad to make submissions, the same was not availed.

5. Learned Labour Court has observed that by judgment dated 04/10/2023 it was held that the dismissal of the workman from service is in utter disregard of principles of natural justice and without rendering any opportunity to the complainant to refute allegation and to justify her stand. It was also held that consequently finding recorded by the Inquiry Officer holding complainant guilty for the misconduct are vitiated being

perverse. It is observed by the learned Labour Court that Zilla Parishad has never reserved its rights in the written statement nor sought any permission even subsequently to prove the misconduct of the workman before the Court by adducing evidence. The Hon'ble Supreme Court in case of *Karnataka State Road Transport Corporation* (cited supra) has held that the employer may be allowed to prove his conduct before the court only when the right is reserved to that effect. In absence of any such right being reserved or making any request at any stage of the proceeding before the Labour Court to lead evidence to prove his conduct, the question of Zilla Parishad being permitted to prove his misconduct of the workman did not arise.

6. In the revision application filed before the Industrial Court against the judgment passed by the Labour Court it was sought to be contended on behalf of the Zilla Parishad that the inquiry conducted against the workman was after giving her opportunity defend herself and that there is evidence brought on record during the said inquiry indicating act of commission of misconduct by the workman. It is also sought to be claimed that the Advocate for Zilla Parishad remained absent before the Labour Court and therefore Zilla Parishad was not properly represented and that party should not suffer due to the fault of Advocate.

7. Learned Industrial Court while entertaining revision application has tested the order passed by the Labour Court within parameters of powers of the revisional court. The powers of revision are not akin to the powers of appeal. The revisional Court is expected to ascertain as to whether there is error of jurisdiction or error apparent on the face of record which had led to miscarriage of justice. The learned Industrial court has taken into consideration the evidence on record i.e. the inquiry proceedings and the report of the Inquiry Officer and found that there is no perversity in the findings recorded by the learned Labour Court that the evidence which led in the inquiry of the witnesses who were not subjected to cross-examination cannot be considered as proof of misconduct.

8. Thus, it is held by the Industrial court that the findings recorded by the Labour Court that the inquiry was conducted in violation of principles of natural justice. It has also taken into account record and proceedings of Complaint (ULP) No. 21/2013 and it is held that there was no haste shown by the Labour Court in deciding the complaint as an opportunities were given to the Zilla Parishad to defend the said proceeding.

9. Evidence of the workman has gone unchallenged with regard to the gainful employment. The settled law that the workman is required

to make statement before the Court at first instance that he is not gainfully employed and the onus shifts upon the employer to prove otherwise. Not only that the statement made of the workman made before the Labour Court is not contradicted by the Zilla Parishad but no evidence is led in order to show that the workman is gainfully employed in the intervening period.

10. Having regard to the afore stated facts, this Court finds no reason or justification for causing interference in exercise of writ jurisdiction, in the impugned order passed by the Industrial Court confirming the order passed by the Labour Court. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

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