

Shabnoor

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

WRIT PETITION NO.4576 OF 2018

Gopal Jagannath Patil	... Petitioner
V/s.	
M/s. Mahindra & Mahindra Ltd.	... Respondent

Mr. Anubha Rastogi a/w Ms. Rachita Padwal i/by Ms. Bhavana Mhatre, for Petitioner.

Mr. N. B. Jalota a/w Mr. Vipul Patel i/by Haresh Mehta & Co., for Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 15, 2024

P.C.:

1. The petitioner is challenging the judgment of the Labour Court dated 4 January 2019 answering reference under Section 10(1) r/w Section 12(5) and Section 2-A of the Industrial Disputes Act, 1947 on the point of adjudication as to whether the petitioner should be reinstated in service with full back wages with effect from 19 December 2011.

2. The petitioner was appointed in the year 1991. The petitioner's services were terminated with effect from 19 December 2011. In the meantime, on 20 May 2011, the employer issued charge-sheet to him on the ground that he committed misconduct of taking money from the contract officer named in the charge-

sheet before giving them appointment in employer company.

3. The Enquiry Officer after giving opportunity to the petitioner and after following procedure required under the relevant rules, submitted his report that the petitioner was guilty of misconduct alleged against him. Based on report of Enquiry Officer, the petitioner was terminated from his employment with the effect from 19 December 2011.

4. The petitioner, therefore, sought reference. In the reference, initially the preliminary issue regarding legality and validity of disciplinary enquiry framed, which was answered in favour of employer. The Labour Court, thereafter permitted both the parties to lead evidence. The petitioner did not lead evidence.

5. The Labour Court based on material on record answered reference in negative. The petitioner has, therefore, filed the present writ petition.

6. Learned Advocate for the petitioner, submitted that the enquiry was not held in accordance with law. According to her, in absence of allegations of previous misconduct, based on finding of misconduct by the Enquiry Officer punishment of dismissal is shockingly disproportionate to the proved misconduct.

7. The scope of judicial review challenging the findings of disciplinary officer is well settled. In exercise of judicial review, the Court does not act as appellate forum over the findings of disciplinary officer and does not re-appreciate evidence on the basis of which findings of misconduct have been arrived during the course of the disciplinary enquiry. The exercise of judicial review

is restricted to determine whether: (i) rules of natural justice have been complied with; (ii) findings of misconduct is based on some evidence; (iii) statutory rules governing conduct of enquiry proceedings were followed; (iv) finding of disciplinary enquiry suffers from perversity; (v) penalty of disproportionate is proved to the misconduct.

8. In the facts of the case, on perusal of the record that the first four circumstances warranting interference are not attracted.

9. The submission of the petitioner is on the point of penalty disproportionate to the misconduct. The Labour Court in paragraph 13 has considered the proportionality of punishment. The charge of misconduct against the petitioner is taking money from five persons on promise of providing them jobs in employer company. Therefore, such proved misconduct amounts grave misconduct. The Labour Court has rightly considered the issue of punishment being proportionate to the misconduct proved. Hence, in my opinion, no interference in the impugned judgment is called for. The writ petition stands dismissed.

10. It will be open for the petitioner to apply for statutory dues if permissible in law. The employer shall take decision in that regard in accordance with law as expeditiously as possible in any case within eight weeks from the date of application.

(AMIT BORKAR, J.)