

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2644 OF 2015
WITH
CIVIL APPLICATION NO.1209 OF 2016
IN
WRIT PETITION NO.2644 OF 2015

...

1 Subhash Ananda Kasote
Aged 42 years, Occ. Cleaner
(now unemployed) R/o Sangrul
Taluka Karveer, Dist. Kolhapur

2 Sanjay Pandurang Desai
Aged 41 years, Occ. Cleaner
At Post Bhamate, Taluka Karveer,
District Kolhapur

....Petitioners

V/S

1 Managing Director,
Nagrika Exports Ltd. Yavluj,
Taluka Panhala, District Kolhapur

2 The Hon'ble Member
Industrial Court-1, Kolhapur.

3 The Hon'ble Industrial Court No.1,
Kolhapur.

....Respondents

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Mr. Chetan Patil a/w Mr. Mandar G. Bagkar for the Petitioners/Applicants.

Mr. Abhay Nevagi a/w Mr. Amit Singh i/b Mr. Santosh Sawant for
Respondent No.1.

...

CORAM: SANDEEP V. MARNE, J.

DATE : FEBRUARY 15, 2024.

ORAL JUDGMENT:

1 By this Petition, Petitioners challenge judgment and order dated 25 September 2014 passed by the Industrial Court, Kolhapur in Revision (ULP) No.85 of 2014. The Industrial Court has partly allowed the Revision filed by Respondent-employer and has set aside Labour Court's order dated 15 May 2014 which had directed Petitioners' reinstatement with 70% backwages till 2011 for Petitioner No.1 and for the entire period for Petitioner No.2. The Industrial Court has directed payment of lumpsum compensation to the Petitioners of amount equal to wages of three years and three months as per last drawn salary alongwith their terminal dues.

2 Petitioners were employed with the Respondent-Mill. They were subjected to domestic enquiry by issuance of charge-sheet dated 30 September 2002 on the allegation that on 3 September 2002 they were found sleeping on duty at 11.30 a.m. in the canteen of the Respondent-Mill. Petitioners were placed under suspension. Domestic enquiry was conducted into the charges. The Enquiry Officer gave report holding that the charge leveled against the Petitioners was proved. The Respondent-Mill terminated them from service on 15 April 2003.

3 Petitioners approached Labour Court by filing Complaints under provisions of section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). Labour Court passed Part-I Award dated 6 January 2009 holding that the enquiry was held in accordance with the principles of natural justice. In Part-II Award dated 31 July 2010, the Labour Court held that the findings recorded by the Enquiry Officer were perverse and directed the Respondent-Mill to reinstate the Petitioners with back-wages. Respondent-Mill filed Revision Applications before the Industrial Court, which remanded the Complaints to the Labour Court on the ground that the employer was required to be given an opportunity to prove the misconduct before Labour Court after holding the findings of the Enquiry Officer to be perverse.

4 Upon remand of the Complaints to the Labour Court, Respondent-Mill led evidence by examining various witnesses. After taking into consideration the evidence on record, the Labour Court passed judgment and order dated 15 May 2014 partly allowing the Complaints and held that the Respondent committed unfair labour practices and directed reinstatement of both the Petitioners with continuity and all consequential benefits. It held that both the Petitioners would be entitled to 70% backwages. The entitlement of Petitioner No.1 to get 70% backwages was however restricted till the year 2011 on account of his gainful employment thereafter. Petitioner No.2 was however held entitled to 70% backwages for the entire period.

5 The Respondent filed Revision Applications before the Industrial Court challenging the decision of the Labour Court. The Industrial Court has set aside the order of the Labour Court and has directed the Respondent to pay a lumpsum compensation of wages equivalent to three years three months in addition to terminal dues to the Petitioners. Aggrieved by the decision of the Industrial Court dated 25 September 2014, Petitioners have filed a present Petition. It appears that the Respondent has honoured the directives of the Industrial Court and has paid to the Petitioners the amount awarded by the Industrial Court. It appears that Petitioners are paid following amounts towards implementation of the decision of the Industrial Court:

Wages for 40 months	Rs.1,22,200/-,
Unpaid bonus (with ex-gratia)	Rs. 3,632/-,
Gratuity	Rs. 11,349/-,
Leave wages	Rs. 1,058/-,

Total	Rs.1,38,239/-.

6 This Court admitted the Petition by order dated 16 February 2016.

7 I have heard Mr. Patil, the learned Counsel appearing for the Petitioners. He would submit that the Industrial Court has committed a grave error in interfering a well-reasoned order passed by the Labour Court. He would submit that the Management witness admitted before the Labour Court that signatures of Petitioners were obtained on blank papers. That 16 to 17 other employees were also found sleeping at the

same time in the canteen. That they were let off with minor penalty of suspension. He would therefore submit that discriminatory treatment is given to the Petitioners in the matter of penalty.

8 Mr. Patil would further submit that the evidence on record would clearly indicate that the charge against the Petitioners is not found to be proved. That the Labour Court had correctly appreciated the fact that there was no fixed recess time for the workers on account of which the workers were entitled to take 30 minutes recess during the entire shift. That it is inhuman to expect workers to work continuously without any break. That mere presence in the canteen does not amount to misconduct in absence of any evidence that the time at which the Petitioners were found in the canteen was not a recess time. He would submit that the Labour Court has correctly appreciated this aspect and has set aside the termination. The Industrial Court has erroneously exercised jurisdiction under section 44 of the MRTU & PULP Act, in absence of any patent error in the finding recorded by the Labour Court. Mr. Patil would submit that the findings of the Industrial Court would indicate that it has found fault with the Labour Court for not into consideration the evidence on record. If that was the case, the Industrial Court could have, at the highest, remanded the proceedings for correction of procedural error. That setting aside the order of the Labour Court in entirety was clearly uncalled for. Lastly Mr. Patil would submit that the penalty imposed on the Petitioners is grossly disproportionate to the misconduct proved. That even if the misconduct of sleeping on duty is held to be proved, the

same is not so serious so as to impose harsh penalty of termination. He would therefore pray that the order passed by the Industrial Court be set aside and the Labour Court's decision be upheld.

9 *Per contra*, Mr. Nevagi the learned Counsel appearing for Respondent-employer would oppose the Petition and support the order passed by the Industrial Court. He would submit that the order is complied with by paying amount of Rs. 1,38,250/- each to Petitioners in the year 2014 itself. He would submit that the misconduct of sleeping on duty is a serious misconduct as held by the Apex Court in its judgment in ***Bharat Forge Co. Ltd. vs. Uttam Manohar Nakate***, (2005) 2 SCC 489. He would submit that Respondent is a 100% Export Oriented Unit and supplies yarn in the international markets. That the misconduct of sleeping on duty, cannot be tolerated in the establishment of the Respondent. That the past record of the Petitioners is not free from blemish and that they were repeatedly punished in the past. He would submit that though the Petitioners are found to be guilty of serious misconduct, Respondent has still honoured the order of the Industrial Court and paid the amount of compensation to them. He would pray for dismissal of the Petition.

10 Rival contentions of the parties now fall for my consideration.

11 Perusal of the order passed by the Labour Court would indicate that after remand of the proceedings by the Industrial Court,

Respondent-employee led evidence of as many as four witnesses to prove each article of charge. The first issue before the Labour Court was about proof of charge of sleeping on duty. Petitioners apparently admitted that they were found sleeping on duty. However, the said document is sought to be discarded by them on the basis of evidence of the Management witness Mr. Uday Bhosale who deposed that he had obtained signatures of the Petitioners on blank papers. Even if the statements given by the Petitioners before conduct of enquiry is to be ignored, act of sleeping during the course of duty appears to have been admitted in the written submissions filed before the Labour Court. It appears that in the written submissions dated 7 May 2014 filed before the Labour Court, Petitioners pleaded for imposition of lesser penalty. While raising such a plea, they gave a clear admission that they were actually sleeping on duty. Though written submissions are not affirmed and cannot be treated as pleadings, it appears that Petitioner No.1 signed the written submissions drafted by his advocate. Thus, there are atleast two documents on record containing clear admission of charge of sleeping on duty. Even if the statements recorded prior to conduct of domestic enquiry are to be ignored, Petitioners cannot be run away from the written submissions filed before the Labour Court. In my view therefore, the charge of sleeping on duty is clearly admitted by the Petitioners and it was not even necessary for the Respondent to lead any evidence to prove the charge. Perusal of the findings recorded by the Labour Court would indicate that the Labour Court has completely misdirected itself while appreciating evidence on record. Petitioners faced the charge of sleeping on duty in the canteen.

The Labour Court quite unnecessarily went into the aspect of the exact place where they were found sleeping. The Labour Court has held that the Management witness deposed that Petitioners were found sleeping on the terrace of the kitchen room of the canteen. Since the said location was not reflected in the charge-sheet, the Labour Court has held the charge to be disproved. In my view those findings recorded by the Labour Court are completely perverse.

12 Once it is held that there is sufficient evidence on record as well as admissions repeatedly given by the Petitioners for the purpose of proof of charge of sleeping on duty, the next issue is about correctness of penalty imposed on them. Here two aspects are sought to be highlighted on the part of the Petitioners. Firstly, it is sought to be contended that alongwith Petitioners, 16 to 17 other employees were also found sleeping in the canteen. In my view, merely because the Respondent-employer did not impose the same punishment on other employees cannot be a reason for setting aside the penalty imposed on them. Correctness of penalty imposed on Petitioners is required to be examined on the basis of gravity of misconduct proved against them. The Industrial Court has already granted compensation to Petitioners and the Employer has not challenged Industrial Court's order.

13 So far as the aspect of proportionality is concerned, it is well settled law that Courts and Tribunals cannot go into the issue of

proportionality unless they find the penalty to be shockingly disproportionate. It is only in extreme cases where penalty imposed on an employee shocks the conscience of the Court that interference by Courts and Tribunals in the penalty is warranted. Mr. Nevagi has placed reliance on the judgment of the Apex Court in ***Bharat Forge Co. Ltd.*** (supra) in which the Apex Court has reiterated the limited scope for Courts and Tribunals to interfere in the penalty. The Apex Court has also held that sleeping on duty cannot be treated as minor misconduct. In my view therefore the penalty imposed on the Petitioners cannot be treated as the one which would shock the conscience of the Court. Though the penalty imposed on the Petitioners is found to be perfectly valid, the Industrial Court has awarded compensation in favour of Petitioners in the form of wages for three years and three months in addition to terminal dues possibly because of letting of other employees who were also found sleeping in the canteen. It appears that the Petitioners have been paid amounts of Rs.1,38,250/- each towards implementation of the order passed by the Industrial Court. Upon being inquired, Mr. Nevagi has fairly submitted that the Respondent is willing to pay further amount of Rs.75,000/- each to the Petitioners over and above what is already paid to them in pursuance of the order of the Industrial Court. This would make Petitioners' entitlement to compensation to about Rs. 2,13,000/-

14. In that view of the matter, I proceed to pass the following order:

ORDER

- i) The judgment and order dated 25 September 2014 passed by Industrial Court in Revision (ULP) No.85 of 2014 is upheld;
- ii) However, Respondent shall pay to each of the Petitioners an amount of Rs. 75,000/- over and above the amount paid as per the order of the Industrial Court;
- iii) Amount of Rs. 75,000/- shall be paid by the Respondent to the Petitioners within a period of four weeks from today.

15 With the above directions, the Writ Petition is disposed of.

16 In view of the disposal of the Writ Petition, nothing survives in the Civil Application and the same is disposed of accordingly.

(SANDEEP V. MARNE, J.)