

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4916 OF 2007**

Bombay Dyeing & Manufacturing Co. Ltd.

.. Petitioner

Versus

Mr. Yogesh Vinayak Tipre

.. Respondent

...

Mr. Avinash Jalisatgi a/w Mr. T. R. Yadav & Ms. Divya Wadekar, for Petitioner.

Mr. Sachin Punde, for Respondent.

...

CORAM : SANDEEP V. MARNE J.

RESERVED ON : 2 MAY 2024.

PRONOUNCED ON : 9 MAY 2024.

JUDGMENT :-

1) Petitioner-Bombay Dyeing & Manufacturing Co. Ltd. has filed this Petition challenging the Award dated 26 April 2007 passed by Presiding Officer, Labour Court, Mahad by which the Respondent is held entitled for reinstatement at his original post with continuity and full backwages with effect from 24 September 1999.

2) Petitioner is engaged *inter alia* in manufacturing of Di-Methyl Terephthalate (DMT), which is a raw material for manufacturing synthetic yarn.

Petitioner has a DMT manufacturing plot at Patalganga, District Raigad. Respondent was employed as Accounts Assistant (Weigh bridge) in Petitioner's DMT factory. While so working, Respondent was issued with a show cause notice dated 30 June 1999 alleging that on 28 June 1999, while being deployed to work in 1st shift duty from 7.00 a.m. to 3.00 p.m., he also continued to perform duty in the 2nd shift from 3.00 p.m. onwards on overtime. That there was heavy workload on account of month end and it was observed that from 2.48 p.m. to 4.24 p.m., he was not present at workplace without permission and without any reason. That on account of Respondent's absence, more than dozen loaded trucks could not go out. It was further alleged that when the General Manager visited weigh bridge to assess the situation at 5.40 p.m., he noticed that Respondent had gone to canteen keeping the work in abeyance and returned from canteen only at 6.05 p.m. Respondent was informed that his conduct needs to be investigated by issuing him charge sheet and conducting domestic enquiry. He was placed under suspension by composite show cause notice-cum-suspension Order dated 30 June 1999.

3) Respondent replied the show cause notice on 1 July 1999 and sought pardon for his absence. Petitioner issued charge sheet to Respondent on 8 July 1999 alleging misconduct, willful disobedience, willful slowing down in performance of work and commission of an act subversive of discipline or good behavior under clauses 20.1, 20.3 and 20.11 of the certified Standing Orders.

4) An enquiry was conducted into the charges by appointing Mr. P. N. Upadhyay as Enquiry Officer. According to the Petitioner, Respondent participated in the enquiry through President of Recognized Union as is defence representative. In the enquiry, Petitioner examined six witnesses which were cross-examined by Respondent. Respondent examined himself and one more defence witness. The Enquiry Officer submitted his report, which was forwarded to Respondent on

which Respondent submitted his reply. Petitioner thereafter proceeded to pass Order dated 24 September 1999 dismissing the Respondent from service from 24 September 1999.

5) In some independent adjudication pending before the Industrial Tribunal at the behest of the recognised union, Petitioner filed application under Section 33 (2)(b) of the Industrial Disputes Act 1947 seeking approval of dismissal of Respondent. By Order dated 21 October 2003, the Industrial Tribunal approved the action of dismissal taken against the Respondent.

6) Respondent filed Complaint (ULP) No. 287 of 2000 before Third Labour Court, Thane challenging the dismissal Order. The Complaint was held to be barred by limitation by Labour Court's Order dated 21 April 2001. The Industrial Court dismissed Revision Application (ULP) No. 55 of 2001 filed by Respondent.

7) Respondent thereafter raised Industrial Dispute demanding that he should be reinstated with full backwages and continuity of service. Though Reference was opposed by Petitioner, the Government of Maharashtra referred dispute for adjudication to Labour Court, Thane, which was registered as Reference (IDA) No. 206 of 2002. The Reference was subsequently transferred to Labour Court at Mahad and numbered as Reference (IDA) No. 206 of 2002. Respondent filed his Statement of Claim which was resisted on Petitioner by filing written statement. The Labour Court framed preliminary issues about fairness of enquiry and perversity in the finding of the enquiry officer and delivered Part-I Award on preliminary points on 30 April 2005 holding that the enquiry was not fair and proper and that the findings of the enquiry officer are perverse. Petitioner was granted opportunity to lead evidence. Petitioner preferred Writ Petition No. 5991 of

2005 in this Court challenging Part-I Award which was rejected by Order dated 8 September 2005. Petitioner filed Letters Patent Appeal No. 289 of 2005 which was dismissed by the Division Bench by Order dated 12 January 2006.

8) The Petitioner examined four witnesses before the Labour Court to prove the charges. Respondent examined himself before the Labour Court. After considering the evidence on record Labour Court delivered Part-II Award dated 26 April 2007 answering the Reference in the affirmative and directing that Respondent is entitled for reinstatement at his original post with continuity of service and full back wages with effect from 24 September 1999. Aggrieved by the Award dated 26 April 2007, Petitioner has filed the present Petition.

9) This Court admitted the Petition by Order dated 28 June 2007 and stayed the Award subject to the condition of Petitioner depositing the entire amount of backwages. Respondent was granted liberty to file an application under Section 17-B of ID Act for payment of last drawn wages and also to apply for withdrawal of deposited wages. Accordingly, Petitioner has deposited amount of Rs.15,76,313/- in this Court towards backwages. By Order dated 17 August 2007, this Court allowed the application filed by Respondent for payment of wages under Section 17B of Industrial Disputes Act. When Respondent moved application for withdrawal of deposited amount of back wages, this Court directed Registry to invest the same fixed deposit by Order dated 21 November 2007. Thus, in accordance with order passed by this Court, Respondent is being paid last drawn wages of Rs. 7,584/- till date.

10) I have heard Mr. Avinash Jalisatgi the learned counsel appearing for Petitioner. He would submit that the Labour Court has erred in holding that charges levelled against Respondent were not proved. Inviting my attention to the

reply given by Respondent to the show cause notice, he would submit that Respondent admitted his absence from workplace at the relevant time and in fact pleaded for pardon. That in the light of clear admission, nothing was required to be proved. That in the light of such admission, finding recorded by the Labour Court is perverse. He would submit that the Labour Court has erroneously held that charge sheet and show cause notice were not proved. That there was no dispute about issuance of charge sheet and show cause notice and that therefore the Labour Court has committed gross error in de-exhibiting the said documents and refused to read the same. So far as punishment of dismissal is concerned, he would submit that Respondent's past service record is riddled with punishments for various misconduct, 2 to 3 of them pertain to similar conduct. He would submit that the Award of the Labour Court therefore deserves to be set aside.

11) *Per contra*, Mr. Punde the learned counsel appearing for Respondent would oppose the Petition and support the award of the Labour Court. He would submit that there is no perversity in the findings recorded by the Labour Court. That the entire allegations levelled against Respondent were falsified, once it was proved that Respondent was present by the weigh bridge at 15.10 hours on 28 June 1999 and that the work never remained in abeyance. He would submit that the Labour Court had rightly considered the position that all the 26 vehicles were called at 15.35 p.m. by Respondent by giving written instructions to the security and that therefore the charge of remaining absent from workplace was clearly falsified. He would submit that punishment imposed on the Respondent is otherwise grossly disproportionate and he has been illegally dismissed from service for insignificant and minor allegation of remaining away from duties for few hours. He would pray for dismissal of the Petition.

12) I have considered the submissions canvassed by the learned counsel appearing for parties and I have gone through the impugned award of the Labour Court as well as various documents placed on record.

13) As observed above, Part-I Award was delivered against Petitioner and the same was upheld by this Court, both by the Single Judge as well as by the Division Bench. That therefore it became incumbent for Petitioner to prove the charges before Labour Court by adducing evidence. It appears that Petitioner produced a computerized statement showing income and outgoing vehicles of 28 June 1999, which was marked in evidence as Exhibit 62 by the Labour Court. Additionally, Petitioner also adduced evidence of Mr. Sadanand Eknath Virkar, Deputy Manager, Accounts, Mr. Anant Mahadeo Kanitkar, Senior Manager - Materials, Mr. Pradeep Pundalikrao Mohod, Manager, Fire and Safety and Mr. Rajaram Laxman Patil, General Manager - Engineering. I have gone through the evidence on record and I find that all the four witnesses have given clear evidence about absence of Respondent from workplace during the time alleged in the show cause notice and the charge sheet.

14) In addition to the evidence produced before the Labour Court what is relevant is the response of the Respondent to the show cause notice. In the show cause notice, it was alleged as under:

“It is reported against you as under:

On 28th June 1999 you were scheduled to work in 1st shift duty i.e. from 7.00 a.m. to 3.00 p.m. On that day you also continued duty in 2nd shift i.e. from 3.00 p.m. onwards on overtime. You were posted for work at the weigh bridge. Since it was month-end there was a heavy schedule for DMT loading and a large number of trucks were waiting outside the factory. Some tankers came to unload raw materials were also to be cleared. 28th June 1999 being Monday, normally one person at the weigh bridge would have handled raw material and DMT weighment at the weigh bridge. However, as an additional help, without your request, one extra hand was provided to help you between 1.00 p.m. and 2.30 p.m. for handling raw material tankers.

It was observed that from 2.48 p.m. to 4.24 p.m. you were away from your work place without permission or without any apparent justifiable reason. As a result of your absence for more than 1 ½ hours, more than a dozen loaded trucks could not go out. Taking trucks inside for DMT loading was also delayed, consequently delaying the dispatches, which ultimately resulted in huge monetary loss to the Company. Your remaining away from work place has also led to rendering warehouse employees as well as Mathadi workmen idle since there were no empty trucks available for DMT loading. Your absence from the weighbridge also led to heavy traffic jam inside and outside of the factory gate, putting additional strain on the security personnel. Show cause Notice-cum-Order of Suspension pending enquiry issued to Mr. YV Tipre, Accts. Asst. (W.B.) dtd. June 30, 1999.

Your department Head had given you standing instructions to clear the traffic first and then go to the Canteen to have tea and snacks. When Mr. RL Patil, General Manager (Engg.) visited the weighbridge to assess the situation at about 5.40 p.m. he noticed that you had gone to Canteen keeping the work in abeyance. You returned from Canteen only at 6.05 p.m. Upon questioning by Mr. RL Patil you could not give satisfactory explanation for your going to the canteen keeping the work in abeyance, in spite of the instructions of your Department Head.”

15) Plaintiff gave reply to the show cause notice on 1 July 1999 and in which he stated as under:

“You have observed that, from 14.48 p.m. to 16.40 p.m. this observation ----- is correct but I was available in Canteen from 15.00 p.m. to 15.30 p.m. to have a tea & snacks & from 15.40 p.m. to 16.24 p.m. I was in A/C.s Dept. discussing with my Superiors, as I was hungry & during shift change time, a relative had come to see me. I have not kept the work in abeyance deliberately & delay the dispatches. Also, it was not my intention to put the Company in monetary loss & to keep the Mathadi worker idle. As I had taken 18 to 19 numbers of trucks approximately inside for loading, out of which they had loaded 12 numbers of trucks in first shift, out of 12 loaded trucks, 4 loaded trucks, came for weighment at weighbridge. The remaining trucks were busy in tying tarpaulin in between warehouse to weighbridge.

This is the first occasion is pardonable. I am well aware about weighbridge operation criticality to avoid companies business to affect. Sorry for the same.”

16) Petitioner thus specifically admitted that the allegation of absence from 14.48 p.m. to 16.40 p.m. was correct. He also admitted that he was in canteen from 15.00 p.m. to 15.30 p.m. for having tea and snacks and from 15.40 to 16.24 p.m. he was in Accounts Department discussing with his superiors as he was

hungry and during shift change time, a relative had come to visit him. In addition to admitting the absence, he is specifically stated that since his absence was a first time occurrence the same was pardonable and he apologized for his conduct. What is material is in the fact that Respondent never disowned contents of his reply dated 1 July 1999 and, on the contrary, admitted in his cross examination as under:

“My reply Date 01/07/99 is filed by the Company along with enquiry proceeding. Whatever stated in this reply dated 01/07/99 in respect of incident dated 28 June 1999 are true and correct. It is true that in respect of the incident dated 28 June 1999. I have stated that the occasion be pardonable and I am sorry for the incident”.

17) Despite above clear admissions in reply to the show cause notice, in addition to specific evidence of as many as four witnesses, the Labour Court proceeded to discard the entire evidence on record by recording a vague finding in para 13 of the Award as under:

“13. I have carefully gone through the oral evidence of management witness Nos. 3 & 4 and I notice that their evidence are not at all helpful to the Company’s case. Moreover their evidence are not cogent, reliable and acceptable.”

18) What is most shocking is refusal by the Labour Court to take into consideration the charge sheet dated 8 July 1999 and show cause notice dated 30 June 1999 on the ground that their authors were not examined and in ordering their de-exhibition. In para 14 of the Award, the Labour Court has held as under:

“14. It is pertinent to note there that since the 1st Party Company has not proved their documents through their witness i.e. particularly the chargesheet dtd. 08/07/1999 and show-cause notice dtd. 30/.6/1999. The 1st Party Company tried to got examined the said documents through the 2nd Party workman. The Learned Counsel Mr. L.A. Sawant has strongly objected to exhibit these documents. According to me the documents should be proved through the author of the documents and not any other witness. Having regard of this fact, I am of the view that the objection raised by Mr. Sawant, Adv. For 2nd Party having substance and therefore, the documents which are exhibited are now “D” exhibited.”

19) The above finding recorded by the Labour Court are shocking to say the least. Issuance of charge sheet and show cause notice were not under dispute. Respondent replied both charge sheet as well as show cause notice. Therefore, there was no requirement of examining authors of the charge sheet and the show cause notice when Respondent had never disputed its existence. He had replied both of them and his replies were remarked as Exhibits. In such circumstances, the Labour Court committed gross error in directing removal of marking of the charge sheet and the show cause notice as Exhibits.

20) I am therefore of the view that the finding recorded by the Labour Court about inability of Petitioner to prove charges before it is totally perverse and unsustainable. I accordingly hold that Petitioner proved charges levelled against Respondent both on account of leading of evidence of four witnesses as well as on account of specific admission given by Respondent.

21) After having held that the charges levelled against the Respondent were duly proved before the Labour Court, the next issue is about proportionality of penalty. The misconduct levelled against Respondent was not of serious nature. The misconduct related to absence for few hours from place of work. For such misconduct, penalty of dismissal from service is shockingly disproportionate. Mr. Jalisatgi has attempted to justify the penalty of dismissal by inviting my attention to the past conduct and record for which disciplinary actions were conducted against Respondent. The past misconduct is reflected in the dismissal order and the same is as under:

No.		Misconduct	Action
01.	04/03/96	Abnormal & erratic behavior	Warning Letter
02.	15/05/96	Refusal to take trucks	Suspension pending enquiry

	15/05/96 28/05/96	inside for DMT loading & Refusal to accept charge-sheet	& punishment – 4 days Suspension
03.	17/08/96	Left the premises without informing Superiors	Advisory Letter
04.	19/02/97 05/05/97	Refusal to take tankers inside	Suspension 2 days with warning 2 days suspension
05.	30/03/98	9 days unauthorised absence April to December 1997	Caution Letter
06.	13/04/99	Slowing down in performance	Warning Letter

22) After going through the past misconduct, it is seen that in respect of four incidents, mere warning/ caution letters were issued. In respect of the rest of the two incidents, penalty of his suspension for 4 and 2 days was imposed. In my view, none of the 6 past misconducts were serious. I am therefore of the view that penalty of dismissal from service is not commensurate with gravity of misconduct proved against Respondent.

23) Having held that the punishment of dismissal imposed on Respondent is disproportionate, the next issue is the nature of relief that can be granted in favour of Respondent at this stage. It appears that the age of Respondent is now 54 years. He is out of employment of Petitioner since 24 September 1999 and by now period of about 25 long years has elapsed. In that view of the matter and considering long litigation that has ensued between the parties, I am of the view that it would not be in the interest of Respondent himself to work with the Petitioner. Instead, award of lump sum compensation to the Respondent would meet the ends of justice.

24) The next issue is about the quantum of lumpsum compensation to be awarded to Respondent. It is not that Respondent had rendered considerable period of service prior to his termination. He also delayed raising of Industrial Dispute. He

first sought to adopt the remedy under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 and filed compliant of unfair labour practice, which was dismissed and in revision, the dismissal of compliant was upheld. He later raised a demand for industrial dispute. It is not that Respondent is completely exonerated of the charges levelled against him. The charges are in fact proved. This factor also needs to be considered while determining the amount of lumpsum compensation payable to him. His last drawn wages were Rs.7,584/- which he has drawn during pendency of the present Petition. Mr. Jalisatgi he has placed on record statement of wages paid to Respondent during the years 2007 till date and the total amount paid to him Rs.15,16,800/-. In my view, further amount of Rs.25,00,000/- shall be paid by Petitioner to Respondent towards lumpsum compensation. considering the amount of wages of Rs.15,16,800/- already paid to Respondents, payment of further compensation of Rs.25,00,000/- would make total amount paid to him at Rs.40,16,800/-.

25) In pursuance of Order passed by this Court on 28 June 2007, Petitioner has deposited backwages of Rs.15,76,313/- in this Court on 26 July 2007, which has been invested. Petitioner can be permitted to withdraw amount of Rs. 25,00,000/- from maturity value of such invested amount and the balance amount can be refunded to Petitioner.

26) I accordingly proceed to pass the following Order.

ORDER

- I. Award dated 26 April 2007 passed by Presiding Officer, Labour Court, Mahad in Reference (IDA) No. 206 of 2002 is modified to the extent of Respondent shall be entitled to lump sum compensation of

Rs. 25,00,000 in lieu of reinstatement and full backwages in addition to the amount of wages already paid to him under provisions of section 17B of ID Act.

- II. Beyond the amount of Rs. 25,00,000, Respondent shall not be entitled any further monetary benefits from Petitioner.
- III. Respondent shall withdraw an amount of Rs. 25,00,000/- from maturity value of amount of backwages deposited by Petitioner in this Court. The said amount of compensation shall be considered as deferred wages from the date of termination till today for the purpose of income tax liability.
- IV. The balance maturity amount shall be refunded to Petitioner by the Registry.

27) With the above directions Writ Petition is partly allowed. Rule is partly made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE J.]