



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

2 WRIT PETITION NO. 10470 OF 2018

Superintending Engineer
The Maharashtra Electricity Distribution Company
& anotherPetitioners

VERSUS

Subhash Madhavrao BhogadeRespondent
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Mr. A. S. Bajaj, Advocate for the Petitioners.
Mr. U. L. Telgaonkar, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE :24th JUNE, 2024.

PER COURT :

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

2. This Petition takes exception to the order passed by the Industrial Court in Revision Application No. 26/2017 dated 23.07.2018 whereby the judgment and order dated 19.07.2016 passed by the Labour Court in complaint ULP No. 77/2010 is set aside and the Respondent herein is granted continuity of service and backwages till the date of his superannuation.

3. The facts as they appear from the record can be narrated in nutshell as under :-

Petitioner is the State Electricity Distribution Company and Respondent was an employee of the Petitioner working as a Steno Typist. Respondent had requested for transfer which was granted. However, subsequently, an order was passed directing him to report at some other place without his request. Thereupon, the Respondent did not resume his duty at transfer place and went on leave without approval thereof. It is alleged against the Respondent that he addressed several communications to the concerned Ministry making wild and reckless allegations against the Petitioners which amount to unmining the image of the Petitioner/company. On this and other allegations, the Respondent was suspended. Later on, he was issued charge-sheet for committing employment mis-conduct. One of the allegations against the Respondent is that he made defamatory and reckless statements against the Petitioner/company in the correspondence addressed by him which has maligned image of Petitioners. It is the case of the Petitioners that Respondent replied to the said charge-sheet and has placed reliance on the very same communication. After conducting of enquiry, Petitioners had dismissed the Respondent from service. The said order of dismissal

was challenged by filing complaint ULP No. 77/2010. During the pendency of said complaint, orders passed by the Labour Court were subjected to challenge to this Court. This Court had permitted the Petitioner/employer to lead evidence before the Labour Court to prove the charges. Permission was also granted to the employee to lead evidence in rebuttal. Accordingly, the employer led evidence before the Labour Court wherein the Labour Court by passing order dated 19.07.2016 has observed that the Petitioners have substantiated charge Nos. 2, 3 and 5 against Respondent/employee. After taking into consideration the nature of allegations and proved charges, it was held by the Labour Court that punishment of dismissal of service is proportionate. Accordingly, complaint came to be dismissed.

4. Respondent/employee being aggrieved by said dismissal of complaint, preferred Revision Application no. 26/2017 before the Industrial Court, Ahmednagar. Perusal of the said application shows that the application is filed not on merit challenging the order passed by the Labour Court but making several allegations against the learned Judge by naming him with further allegations against the

Petitioners and advocate of Petitioners and their collusion with the learned Judge.

5. The learned Industrial Court entertained said revision and by passing order dated 23.07.2018, set aside the order passed by Labour Court and granted continuity of service and backwages to Respondent herein. This order is subjected to challenge before this Court.

6. Learned counsel for the Petitioners apart from taking this Court through the record has canvassed that the Revisional Court has committed error in observing that it was not open for the Labour Court to permit the employer to lead evidence in respect of charge No. 2 and the said charge No. 2 ought not to have been held proved. In this regard, he has drawn attention of the Court to the order passed by this Court in Writ Petition No. 11936/2015 wherein it is held by this Court as under :-

“14. There is no dispute that the documents from Exhibits C/37 to C/45 and the list of documents below Exhibit C/22 were before the Labour Court. I find that the Petitioner was charged with using abusive language and making defamatory allegations against superiors in his

correspondence. I can also see that the Petitioner did not deny his signatures on these documents as he did not step into the witness box. Had the Labour Court considered these documents, it could have viewed the case in the light of the said documents. This would have resulted in a proper adjudication of the complaint. I, therefore, do not find that the conclusions drawn by the Industrial Court could be termed as being perverse or erroneous.

It is his further submission that the order passed by the Revisional Court is contrary to the order passed by this Court and as such it is not sustainable. Apart from this, he has drawn attention of the Court to the charge-sheet indicating that specific charge is levelled against the employee that he has levelled allegations against the officers of the company and has maligned the image of the company and the said charge shows that the correspondence concerned is also referred therein. It is thus his submission that the order passed by the Industrial Court cannot sustain.

7. Learned counsel for Respondent though opposed the said contention, however, he was unable to counter the submission of learned counsel for the Petitioners that charge No. 2 ought to have been considered by the Industrial Court and the said order is passed

contrary to the observations made by this Court in Writ Petition No. 11936/2015. Though he sought to make submission with regard to other charges, however, at this stage, this Court is not inclined to take into account those submissions for the reason the order impugned would not be sustainable in absence of taking into account charge No. 2 and the evidence lead before the Labour Court, by Industrial Court.

8. Perusal of the record indicates that the Industrial Court has refused to consider charge No. 2 and the evidence led before the Labour Court. Having regard to the charge-sheet issued to the Respondent/employee, such observations made by the Industrial Court are not sustainable. Moreover, this Court finds substance in the contention of learned counsel for the Petitioner that this order is contrary to the observations made by this Court in Writ Petition and as such, not sustainable. Having regard to the aforestated facts, there is no reason to sustain the impugned order passed by the Industrial Court. As a result of this, the impugned order deserves to be set aside and matter needs to be relegated back to Industrial Court.

9. Before parting with the judgment, this Court finds it appropriate to record that the Industrial Court has totally ignored the fact that the Respondent/employee had made reckless allegations against the learned Judge of Labour Court. Prima facie, this Court also is of the view that revision application is not on merit of the order of the Labour Court but is filed only on the basis of reckless allegations made against the learned Judge of Labour Court. In these circumstances, it was absolutely necessary for the Industrial Court to take cognizance of the said averments and if there was no proof of the said allegation, appropriate action as provided by law ought to have been initiated against the Respondent. Thus, Industrial Court, therefore, is directed that while deciding Revision Application afresh, if the Respondent/employee fails to substantiate the said allegations, appropriate action e initiated against him as provided by law.

10. Record indicates that by order dated 26.09.2019, out of total amount of Rs. 7,05,737/- an amount of Rs. 6,60,000/- was permitted to be withdrawn by Respondent/employee. The said order further mentions about refund of Rs. 90,000/- by the employee in the event management succeeds in this Petition. Since the

management has succeeded in this Petition and as the impugned order is set aside, Respondent/employee is directed to deposit sum of Rs. 90,000/- within a period of 8 weeks from today. It is clarified that deposit of amount would be a condition precedent for permitting Respondent/employee to make submissions before the Revisional Court. Balance amount lying in this Court be returned to the Petitioners/company. Needless to state that if the Respondent ultimately succeeds, he would be entitled to this amount.

11. In view of above discussion, impugned order is set aside. Revision complaint (ULP) No. 26/2017 is relegated back to the Industrial Court for decision afresh, in accordance with law. Parties are directed to appear before the Industrial Court on 15.07.2024. If any party fails to appear, fresh notice be issued to such party.

12. In view of above, Petition stands disposed of. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge