



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 13700 OF 2023
WITH
WRIT PETITION NO. 13701 OF 2023
WITH
WRIT PETITION NO. 13702 OF 2023
WITH
WRIT PETITION NO. 13703 OF 2023
WITH
WRIT PETITION NO. 13704 OF 2023
WITH
WRIT PETITION NO. 13705 OF 2023
WITH
WRIT PETITION NO. 13706 OF 2023
WITH
WRIT PETITION NO. 13707 OF 2023
WITH
WRIT PETITION NO. 13708 OF 2023
WITH
WRIT PETITION NO. 13709 OF 2023**

Dhammapal Dadarao Pradhan
Age : 31 years, Occ. Nil
R/o. F-28/8, Ayodhaya Nagar,
N-7, CIDCO, Aurangabad

... Petitioner

Versus

M/s. Greaves Cotton Limited,
Light Engines Unit-V, A.1/3,
Five Star MIDC Area, Shendra,
Aurangabad-431201

... Respondent

...
Advocate for Petitioners : Mr. Ashutosh S. Kulkarni
Advocate for Respondents : Mr. B.R.Kaware

...

CORAM : SHAILESH P. BRAHME, J.

**Judgment Reserved On : 07th December, 2023
Judgment Pronounced On : 09th January, 2024**

JUDGMENT :

1. Rule. Rule is made returnable forthwith by the consent of the parties.

2. Heard learned counsel Mr. Ashutosh S. Kulkarni for the petitioners and Mr. B.R.Kawre for the respondents in all the matters for final disposal.

3. There is common question of law and facts, involved in this matters. Hence, this group is decided by common order. For the sake of convenience, Writ Petition No.13700 of 2023 be treated as a lead petition to refer the papers and the submissions of the parties.

4. All the petitioners are the ex-employees of the respondent. They were terminated from the services after conducting disciplinary enquiry, finding them guilty of misconduct. All of them are in reference under section 10 of the Industrial Disputes Act (hereinafter referred to as 'Act' for the sake of brevity and convenience) before Labour Court, Aurangabad. Their prayers are as follows :

A) Quash and set aside Suspension letter dated 09-05-2019, Charge-sheet dated 08-07-2019 and 31-12-2019, Enquiry Report dated 08-12-2019 and 09-12-2021, Second Show Cause Notice dated 24-12-2020 and the Dismissal Order dated 29-12-2021 issued to the Second Party by the First Party ;

B) Direct the First Party to reinstate Second Party in service with continuity of service, full back-wages and consequential benefits ;

C) Allow the Reference in above form ;

D) Pass an award accordingly.

5. They preferred interim application at Exhibit U-5 seeking the following relief :

A) Stay the suspension letter dated 09-05-2019, Charge-sheet dated 08-07-2019 and 31-12-2019, Enquiry Report dated 08-12-2021 and 09-12-2021, Second Show cause Notice dated 27-12-2021 and the Dismissal Order dated 30-12-2021 issued to the Second Party by the First Party, during the pendency of instant Reference ;

B) Direct the First Party to employ the Second Party at its Factory at Shendra regularly and pay him regular wages, during the pendency of instant Reference ;

C) Allow the Application on above terms ;

D) Grant any other such relief as this Hon'ble Court may deem fit.

6. The dates of suspension letter, charge-sheet, enquiry report varies marginally in case of individual petitioners. By distinct orders passed on 15.06.2023, interim application Exh U-5 have been rejected, which are under challenge in these petitions.

7. Learned counsel for the petitioner has informed that the petitioner Dhammapal Dadarao Pradhan in the lead petition happened to be the leader and targetted. The petitioners are the members of committee of Labour Union. The petitioner in lead petition was issued charge-sheet on two occasions leveling different allegations.

8. It is the case of the petitioners that they were required to file complaint ULP No. 51 of 2019, 53 of 2019 and 55 of 2019 in the groups. They had prayed for prohibitory orders from changing service conditions without following due procedure of law. Those complaints were withdrawn on 28.02.2022, when they were met with termination.

9. The petitioners were suspended by orders dated 09.05.2019 and 14.05.2019. Thereafter, they had filed complaint ULP No. 65 of 2019. It was withdrawn on 28.02.2022, as they were terminated. The petitioners were served with charge-sheet. The disciplinary action was conducted by holding an enquiry. The evidence was led and the enquiry report was prepared on 09.12.2021. On 24.12.2021, show cause notice was issued. They were called upon to tender explanation within 48 hours. To that, representation was made on 28.12.2021 to grant more time and to hear them again.

10. The petitioners again apprehended coercive action and they filed complaint ULP NO. 458 of 2021 before Labour Court. It was required to be withdrawn because of subsequent order of dismissal. All

the petitioners were dismissed by order dated 29.12.2021. The disciplinary action and the dismissal have been challenged before the labour court by the present proceedings.

11. Learned counsel for the petitioner submits that the allegations are not serious in nature. The respondent did not like the active role of the petitioners in the labour union. False allegations are made to victimize the petitioners. He submits that total disproportionate punishment is awarded. He further submits that the charges have not been proved. There were no sufficient material against the petitioners, especially CCTV footage was not supplied. The disciplinary action is farce and totally uncalled for.

12. Learned counsel submits that the dismissal is in utter disregard to the principles of natural justice. The disciplinary action proceeded in a biased manner and the penalty was predetermined. He would point out from the show cause notice dated 24.12.2021, that no sufficient time was given to file reply. The representation made by the petitioners on 28.12.2021 was overlooked and the orders of dismissal were issued.

13. Learned counsel submits that incident dated 08.11.2019 alleged against the petitioners was false because the witnesses to the incident acted as a defence witnesses and supported the petitioner.

14. The learned counsel for the petitioner has vehemently criticized the findings recorded by the Industrial Court in rejecting application Exh-U-5. When preliminary issues were framed, the hearing of the application Exh U-5 should have been differed. The learned judge erred in holding that the petitioners failed to tender their reply and showed cleverness in approaching the court without challenging second show cause notice. According to him, the findings are perverse because the delinquent employees have legitimate right to approach court of law.

15. The learned counsel has challenged findings recorded in paragraph No. 14 of the order on the ground that except enquiry report nothing was before the court still it was recorded that enquiry was conducted in a proper manner. Learned counsel submits that the interim relief sought by the petitioners was not the final relief. Finding in that regard is perverse.

16. The learned counsel has placed heavy reliance on the law laid down in the matter of *Solapur Janata Sahkari Bank and another Versus Vilas Digambar Kamble*, passed by Bhomby High Court in Writ Petition No. 1432 of 2002, to buttress that the labour court should have postponed the consideration of application for interim relief when preliminary issue of validity of the enquiry was framed and yet to be decided. There is procedural illegality committed by the learned judge. Therefore it is prayed that the petitioners are entitled to interim orders.

17. The petitioners seek reliance upon following judgments :

- a) *Union of India Versus Mohd Ramzan Khan* reported in **1990 (11) CPSC 697 ;**
- b) *Hindustan Lever Ltd. Versus Ashok Vishnu Kate* reported in **AIR 1996 SC 285 ;**
- c) *Yoginath D. Bagde Versus State of Maharashtra and others* reported in **MANU/SC/0583/1999 ;**
- d) *Mahindra and Mahindra Ltd. Versus Dwarkanath Babaji Dalvi and Another* reported in **2006 (3) L.L.N. 983 ;**
- e) *Dombivali Nagri Sahkari Bank Versus Lahu Keshav Rewale* reported in **2014 II CLR 583 ;**
- f) *Amol Dilip Sable and others Versus M/s. L G Balkrishnan and Bros Ltd.* passed by this Court in Writ Petition No. 386 of 2018 ;
- g) *L.G. Balkrishnan and Bros Ltd. Through its IR Manager-HRD Versus Aurangabad Mazdoor Union (CITU) and others*, passed by this Court in Writ Petition No. 7441 of 2023 ;
- h) *Solapur Janta Sahkari Bank Ltd. Versus Vilas Digambar Kamble*, passed by Bombay High Court in Writ Petition No. 1432 of 2002.

18. Learned counsel for the respondent opposed the submissions of the petitioners. It is contended that the charges are

serious and they are proven charges by full fledged enquiry. The petitioner was found to be guilty of misconduct. Their existence in the service is detrimental to the smooth functioning of the respondent. He submits that due opportunity of hearing was given to the petitioners and thereafter the services were terminated. All the documents were supplied to them.

19. Learned counsel submits that there are no exceptional circumstances to grant interim relief of stay to the dismissal order which was passed after full fledged enquiry. The learned counsel submits that they pressed for interim application Exh-U-5 instead of proceeding with the preliminary issue. According to him, the learned judge is justified in rejecting interim application.

20. Learned counsel for the respondent has invited my attention to paragraph No. 13 to 17 of the impugned order to show that all aspect of the matter was duly considered. The court has formed a prima facie opinion regarding the conduct of the enquiry. The learned judge has shown reasonableness in observing that the petitioners would be reinstated with consequential relief if it is found after final hearing that the dismissal was unlawful. The petitioners would have placed on record the documents supplied to them besides enquiry report. In this way, the respondent defended the interim order and prays to dismiss petition.

21. The respondents seek reliance upon following judgments :

- a) Judgment dated 23.11.2006 passed by Supreme Court in the matter of *State of UP and others Versus Desh raj* in **Appeal (c) 5674/2006, SLP (c) No. 22947/2005 ;**
- b) Judgment dated 18.09.2009 passed by Supreme Court in the matter of *State of UP Versus Sandeep Kumar Balmiki and others*, in **Civil Appeal No. 6517/2009 of SLP No. 13319/2019 ;**
- c) *Maharashtra State Road Corporation Versus Raju Mahadevrao Bhagwatkar* reported in **2003 (2) Mh.L.J. 769 ;**
- d) *The Raja Bahadur Motilal Poona Versus Girni Kamgar Sanghatana* reported in **1995 III LLJ 447 ;**
- e) *United Ink and Varnish Co. Ltd. Versus Chandrashekhar Kuvre and Others* reported in **2007 (1) CLR 503 ;**
- f) *Executive Engineer MSEB Morshi and others Versus Industrial Court Amravati* reported in **2013 (3) Mh.L.J 320 ;**
- g) *Anthea Aromatics P. Ltd. Versus Association of Chemical Workers* reported in **2005 (3) LLJ 1145 ;**
- h) Judgment dated 24.06.2002 passed by Bombay High Court in the matter of *Solapur Janata Sahkari Bank Ltd.And another Versus Vilas Digambar Kamble*, in Writ Petition No. 1432 of 2002 ;

i) *M D Parmar Versus State of Gujarat* reported in **1991 (6) SLR 129 ;**

22. I have considered rival submission of the parties. I have gone through the judgments cited across the bar. The reference of the petitioners are pending before the labour court at Aurangabad. I have to consider whether prima facie case is made out for granting relief pending the reference. A threadbare analysis of the disciplinary action is not contemplated at this juncture. Though the petitioner has referred to the previous history of litigation, I do not propose to go into it at this juncture.

23. It is clinching to notice that the labour court has framed preliminary issues on 18.08.2023. Following are preliminary issues.

1. Does the second party prove that the enquiry conducted against him by the first party is unfair, illegal and in violation of principles of natural justice ?

2. Does the second party prove that the findings recorded by the enquiry officer are perverse ?

24. It is a matter of record that the respondent has taken disciplinary action against the petitioners-employees. They were served with charge-sheet. Enquiry officer was appointed to conduct enquiry. Oral evidence was recorded in the enquiry. On the basis of material, a report was prepared by the enquiry officer on 09.12.2021. The

misconduct alleged against the petitioner is held to be proved. Show-cause notice was issued to the petitioners before imposing final punishment. Thereafter penalty of dismissal from service is imposed.

25. It appears from record that there are substantial charges levelled against the petitioners. There is material against them to support the charges. Whether the charges are proved or not can be determined by the Industrial Court. The evidence adduced is admissible or not, the deposition of the witnesses is trustworthy or not can be gone into during the hearing of reference. At this interlocutory stage, it would not be appropriate to express any opinion about the merits of the matter.

26. Learned counsel for the petitioner has vehemently argued that the enquiry was a farce. The respondent was strategic and pre-decided to remove the petitioners. The documents were also not supplied. The petitioners were not given adequate opportunity after show-cause notice. These submissions cannot be accepted as a gospel truth. The respondent has repelled the submissions. Proper stage to examine this aspect of the matter is during the hearing of the complaint. I do not find any substance in the submissions to hold that there is a prima facie case to grant stay to the order of dismissal.

27. The learned counsel for the petitioner is unable to point out any flagrant violation of the statutory procedure resulting into miscarriage of justice. Minor aberration here and there would not permit

this court to grant stay to dismissal. The learned judge is justified in recording findings in paragraph no. 9, that no case of prejudice is made out.

28. Learned judge has dealt with observance of principles of natural justice in paragraph No. 10 and 11. I did not notice any perversity in the findings . I have carefully gone through findings recorded by learned judge in paragraph No. 13 to 15. I do not find any perversity or any patent illegality in the finding. Once an employee is dismissed from the service after conducting enquiry, if he wants to claim reinstatement by way of interim orders then very strong case with overwhelming material is required to be made out. Though the final relief in the present matter are various, reinstatement at interlocutory stage is the substantive relief. Such relief is possible to be granted only in an exceptional circumstances.

29. Learned counsel for the petitioner has heavily relied upon the judgment rendered in *Solapur Janta Sahkari Bank Versus Vilas Kamble* (supra). He has invited my attention to paragraph No. 3 to make out a submission that if a preliminary issues are framed then labour court should postpone the consideration of application of interim relief to avoid the anomaly.

30. Learned counsel for the respondent repelled the submission of the petitioner contending that the petitioners have pressed their

interim applications instead of proceeding with preliminary issues. The submission of the respondent that the petitioners insisted on the hearing of the interim application has substance. In the present matter, issues are framed on 18.08.2023. Out of them issue No. 1 and 2 are the preliminary issues. The petitioners could have pointed out the labour court that instead of deciding interim applications, they were prepared for the decisions on the preliminary issues.

31. The labour court is yet to decide preliminary issues in all these matters. The petitioners can reagitate their claim of interim relief after the decision on the preliminary issues. The impugned orders cannot be an impediment for the petitioners to file application for the interim relief after decision on preliminary issues.

32. Learned counsel for the petitioner has referred to various judgments cited (supra) in their support. He refers to paragraph No. 15 and 18 of the judgment in *Union of India Versus Mohan Ramzan Khot* (supra). That is the matter where the enquiry report and relevant documents were not supplied to the delinquent before imposing punishment. In the present matter during the course of full fledged trial the labour court can consider whether there is a violation of principles of natural justice or not. In the matter of *Hindustan Lever Versus Ashok Vishnu Kate* (supra) reference is made to paragraph nos. 33 to 38. As the maintainability of the complaints filed by the petitioner is not an issue involved in the present matter, the judgment is not useful.

33. The judgment in the matter of *Mr. Yoginath D. Bagde Versus State of Maharashtra* (supra) is referred and the reliance is placed on paragraph nos. 34 to 38. It is about the observance of principles of natural justice and denial of opportunity to the delinquent. This judgment may not be helpful at this stage of the proceedings.

34. In the matter of *Mahindra and Mahindra Versus Dwarkanath Dalvi* (supra) and paragraph nos. 22, 38 and 43 are referred to show parameters for granting interim relief. Similarly, in the matter of *Dombivali Nagri Sahkari Bank Versus Lahu Keshav Rewale* (supra), the jurisdiction of the labour court under section 30 sub-section (2) of The Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (MRTU PULP), is considered. I do not find that the learned judge has committed error of jurisdiction or misunderstood the parameters while considering application for interim relief.

35. The judgment in the matter of *Amol Sable Versus L.G. Balkrishnan* (supra) is also not useful because the facts are different. Similarly, facts in the matter of *L.G. Balkrishnan Versus Aurangabad Majdoor Union (CITU)* in Writ Petition No. 7441 of 2023 are also different.

36. Considering the submissions of the learned counsel, I am of the considered view that learned Judge has exercised the jurisdiction

properly. No case is made out for interference. Writ Petitions are dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]