

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9442 OF 2011**

Mr. Suresh Vasudeo Dalvi

...PETITIONER

V/S.

1. Priyadarshini Indira Gandhi
Kreeda Sankul, Mahkavi Kalidas
Natyamandir.

2. Brihanmumbai Kreeda Ani
Lalitkala Pratishthan

3. Mr. Pratap G. Vedpathak,
Managing Trustee

4. Mr. Uday V. Deshpande

5. The Complex Officer,
Brihanmumbai Kreeda Ani
Lalitkala Pratishthan

6. The Industrial Court, Maharashtra

...RESPONDENTS

Ms. Aditi Naikare, *for the Petitioner.*

Ms. A.P. Purav, *for the Respondent.*

CORAM	: SANDEEP V. MARNE, J.
<i>Reserved on</i>	<i>: 22 February 2024.</i>
<i>Pronounced On</i>	<i>: 29 February 2024.</i>

JUDGMENT :

1) The Petitioner has filed this petition challenging the Judgment and Order dated 19 January 2011 passed by the

President, Industrial Court allowing Revision (ULP) No.11 of 2010 filed by Respondent No.1 and setting aside the Judgment and Order dated 3 November 2009 passed by the 4th Labour Court, Thane in Complaint (ULP) No. 206 of 2002. The Labour Court, by its Judgment and Order dated 3 November 2009 had directed Petitioner's reinstatement with full backwages and continuity w.e.f 1 February 2002. The Industrial Court has confirmed the termination order of the Petitioner dated 28 February 2002.

2) Respondent No.2 is a Trust registered under the provisions of the Maharashtra Public Trusts Act, 1950. It runs and operates an Auditorium named 'Kalidas Natyagruha' in Mulund West, Mumbai (Respondent No.1). Petitioner no.1 was appointed in the service of Respondent Nos. 1 and 2 as a Clerk on 11 April 1991. It appears that his services were terminated on 21 September 1991 and he was reappointed on 10 October 1991. On 16 April 2000, one Smt. Sukhbir Kaur made a complaint with the Mayor of the Municipal Corporation of Greater Mumbai (MCGM) alleging that Petitioner demanded amount of Rs.45,000/- for booking of Auditorium (Rs.15,000/- for license, Rs.15,000/- for lamp and light material and Rs.15,000/- for other expenses). She later booked the auditorium, without any need to make payments as were demanded by Petitioner. It appears that, Smt. Sukhbir Kaur repeated her allegations when a meeting was convened with the show organisers by the Management of Respondent Nos. 1 and 2 on 26 July 2000 in presence of several

attendees of the meeting. Preliminary inquiry was conducted against the Petitioner, based on which chargesheet was issued to him on 2 May 2001. Domestic enquiry was conducted into the charges, which were held to be proved against the Petitioner. Based on the findings of the Enquiry Officer, Respondent Nos.1 and 2 proceeded to terminate the services of Petitioner by Order dated 28 February 2002.

3) The Petitioner approached the Labour Court by filing Complaint (ULP) No.206 of 2002 challenging the termination and seeking his reinstatement. The complaint was resisted by Respondent Nos.1 and 2 by filing Written Statement. The Labour Court delivered Part-I Award dated 13 March 2006 holding that the enquiry was not fair and proper. Opportunity was given to Respondent Nos.1 and 2 to lead evidence. Accordingly, Respondent Nos. 1 and 2 examined D.R. Kharkhanis (Enquiry Officer), Uday Deshpande and Pratapji Vedpathak as their witness. After considering the evidence on record, the Labour Court delivered Judgment and Award dated 3 November 2009 directing reinstatement of Petitioner w.e.f. 28 February 2002 with full backwages. Respondent No.1 filed Revision before the Industrial Court challenging the decision of the Labour Court. By Judgment and Order dated 19 January 2011, the Industrial Court allowed the Revision preferred by Respondent No.1 and has set aside the Labour Court's Order confirming the termination order dated 28 February 2002. Aggrieved by the decision of the

Industrial Court, the Petitioner has filed the present petition. This Court admitted the petition by Order dated 6 September 2012.

4). Mr. Naikare, the learned counsel appearing for the Petitioner would submit that the Industrial Court has exceeded its revisionary jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (**MRTU & PULP Act**) in reversing a well-reasoned Order of the Labour Court. That the burden of proving the charge rested on the shoulders of Respondent No.1, whereas, the Industrial Court erroneously expected the Petitioner to disprove the charge. That the Industrial Court has erred in not appreciating that no evidence appears on record to prove the allegation of demand by the Petitioner. Though Ms. Kaur had filed a written complaint with the Mayor, she subsequently withdrew the same on 8 April 2001. That, Smt. Kaur was not examined as a witness in the enquiry or before the Labour Court. Thus, neither demand is proved nor there is an allegation of actual acceptance of any amount from Smt. Kaur. That in such circumstances, vague complaint made by Smt. Kaur of mere demand, which was later withdrawn, could not have been a reason for initiation of disciplinary proceedings against the Petitioner especially when no amount was ever accepted by him. That evidence on record is such that no person of reasonable prudence could ever hold that the charge leveled against the petitioner can

be held to be proved. That the scope of revisional powers of the Industrial Court is extremely narrow and in absence of any perversity in the findings recorded the Labour Court, the Industrial Court ought not to have interfered in the Labour Court's decision. That Petitioner's complaint was based on victimisation which was held to be proved before the Labour Court. Lastly, Mr. Naikare would submit that punishment imposed on the Petitioner is grossly disproportionate and Petitioner could not have been dismissed from service on the vague allegation of mere demand which was infact withdrawn by the Complainant. She would pray for setting aside the Order passed by the Industrial Court and for upholding the Order of the Lahour Court.

5). Ms. Purav, the learned counsel appearing for Respondent Nos.1 to 5, on the other hand, opposes the petition and supports the Order passed by the Industrial Court. She would submit that Petitioner indulged in gross misconduct of demanding gratification from Smt. Kaur by giving her false and misleading information that the Auditorium was booked for all Saturdays and Sundays in the entire year, when infact booking prior to only three months could be accepted. That she misled her to believe that the Auditorium could not be booked for events other than drama/play on a weekend. That Petitioner gave a telephonic call and invited her to a Restaurant where he demanded amount of Rs.15,000/- for license, Rs.15,000/- for stage and light equipment and Rs.15,000/-

to be distributed amongst employees. That Smt. Kaur later discovered that the information given by the Petitioner was misleading and she booked the Auditorium for weekend by paying normal charges. That a meeting was organized to understand the difficulties of Drama organizers in staging their shows in the auditorium. During the course of such meeting, Smt. Kaur came on the stage and narrated the entire incident in front of all attendees, which tarnished the image of Respondent No.1 in the eyes of the public. Smt. Kaur had also filed a written complaint with the Mayor on 16 May 2000 about illegal demand of Rs.45,000/- from her by the Petitioner. That the subsequent withdrawal of complaint by Smt. Kaur was on account of Petitioner's request which is evident from letter written by him to her on 10 August 2001 in which Petitioner admitted his mistake.

6. Ms. Purav would take me through the evidence on record to demonstrate that sufficient evidence was produced before the Labour Court to prove the charges leveled against Petitioner. That the burden of proving that findings of the Industrial Court are erroneous lies on Petitioner which he has failed to discharge. She would submit that there is no perversity in the findings recorded by the Industrial Court. That the penalty imposed on the Petitioner is commensurate with the gravity of misconduct. She would pray for dismissal of the petition.

7. Rival contentions of the parties now fall for my consideration.

8. Petitioner faced a grave charge of demanding amount of Rs.45,000/- from Smt. Kaur for accepting booking in respect of a show organized by her named 'Ms. Mulund 2000'. Such demand was towards gratification not forming part of his remuneration and the demanded amount was not required to be paid for booking the auditorium. The charge alleged that Petitioner informed Smt. Kaur that Auditorium was booked on all weekends throughout the year and that the same could be booked only for plays/dramas during weekends. That Petitioner called Smt. Kaur on 7 May 2000 at 10.30 a.m. and invited her to Vishwa Mahal Restaurant. There he demanded amount of Rs.15,000/- for lamp and light equipment, Rs.15,000/- for license fees and Rs.15,000/- for other expenses (for distribution amongst employees). Smt. Kaur promised to pay advance to the Petitioner on 5 July 2000. Smt. Kaur thereafter approached the office of the Auditorium on 17 May 2000 and gave a letter for booking of the event for 5 July 2000. At that time, she realized that the amount of license fees was only Rs.300/- and that advance booking was done only for three months and not for the entire year. Accordingly, she received a booking for 27 July 2000 (Saturday) without any hassles. She paid the deposit of Rs.10,000/- and rent of Rs.13,650/-. Smt. Kaur accordingly addressed a complaint dated 16 May 2000 before the Mayor about the illegal demand of amounts by the Petitioner. In a

meeting arranged with the drama organizers, Smt. Kaur reiterated the allegations in front of the attendees.

9. Petitioner denied the charges and disciplinary enquiry was conducted against him. It appears that a preliminary enquiry was conducted before the issuance of chargesheet in which statements of several individuals including that of Smt. Kaur was recorded. Smt. Kaur repeated the allegations in her statement recorded on 11 September 2000. After receipt of the report of the preliminary enquiry on 3 November 2000, the chargesheet dated 2 May 2001 was issued to the Petitioner. When Smt. Kaur was expected to depose before the Enquiry Officer, she submitted letter dated 8 August 2001 to the Enquiry Officer expressing her inability to attend the enquiry. She expressed desire to withdraw her complaint and stated that her signatures were obtained on papers which she had made by imposing trust on Abhay Paralikar, the Chief Administrative Officer. She desired refund of the amount towards deposit and rent since the event, for which the Auditorium was booked by her, could not be conducted. Careful reading of Smt. Kaur's letter dated 8 August 2001 would indicate that she attempted to resile from the allegations raised by her on three occasions viz. (i) written complaint dated 17 May 2000 addressed to the Mayor, M.C.G.M. (ii) her allegations made on stage during the course of meeting held on 26 July 2000 and (iii) statement given in the preliminary enquiry. The fact that she was requesting refund of rent and security deposit after a period of one

year on 8 August 2001 also suggests that she desired to withdraw the allegations in a hope of securing refund from Auditorium. The withdrawal letter was apparently orchestrated by Petitioner himself who wrote a letter dated 10 August 2001 to Smt. Kaur expressing gratitude for withdrawing the complaint. In that letter, Petitioner clearly admitted his mistake. In my view therefore, Petitioner has rightly been denied the benefit of the withdrawal letter dated 8 August 2001 by the Industrial Court.

10. In the domestic enquiry, the standard of proof is preponderance of probabilities. The charge is not to be proved beyond doubt. Even if there is some evidence to prove the charge, however compendious it may be, the finding of proof of charge cannot be disturbed. It is only in cases where there is total absence of evidence that findings recorded in domestic enquiry can be interfered with on the ground of perversity.

11. in the present case, after the enquiry was held to be not fair, Respondent No.1 examined three witnesses before the Labour Court, who gave the entire account of the incident. The witnesses deposed before the Labour Court that Smt. Kaur made allegations against the Petitioner on stage during the course of meeting held with drama organisers on 26 July 2000. The Labour Court sought to discard the evidence of the said witnesses on the ground that their evidence was hearsay. However, in the domestic enquiry, hearsay evidence can also be relied upon as held by the

Apex Court in its judgment in *State of Haryana Vs. Rattan Singh* (1977) 2 SCC 492. The Apex Court has held:

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. **There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.** It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. **However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded.** The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. **We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled**

against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

(emphasis and underlining supplied)

11. I have gone through the findings of the Labour Court and the Industrial Court, as well as the evidence on record. In my view, the Labour Court had committed a gross error in discarding the evidence of the witnesses before the Labour Court. It expected Respondent No.1 to produce 'supporting evidence' which is not the requirement for proof of charge in a domestic enquiry. The Industrial Court has correctly exercised the revisionary jurisdiction by setting aside perverse findings recorded by the Labour Court. I do not find any valid ground to interfere in a well reasoned order of the Industrial Court.

12. There is one more aspect which must be taken note of. This was second incident when Petitioner has been terminated from services His services were earlier terminated on similar allegation of misappropriation. He was taken back in service on 10 October 1991 and indulged in one more similar misconduct.

13. The submission of Ms. Naikare about proportionality of penalty cannot be considered in the light of the fact that demand of gratification from Smt. Kaur over and above his wages is a serious misconduct on the part of the Petitioner. The charge leveled against him was of grave nature and the punishment of

penalty/dismissal is commensurate with the gravity of misconduct. It does not shock my conscience.

14. After considering the overall conspectus of the case, I am of the view that no serious error can be traced in the order passed by the Industrial Court. There is no valid ground to interfere in the Industrial Court's order. The Writ Petition being devoid of merits is **dismissed** without any order as to costs. Rule is discharged.

[**SANDEEP V. MARNE, J.**]

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