

Shabnoor

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

WRIT PETITION NO.2610 OF 2020

**WITH
INTERIM APPLICATION NO.13208 OF 2023
IN
WRIT PETITION NO.2610 OF 2020**

Shrimati Mahadev Kawale ... Petitioner

V/s.

Department of Social Welfare Pune
Region Through Divisional Social
Welfare Officer

... Respondents

Mr. Amit A. Ghorte, for the Applicant

Mr. A. B. Chate, AGP a/w Ms. Nisha Mehra, AGP, for
State/Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 15, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The petitioner/workman is challenging order dated 28 February 2019 passed by the Labour Court, Satara answering reference under Section 10 of the Industrial Disputes Act, 1947 in negative.
- 3.** The petitioner was employed as Cook under the establishment of District Social Welfare, Office at Satara.

According to respondent No.1, the petitioner was engaged up to 28 September 1983 and thereafter, she was appointed for period of 29 days on the recommendation of Minister. The petitioner was thereafter continued till 1994. On 14 January 1994, the petitioner's services were discontinued considering complaint filed against her.

4. The petitioner, therefore, filed Complaint (ULP) No.18 of 1994 before the Labour Court and by way of interim relief she was allowed to join at Government Ladies Hostel, Dahiwadi. However, according to the Divisional Social Welfare Officer, there were complaints against the petitioner by the officers and inmates of the institution. A meeting was held on 8 January 1996 wherein it was alleged that the petitioner indulged in acts of misconduct. An Enquiry Committee was, therefore, setup and submitted a report on 9 November 1996. The petitioner's services were terminated on 23 February 1996.

5. The petitioner, therefore approached the Labour Court under Items 1(a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court allowed the complaint on 30 November 2005 holding that the termination was stigmatic. The Labour Court directed reinstatement with 50% back wages.

6. The respondent challenged the order of Labour Court before the Industrial Court. The petitioner also challenged the denial of back wages before the Industrial Court. The Industrial Court confirmed the order of reinstatement and denial of back wages.

7. The petitioner and the State of Maharashtra, therefore, approached this Court by separate writ petition. This Court on 30 September 2008 disposed of the writ petition by passing following order:

“8. The petitions shall accordingly stand disposed of with the following directions:

(i) The order passed by the Industrial Court on 28th January 2008 in so far as it grants reinstatement without back wages shall stand confirmed inasmuch as the services of the workman were terminated for an act of misconduct without compliance with the principles of natural justice;

(ii) The Divisional Social Welfare Officer, Pune Division, is permitted to hold a disciplinary enquiry in accordance with law to probe the allegations of misconduct against the workman. The Divisional Social Welfare Officer will be at liberty to issue a chargesheet to the workman in regard to the allegation of misconduct and to hold a disciplinary enquiry thereupon in accordance with law;

(iii) Pending disciplinary proceedings, the workman shall remain under suspension in pursuance of the order dated 85th January 1996. During the period of suspension and commencing from the month of October 2008, the workman shall be entitled to subsistence allowance;

(iv) The enquiry shall be concluded expeditiously and preferably within a period of six months from today;

(v) The question as regards the grant of continuity of service shall abide by the result of the enquiry.

8. Based on liberty granted by this to hold disciplinary enquiry in accordance with law, the Enquiry Committee completed the enquiry and recommended appointment for dismissal which the respondent accepted and passed an order of dismissal.

9. The petitioner, therefore, requested for reference.

10. The reference was made to the Labour Court. The Labour Court by the impugned judgment answered in negative. The petitioner has, therefore, filed present writ petition.

11. On perusal of the impugned judgment, it appears that the Labour Court has not considered a validity and legality of enquiry proceedings in the context of parameters laid down by the Apex Court. It was necessary for the Labour Court to consider as to whether the enquiry was conducted after following principles of natural justice. It was also necessary to consider whether the rules of procedure under the relevant statutory rules are followed, and findings of guilt is based on admissibility of evidence. Whether there is perversity in the findings recorded by the Enquiry Officer.

12. Moreover, if such misconduct is held to be proved, whether the punishment imposed is shockingly disproportionate to the misconduct proof was also required to be considered. In absence of reference to such factors, the decision on reference in the

negative was not justified. Hence, following order:

- i) The Reference No.3 of 2012 is revived.
- ii) The Presiding Officer after considering material produced by the parties shall reconsider the reference on its own merits.
- iii) Considering the fact that the petitioner is out of services from the 1996, the Labour Court shall decide the reference based on material already produced by the parties within three months from the date of the appearance of the parties.
- iv) The parties shall appear before the Labour Court on **26 February 2024 at 11:00 a.m.**

13. Rule is made absolute in above terms.

14. The writ petition stands disposed of. No costs.

15. Interim application stand disposed of.

(AMIT BORKAR, J.)