

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3761 OF 2019

KEIHINFIE PRIVATE LIMITED

....PETITIONER

V/S

PRAKASH SUDHAKARRAO SHINDE

....RESPONDENT

...

Mr. A.D. Patwardhan a/w Mr. Triveninath R. Yadav for the Petitioner.

Mr. Rahul Singh a/w Mr. Yash Naik i/b Mr. M.S. Singh for Respondent.

...

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 16, 2024.

ORAL JUDGMENT:

1 **Rule.** Rule is made returnable forthwith. By consent of the learned Counsel appearing for the parties, the Petition is taken for hearing and disposal.

2 The challenge in the present Petition is to the Part-I Award dated 21 December 2018 passed by the Presiding Officer, Labour Court-3, Pune by which the Labour Court has held the enquiry to be legal, fair and proper but the findings of the Enquiry Officer to be perverse. The Petitioner-employer has challenged the Part-I Award to the limited extent of the finding of the Enquiry Officer being held perverse.

3 Briefly stated, facts of the case are that – Petitioner is a Multi-National Company and has one of its factories at Chakan, District Pune. Petitioner is engaged in the business of manufacture of carburetors used

in two wheelers and also in manufacture of fuel injection systems. Respondent was appointed in the services of the Petitioner on the post of Operator in the year 2003. A charge-sheet was served on the Respondent on 15 February 2013 alleging commission of habitual absence under clause 24(f) of the Model Standing Orders. Additionally misconduct of committing habitual breach of Model Standing Order under clause 24(h) of the Model Standing Orders and commission of act subversive of discipline under clause 25(l) of Model Standing Orders was also levelled. In the domestic enquiry conducted against the Respondent, the charges were proved and by order dated 5 July 2013, the penalty of dismissal from service is imposed on the Respondent.

4 At the behest of the Respondent a Reference is made to the Labour Court, Pune by the appropriate Government with regard to the termination of the Respondent and his prayer for reinstatement with back-wages. The Reference came to be registered as a Reference (IDA) No.115 of 2014 before the Labour Court, Pune. In that Reference the Labour Court has passed Part-I Award dated 21 December 2018 holding that the enquiry conducted against the Respondent is legal, fair and proper. The Labour Court has however held that the findings of the Enquiry Officer are perverse. Accordingly the Labour Court has given an opportunity to the Petitioner to prove the misconduct before the Labour Court by adducing evidence. As observed above, the Petitioner is aggrieved by the Part-I Award to the limited extent of finding of the Enquiry Officer being treated as perverse and vitiated.

6 Mr. Patwardhan, the learned Counsel appearing for the Petitioner would submit that the Tribunal's finding about perversity in the findings of the Enquiry Officer are totally unsustainable. He would submit that the charges levelled against the Respondent specifically alleged misconduct for remaining unauthorized absent on 10 occasions during September 2012 to December 2012. He would invite my attention to the Explanation to clause 24 of the Model Standing Orders under which, any misconduct committed on three or more occasions within a space of one year is treated as 'habitual'. He would submit that the Industrial Court has failed to take into consideration the said Explanation below clause 24 of the Model Standing Orders while recording a perverse finding that the absenteeism of the Respondent cannot be termed as habitual. He would further submit that the Petitioner never alleged absence for more than 10 consecutive days and therefore the finding of the Labour Court about Respondent not remaining absent for more than 10 consecutive days is totally perverse. He would submit that the Respondent was charged with the misconduct of habitual absence without leave and that the said charge is proved in the enquiry. He would therefore pray for setting aside the order passed by the Labour Court.

7 *Per contra*, Mr. Singh the learned Counsel appearing for the Respondent-workman would oppose the Petition and support the order passed by the Labour Court. He would submit that the charge-sheet issued to the Respondent does not contain an allegation that he remained

absent without leave for more than 10 consecutive days. That the total number of days of absence in the charge-sheet is only 8.5 and that therefore no misconduct is committed by the Respondent under clause 24(f) of the Model Standing Orders. He would submit that clause 24(f) of the Model Standing Orders does not apply to absence of less than 10 consecutive days. He would further submit that the other elements of charges under clauses 24(h) and 24(l) of the Model Standing Orders have not been proved in the enquiry. That the absence of the Respondent has been properly explained by making leave applications from time to time. That the Labour Court has rightly taken into consideration the fact that the absence was on account of Respondent's skin problem and health problem of his son. He would submit that in any case for absence of just 8.5 days, penalty of dismissal/termination is grossly disproportionate. He would therefore pray for dismissal of the Petition.

8 After having considered the submissions canvassed by the learned Counsel appearing for the parties, it is seen that the Labour Court has held that the enquiry is legal, fair and proper. Thus the entire evidence recorded in the enquiry which is conducted in a legal, fair and proper manner is available for appreciation by the Labour Court. The Labour Court has recorded following findings in paragraphs 17, 18 and 19 of its Part-I Award for the purpose of holding that the findings of the Enquiry Officer are perverse:

"17) After conclusion of enquiry proceeding the enquiry officer submitted his report dated 17/04/2013. Going through the report of enquiry officer it has been gathered that enquiry officer came to the

conclusion that the charge levelled against the second party under clause 24(f) of Model Standing Orders about habitual absenteeism is proved. There is no whisper about establishment of other charge levelled against the second party. The enquiry officer further mentioned in bracket that during the period of six months occasions of absenteeism were more than four times. It shows that the enquiry officer come to the conclusion that during the period of six months the occasions of absenteeism are more than four times, hence, the second party was guilty of alleged misconduct of habitual absenteeism. In Model Standing Orders nowhere it is mentioned that the occasion of absenteeism should not be more than four within period of six months. The enquiry officer has applied his own mind and wrongly interpreted the provision clause 24(f) of Model Standing Orders.

18) It is also seen from Exh. 10 in enquiry i.e. leave card of the second party that for leave dated 05/09/2012 there is remark that, "request to kindly consider as a sp. Case. Prior intimation received." It is seen that it is alleged that the second party was absent for 8.5 days on 10 occasions. He was not remained absent for more than 10 consecutive days or not overstayed the sanctioned leave without sufficient grounds. If the tenure of his service is considered, it cannot be said that he was habitual in absence.

19) Habitual absenteeism means voluntarily not attended work without any reason. It does not include involuntarily or occasional absence due to valid reasons or causes beyonds ones control such as accident or sickness. Perversity vitiates disciplinary proceeding. There is a two fold taste for deciding perversity of findings. The first taste is that the findings are not supported by any legal evidence at all and the second is that on the basis of the material on the record, no reasonable person could have arrived at the findings complained off. In each of these cases, the findings would be treated as perverse. It is seen that only evidence of second party before enquiry officer is his statement wherein he has submitted that due to his skin problem and health problem of his son, he remained absent on duty, but his statement nowhere is considered by the enquiry officer. Considering the circumstances I am of the opinion that the enquiry officers wrongly came to conclusion that charge of habitual absenteeism under clause 24(f) of Model Standing Orders levelled against the second party was proved. Therefore, the findings of enquiry officer are perverse.

9 In my view, the Labour Court has not correctly appreciated the provisions of clause 24(f) of the Model Standing Orders. Clause 24(f) reads thus:

“24(f) habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation.”

10 Thus, clause 24(f) comprises of three separate misconducts:-
i) habitual absence without leave, ii) absence without leave for more than ten consecutive days, iii) overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation.

11 Thus ‘habitual absence without leave’ constitutes a separate and distinct misconduct than ‘absence without leave for more than ten consecutive days’.

12 In the present case what is alleged against the Respondent is not ‘absence without leave for more than ten consecutive days’, but what is alleged against him is ‘habitual absence without leave’. Thus on a plain reading of clause 24(f) of the Model Standing Orders it is seen that a singular absence on the part of Workman for more than ten consecutive days constitutes misconduct. On the contrary, if the absence is less than ten consecutive days, such absence must be habitual. The term ‘habitual’

has been clarified in explanation to clause 24 of the Model Standing Orders as under:

“Explanation.- No act of misconduct which is committed on less than three occasions within a space of one year shall be treated as “habitual”.”

13 Thus any misconduct which is committed on more than three occasions within a space of one year is treated as ‘habitual’. In the present case, the total occasions on which the Respondent remained absent is ten during September 2012 to December 2012. Therefore, the requirement of misconduct on more than three occasions within a space of one year as provided under explanation to clause 24 of Model Standing Orders is met in the present case. In my view therefore, the charge of the habitual absence without leave is clearly proved against the Respondent in the present case. The findings of perversity recorded by the Labour Court are based on incorrect interpretation of clause 24 of the Model Standing Orders.

14 The Labour Court has held that there is no whisper about establishment of other charges levelled against the Respondent. If this is the case, this would be a relevant factor for the purpose of determining the issue of proportionality of punishment. However merely because the other two charges relating to clauses 25(h) and 25(l) are not proved, the same does not mean that the charge under clause 25(f) also automatically gets disproved.

15 In my view therefore, the Part-I Award dated 21 December 2018 passed by the Labour Court to the extent of holding the finding of the Enquiry Officer to be perverse is unsustainable and liable to be set aside.

16 The Petition accordingly succeeds. Part-I Award dated 21 December 2018 passed by the Labour Court, Pune in Reference IDA No.115 of 2014 is set aside to the extent of holding the findings of the Enquiry Officer to be perverse and vitiated. It is held that the findings of the Enquiry Officer are not perverse. The Labour Court shall accordingly proceed to pass Part-II Award by proceeding on footing that the enquiry is legal, fair and proper and that the findings of the Enquiry Officer are not perverse.

17 With the above directions, the Writ Petition is allowed. Rule is made absolute.

(SANDEEP V. MARNE, J.)

Digitally
signed by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.01.22
14:28:01
+0530