



**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8913 OF 2024

1. Tilaknagar Industries Ltd.,
Through its Whole time Director,
Mr. C.R. Ramesh
Age 65 yrs., Occu. Service,
R/o. Tilaknagar, Tq. Shrirampur,
Dist. Ahmednagar.
2. Mr. C.R. Ramesh
Age 65 yrs., Occu. Service as
Whole Time Director, Tilaknagar
Industries Ltd.,
R/o. Tilaknagar, Tq. Shrirampur,
Dist. Ahmednagar.

....Petitioners

Versus

1. Suresh Dnyandeo Kanse,
Age 57 yrs., Occu. Nil.,
The then Deputy Production Manager,
R/o. Shrirampur, Tq. & Dist. Ahmednagar.
2. Mr. M.R.K. Nayar,
Age 71 yrs., Occu. Nil.,
The then H.R. and Legal Manager,
Tilaknagar Industries Ltd.,
R/o. Tilaknagar, Tq. Shrirampur,
Dist. Ahmednagar.
3. Saviyana Fulsunge,
Age 55 yrs., Occu. Service as The
Then Assistant General Manager,
Tilaknagar Industries Ltd.,
R/o. Tilaknagar, Tq. Shrirampur,
Dist. Ahmednagar.

....Respondents

...

Mr. V.P. Latange, Advocate for the petitioners.

...

CORAM	: ARUN R. PEDNEKER, J.
CLOSED ON	: 21/08/2024
DELIVERED ON	: 03/09/2024

ORDER :

1. By the present writ petition, the petitioners challenge the order dated 4.4.2024 whereby the learned Judicial Magistrate First Class, Court No. 2, Shrirampur refused to re-cast issue No. 3 on an application filed by the petitioner.

2. Brief facts, giving rise to the present writ petition, are as under :-

Respondent No. 1 was working as Deputy Production Manager with the petitioner/industry. The respondent No. 1 filed R.C.S. No. 318/2012 for declaration that the letters dated 20.8.2012 and 3.9.2012 issued to him for unsatisfactory work/performance by the petitioner are illegal. The petitioner/defendant filed written statement opposing the suit.

3. The application, Exh. 144, is filed by the defendant/petitioner for recasting issue No. 3 by deleting the same, contending therein that issue No. 1 covers whole prospectus of the case and issue No. 3 should be deleted. Both the issue Nos. 1 and 3 are quoted below :-

"1. Does the plaintiff prove that his performance while working in the defendant no. 1 industry was good and satisfactory ?

2.

3. Do the defendants prove that the plaintiff has committed misconduct while discharging his duty in the defendant No. 1 industry ?"

4. The said application at Exh. 144 was rejected on 17.6.2023. Thereafter, the petitioner/defendant again moved another application at Exh. 178, seeking modification of issue No. 3 by adding the words

'unsatisfactory work/performance' after the word 'misconduct' in issue No. 3. The defendant/company in the written statement used the word 'unsatisfactory work/performance' which resulted in termination of the respondent No. 1 and thus, again prayed that issue needs to be recasted as the word 'misconduct' would involve higher decree of negativity whereas the words 'unsatisfactory work/performance' needs lesser threshold for action in comparison to the word 'misconduct'. The application is dismissed by the Trial Court by impugned order dated 4.4.2024.

5. The learned counsel for the petitioner submits that termination of respondent No. 1 has resulted by virtue of his unsatisfactory work/performance which is reflected in letters dated 28.8.2012 and 3.9.2012. Thus, the usage of the word 'misconduct' in ordinary circumstances would imply something more negatively being done by the respondent No. 1, which has resulted in his termination, whereas the case of the company/petitioner is that the work performance of the employee was unsatisfactory and as such, he was dismissed. The learned counsel for the petitioner submitted that the issue can be recasted at any stage of the trial before the judgment.

6. Considering the submissions of the petitioner, it is to be noted that earlier also the application at Exh. 144 moved for recasting of issue No. 3 was rejected by the Trial Court vide order dated 17.6.2023. As regards fresh application at Exh. 178 is concerned, which is filed at the stage of final arguments, the word 'misconduct' used in issue No. 3 is of wide import and in the case of misconduct, the letter dated 3.9.2012 indicates the utterly

careless and negative attitude of the respondent towards his duties. The relevant para of letter dated 3.9.2012 is as under :-

"The management has been getting repeated complaints about your utterly careless and negative attitude towards your duties – and its consequent impact on the factory operations. On perusal of the records, it is also noticed that in spite of repeated e-mail communications to you by your HOD regarding such instances, there has neither been any response from your side, nor has there been any improvement in your performance and attitude."

7. The management will have to establish it's case in terms of issue No. 3. The burden is casted upon the management to establish the facts relating to the letter dated 3.9.2012. The letter indicates that employee was careless and had negative attitude towards the duties and due to such attitude, there was impact on the factory operations. Such conduct is also considered as misconduct, which the company in terms of issue No. 3 need to establish. Suit is at the stage of final arguments and the earlier application filed is also rejected by the Trial Court. In view of the above, I do not see any reason to re-cast issue No. 3. There is no merit in the writ petition. The writ petition is dismissed.

[ARUN R. PEDNEKER J.]

SSC/