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

WRIT PETITION NO.1854 OF 2024

VAIBHAV
RAMESH
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VAIBHAV RAMESH
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Veleo India Pvt. Ltd.

A company duly incorporated under the
Companies Act, 1956 having its plant at
Gat No.24, 744, 745,

At Post - Lonikand, Tal. Haveli,

Dist. Pune – 412 216

Through its authorised representative

Shashank Shankar Moghe, Head – HR,

Age : 51, Konark Exotica,

Flat No. E-601, Kesnand Road, Wagoli,

Pune – 412207.

... Petitioner

V/s.

Ranjit Balu Hande

Age : Adult, Occupation : Nil,

R/At : 231/6, Sant Tukaram Nagar,

Dighe Road, Bhosari,

Pune : 411 039

... Respondent

WITH

WRIT PETITION NO.3560 OF 2024

Ranjit Balu Hande

Age. 40 year, Occupation : Nil

C/o. MB Ambre, R/at : 231/6,

Sant Tukaram Nagar, Dighe Road,

Bhosari, Pune - 411 039

... Petitioner

V/s.

Valeo India Pvt. Ltd.

Gat No.24, 744 & 745,

Village Lonikand, Tal.: Haveli,

District Pune – 412 216

... Respondent

Mr. Varun R. Joshi i/by Mr. Chetan A. Alai with Ms. Rama Somani for the petitioner in WP/1854/2024 and for the respondent in WP/3560/2024.

Ms. Seema Chopda with Mr. T. R. Yadav for the petitioner in WP/3560/2024 and for the respondent in WP/1854/2024.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 4, 2024

PRONOUNCED ON : MAY 8, 2024

JUDGMENT.:

1. The employer has challenged the order passed by the Labour Court directing the reinstatement of the workman with continuity of service and consequential benefits in Writ Petition No.1854 of 2024. While workman before the Court in Writ Petition No.3560 of 2024 has challenged order of denial of the back wages and the finding of misconduct held to be proved. For convenience of reference, the parties will be referred to as employer and workman.

2. According to the workman, he was in employment with employer as Quality Inspector from 1 November 2010. His last drawn salary was Rs.24,700/-. His past service record was clean and unblemished. He was General Secretary of the Maharashtra Rajya Rashtriya Kamgar Sangh in 2011. He had played important role in rising the wages and payment of bonus. Due to the above reasons, officials of the employer compelled one girl to lodge a case against a workman at Lonikand Police Station. The employer

issued him a charge sheet dated 17 March 2015. An inquiry was conducted against the workman without giving the opportunity for a hearing, wherein he was held guilty, and his services were illegally terminated with effect from 25 July 2016.

3. The employer filed a written statement and stated that the workman was working the first shift after the market inspection and parking area on the shop floor on 16 March 2015. At around 08:00 a.m., he left the workplace without informing his superior. At about 08:00 a.m., he went to the Metallurgical Laboratory room and started pointing fingers towards complainant Sheetal Patil. Due to this, she asked the workman a reason for such an act. Resultantly, the workman talked and threatened her with dire consequences. He threatened her with slapping and chopping her body parts. She, therefore, started crying. At that time, many employees had gathered on the shop floor. This incident prompted the employer to issue a charge sheet dated 17 March 2015 alleging misconduct under Clauses (a), (k), (l) and (z) of Order 24 of the Model Standing Orders. The employer suspended him and started an inquiry. According to the employer, the procedure was followed during the inquiry. The Inquiry Officer recorded the finding that the charges were proved, and considering the nature and seriousness of the misconduct, the workman's services were terminated by letter dated 25 July 2016.

4. An industrial dispute was raised and referred to adjudication. The Labour Court, by order dated 26 June 2019, held the inquiry to be legal, fair and proper, but the findings recorded by the Inquiry Officer are perverse and not based upon

evidence on record. The Labour Court, therefore, permitted employer to prove misconduct by leading evidence. The employer examined six witnesses to prove misconduct. The workman examined himself in support of his defence.

5. By order dated 1 November 2023, the Labour Court concluded that the workman's misconduct was established; however, the punishment was held to be shockingly disproportionate. In the circumstances, the management has been directed to reinstate the workman without back wages, imposing the punishment of withholding three increments.

6. On behalf of management, it has been submitted that the finding of misconduct arrived at in the course of disciplinary inquiry has been held to be duly proved. The inquiry has been held to be fair and proper. The Charge of threatening a woman employee by slapping her below her ear and chopping her entire body on the premises of the establishment, which is proved to be a serious charge. In these circumstances, it was submitted that there was absolutely no warrant or justification for the Labour Court to conclude that punishment is shockingly disproportionate. On the other hand, on behalf of the workman, it has been submitted that the past record of the workman was clean and unblemished. The testimony of management witness Satish Chavan in the domestic inquiry indicates that all other eyewitnesses deposed before the Labour Court were not present and, therefore, there was no admissible evidence before the Labour Court to arrive at a finding of proof of misconduct. The finding of the Labour Court of the workman's gainful employment during the pendency of the

complaint is perverse as it is his helplessness to accept monthly help from his union, and helping his father in agricultural activities would not amount to gainful employment.

7. The inquiry in the present case has been held to be fair and proper; however, the findings were held to be perverse. In these circumstances, consistent with the well-settled position in law, it was open to the Labour Court to peruse the proceedings in the inquiry and allow the employer to lead the evidence. The Labour Court, in its judgment, adverted to the evidence of six eyewitnesses to the incident and held that testimony of all the witnesses of the employer proves that on 16 March 2015 at 08:10 a.m. at Metallurgical Laboratory, the workman threatened the woman employee of slapping her below her ear and chopping her entire body. The witnesses who deposed before the Labour Court were eyewitnesses to the incident. The proceedings before the Labour Court, while considering evidence led under section 11A of the Industrial Disputes Act, 1947, were not governed by strict rules of a criminal trial. The Charge of misconduct was required to be proved on preponderance or probabilities.

8. In so far as the contention raised on behalf of the workman that the testimony of management witness Satish Chavan in domestic inquiry indicates that the eyewitnesses testified before the Labour Court were not present at the time of the incident. However, the Labour Court, in paragraphs Nos.13 to 21, scrutinised the evidence of eyewitnesses and recorded a finding of fact that testimony of all witnesses of the employer establishes that on 16 March 2015 at 08:10 a.m. the workman threatened the

woman employee of slapping her below her ear and chopping her entire body.

9. At this stage, it is necessary to refer to the judgment of the Supreme Court in **Union of India vs. P. Gunasekaran** reported in (2015) 2 SCC 610, the Supreme Court delineated parameters of exercise of power of this Court under Articles 226 and 227 of the Constitution of India by observing that the High Court, in exercise of power under Articles 226 and 227 of the Constitution of India, shall not venture into reappreciation of the evidence. The Supreme Court observed that the High Court shall not go into the reliability of the evidence or shall not re-appreciate the evidence. It is observed in paragraph Nos.12 and 13 as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous

to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) The finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact, however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

10. Keeping in view parameters laid down by the Apex Court, it is not possible for this Court to accept submissions on behalf of the workman that the testimony of the management witness Satish Chavan in domestic inquiry rules out the possibility of the presence of eyewitnesses deposed before the Labour Court. Accepting such submission would amount to a reappreciation of evidence or examining the reliability of the testimony of witnesses deposed

before the Labour Court, which is impermissible, particularly in view of the detailed discussion by the Labour Court accepting their testimony in paragraphs Nos.13 to 21 of the judgment. Therefore, I do not find perversity in the finding recorded by the Labour Court regarding the Charge of misconduct of threatening a woman employee by slapping her below her ear and chopping her entire body.

11. The Labour Court, thereafter, considered the applicability of Clauses (a), (k), (l) and (z) of Order 24 of the Model Standing Orders. The Labour Court rightly concluded that threatening to slap below the ear and chopping the entire body of a female employee by a male employee is not sexual harassment, and it does not fall under the purview of Clause (z) of Order 24 of the Model Standing Orders. The Labour Court also rightly held that the woman employee was not a superior officer of the workman and she was a trainee engineer. Therefore, the Charge of insubordination or disobedience of any lawful and reasonable order of superior is not proved and, therefore, acts alleged against the workman do not fall within the purview of misconduct under Clause (a) of Order 24 of the Model Standing Orders. The Labour Court was further justified in recording a finding that the act committed by the workman amounts to riotous, disorderly behaviour and subversive of discipline or good behaviour on the premises of the establishment and, therefore, the act will fall within the purview of misconduct enumerated in Clauses (k) and (l) of Order 24 of the Model Standing Orders.

12. However, in the present case, it has been urged on behalf of

the workman that the Labour Court was in error in holding that the articles of Charge were established. There is no merit in the submission. For one thing, in the exercise of writ jurisdiction under Article 226 of the Constitution of India, the Court has to consider whether a finding of misconduct is based on some evidence on record. In holding that the Charge of misconduct was established, the Labour Court relied on the evidence of eyewitnesses whose testimony was held to be credible and trustworthy.

13. On the point of punishment of dismissal inflicted on the workman being shockingly disproportionate, the Labour Court appears to have taken into consideration various factors such as the gravity of the misconduct, the previous record of the employee and other extenuating or aggravating circumstances. The Labour Court has recorded a finding that there is no evidence on record of the petitioner's past record being extremely poor. There are no aggravating circumstances to be taken into consideration against the workman for awarding punishment of dismissal. The Labour Court rightly came to the conclusion that the act of threatening a woman employee by slapping her below her ear and chopping her entire body is somewhat serious but does not appear grave enough to dismiss him. The Labour Court, in my opinion, has struck a balance between the interest of the workman and the bona fide concerns of the employers by imposing the punishment of stoppage of three increments and denial of back wages.

14. The Labour Court, in paragraph No.43, has taken into consideration a fact admitted in cross-examination of the workman that he has a commercial car and might be getting income from

such a commercial car. The workman admitted in his cross-examination that the employees' union paid him money from time to time to make his livelihood. The workman further admitted that he had agricultural land to maintain the livelihood of his family, and, therefore, the Labour Court correctly recorded a finding that he was gainfully employed.

15. The Supreme Court in **North East Karnataka Road Transport Corporation v. M. Nagangouda**, reported in 2007 (I) CLR 939, took the view that the Industrial Tribunal was not justified in granting full back wages as the workman was self-employed in agricultural activity to maintain himself. The Court held as under:

“17. On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment. In our view, “gainful employment” would also include self-employment wherefrom income is generated. Income either from employment in an establishment or from self-employment merely differentiates the sources from which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in “gainful employment.”

16. Moreover, in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others** reported in (2013) 10 SCC 324, the Supreme Court in paragraph No.38.4 held that the Labour Court shall have discretion not to award full back wages in case punishment was held to be disproportionate to the misconduct proved.

17. For all these reasons, I am of the view that the writ petitions filed by the employer and the workman will have to be dismissed.

18. Accordingly, both the writ petitions stand dismissed. In the circumstances of the case, there shall be no order as to costs.

(AMIT BORKAR, J.)