

VRJ

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

WRIT PETITION NO.10663 OF 2022

VAIBHAV
RAMESH
JADHAV
Digitally signed by
VAIBHAV
RAMESH JADHAV
Date: 2024.04.16
10:21:06 +0530

Asahi India Glass Ltd.

... Petitioner

V/s.

Sanjay Raghunath Varhadi

... Respondent

Mr. A. K. Jalisatgi with Mr. T. R. Yadav i/by Mr. Sidhesh
Shetye for the petitioner.

Ms. Vinod P. Sangvikar for the respondent.

CORAM : AMIT BORKAR, J.

DATED : MARCH 21, 2024

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging judgment and order dated 6th January 2021 passed by the Labour Court in Complaint (ULP) No.82 of 2016 confirming in revision application by order dated 30th April 2022.

2. The facts giving rise to the writ petition are as under:

3. According to the petitioner-employer, the respondent while on duty in the night shift on *22nd June 2012* was harassing Mr. Eldho Abraham, a male nurse engaged on contract basis. He abused Mr. Eldho in filthy language and slapped him. Mr. Eldho filed a written complaint with the employer. He called first witness

examined in the inquiry stating the incident.

4. On 25th June 2012, the petitioner suspended the respondent. On 3rd July 2012 the petitioner issued charge-sheet to the respondent.

5. In the inquiry proceeding, the petitioner examined two witnesses one Mr. Manoj Randive and another Mr. Eldho Abraham. Mr. Randive stated that in the night of the incident at 01:00 a.m., Mr. Eldho called him and narrated the incident. The incident narrated in the statement of Mr. Randive is in consonance with the recitals in the written complaint filed by Mr. Eldho with the petitioner. However, Mr. Eldho in his statement stated that he fell from the chair and got injured. On a specific question being asked on behalf of the respondent as to whether anything more than what is stated by him on account of the date of incident, he stated that nothing more than the incident of falling from chair and injury itself had occurred on the date of incident. The Inquiry Officer based on the statement of Mr. Randive recorded a finding of misconduct against the respondent.

6. The respondent filed Complaint (ULP) No.159 of 2012 wherein the Labour Court initially restrained the petitioner from terminating respondent's services. However, on 17th April 2014 the order was vacated. After completion of inquiry, petitioner dismissed the respondent by order dated 9th March 2016.

7. The respondent, therefore, challenged the termination by Complaint (ULP) No.82 of 2016. The Labour Court by order dated 13th June 2016 rejecting respondent's application for interim relief,

the Labour Court by judgment and order dated 6th January 2021 held that the inquiry was fair and proper. However, findings arrived at by the Inquiry Officer were perverse as the findings were based on no evidence. The Industrial Court confirmed the order. Hence, the petitioner filed present writ petition.

8. Learned advocate for the petitioner submitted that considering the quality necessary in departmental proceeding where the Inquiry Officer needs to arrive at finding based on preponderance of probabilities, the evidence of Mr. Randive was required to be treated as contemporaneous evidence as the contents of the complaint filed by the respondent with the petitioner remain unchallenged. He states that therefore there was admissible evidence on record which could not have been brushed aside by the Labour Court to arrive at finding that the findings recorded by Inquiry Officer are perverse as same are based on no evidence. In support of his contentions, he relied on judgments in **J.P. Jain vs. Management of State Bank of India & Another** reported in (1982) 1 SCC 143, **State of Haryana & Another vs. Rattan Singh** reported in (1977) 2 SCC 491, **State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya** reported in (2011) 4 SCC 584 and **Kuldeep Singh vs. Commissioner of Police & Others** reported in (1999) 2 SCC 10.

9. Per contra, learned advocate for the respondent supported the order by submitting that the evidence of Mr. Randive does not inspire confidence as the victim of the incident narrated the incident before the Inquiry Officer which does not contain any allegation regarding abuse or slap. With the result, the complaint

in writing filed with employer does not corroborate in the form of statement of Mr. Eldho. Therefore, the statement of Mr. Randive derived from call made by Mr. Eldho could not have been relied upon.

10. I have heard learned advocates for the parties and considered the material on record including statements of Mr. Eldho and Mr. Randive recorded before the Inquiry Officer. The scope of judicial review in relation to challenge to the findings in inquiry is limited. The parameters for exercise of review is restricted to decide following factors.

- (i) Rules of natural justice have been complied with.
- (ii) Finding of misconduct is based on same evidence.
- (iii) Statutory rules governing the conduct of disciplinary inquiry were followed.
- (iv) The findings of disciplinary authority suffer from perversity.
- (v) Penalty disproportionate to the proved misconduct.

11. According to the Courts below, the respondent's case is governed by parameter No.(ii). On perusal of the evidence of Mr. Eldho, it appears that he categorically described the nature of incident restricting it to his fall from chair and resultant injury. Despite specific question asked on behalf of the respondent, he stated that nothing more than the incident of fall from chair and resultant injury had occurred on that day. The Courts below, therefore, were justified in discarding evidence of Mr. Randive as inadmissible as the source of his knowledge was based on

information from Mr. Eldho who stated nothing about the alleged incident before the Inquiry Officer. Once the source of Mr. Randive's knowledge of incident failed to get support from Mr. Eldho, the Courts below were justified in discarding Mr. Randive's evidence. Except Mr. Eldho and Mr. Randive, no other witnesses were examined by the petitioner. Only material according to the petitioner, therefore, remain is complaint in writing filed by Mr. Eldho immediately after the incident with the petitioner. However, once Mr. Eldho in his evidence before the Inquiry Officer narrates the incident which cannot be reconciled with the incident reflected in the complaint filed with the petitioner, no credibility to the statement in writing can be attached. Therefore, such complaint cannot form basis of arriving at finding of misconduct against the respondent. Hence, the Courts below rightly concluded that no evidence was brought on record to substantiate incident alleged against the respondent. The said finding is based on permissible parameters as laid down by the Apex Court.

12. In so far as the judgments relied upon by the petitioner are concerned, there could not be dispute about the proposition of law laid down by the Apex Court in the said judgments. It is true that there could not be dispute that the provisions of the Evidence Act are not strictly applicable. However, the judgments are distinguishable on facts. In the facts of **J.P. Jain** (supra), extra judicial statement made by the delinquent in presence of four witnesses which supported employer's case of delinquent's admission regarding misappropriation was admissible material on record. However, the Labour Court in the said case discarded the

material only on the ground that Mr. Kansal did not appear before the Inquiry Officer. With the result, there was no direct evidence against the delinquent. However, in the facts of the case, Mr. Eldho positively narrated the incident which is inconsistent with the incident in the written complaint and, therefore, the evidence of Mr. Randive need not be discarded on the ground that it is hearsay evidence but needs to be discarded as the source of his information through Mr. Eldho is inconsistent with the material on record. Therefore, in my view, the findings recorded by the Courts below do not suffer from legal infirmity.

13. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 15 April 2024. The corrections in paragraph Nos.3 and 4 are shown in italicize.