

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

WRIT PETITION NO.8432 OF 2024

Anand Bhaguji Kharat

...Petitioner

V/s.

Rehau Polymers Pvt. Ltd.

...Respondent

**WITH
WRIT PETITION NO.8463 OF 2024**

Navnath Patilbuva Nalawade

...Petitioner

V/s.

Rehau Polymers Pvt. Ltd.

...Respondent

Mr. Avinash Belge *for the Petitioners.*

CORAM : SANDEEP V. MARNE, J.

DATED : 5 December 2024.

P.C. :

1) Petitions challenge Award dated 23 January 2024 passed by the Presiding Officer, Labour Court No.3, Pune, answering References in the negative. The References were made relating to termination of services of the Petitioners w.e.f. 14

December 2017. Petitioners have also challenged the orders on preliminary issues dated 14 October 2022 by which the enquiry was held to be fair and proper and findings of the Enquiry Officer were not held to be perverse.

2) I have heard Mr. Belge, the learned counsel appearing for the Petitioners and considered the submissions canvassed by him. Perusal of the charge-sheets issued to Petitioners would indicate that both of them were charged with the misconduct of reporting late for duty on 1 June 2017. So far as Petitioner-Anand Kharat is concerned, it was alleged that he physically entered factory on 1 June 2017 at 7.46 hours. However, Petitioner -Anand Kharat made an entry in MZE report that he reported for duty at 7.00 hours and operated the machine till 7.50 hours and indicated the Code 111 relating to colour change. It was alleged in the charge-sheet that during the colour change process, machine remains in operational mode. Petitioner-Anand mentioned in MZE report that from 7.50 hours to 8.05 hours he managed to produce 600 meter quantity though the machine/line No.1 was not in operational mode/running and was idle. Therefore, Petitioner -Anand was accused of making false entries in MZE report in fraudulent manner with dishonesty.

3) So far as Navnath is concerned, he was accused by reporting late for work on shop floor line No.5. He entered factory at 7.45 hours. On the inspection sheet, he reported coil/sample inspection time as 7.40 a.m. by putting operator stamp as a

symbol of quality inspection for production of coil Nos. 801 and 802. He further reported in the production order report that he reported for duty at 7.00 hours and produced coil No. 798 onwards.

4) This is how both the Petitioners were accused of not only joining duties late, but making false entries in the concerned report for the purpose of creating a false picture that they actually worked during the period they had not even reached the factory.

5) Petitioner -Anand virtually admitted charge in his reply dated 7 July 2017 where he admitted that he had sought prior permission from Shift In-charge for reporting late on 1 June 2017 and had reached the factory at 7.40 hours. He further claimed that he had filed MZE report from 7.40 hours, but his Shift In-charge directed him to change the said report and fill in the same from 7.00 hours. However, in the enquiry, Anand did not examine the Shift In-charge to prove his false assertion that Shift In-charge had directed him to change the MZE report. On the contrary, evidence of Mr. Sachin Wagh, Shift Manager recorded during course of enquiry completely falsifies defence taken by Anand. Said witness has given detailed account of difficulties faced in production and as to how other employees repeatedly reported absence of the Petitioner at the concerned machine. His deposition further shows that the Shift In-charge had in fact, asked Petitioner-Anand to indicate the remark

‘manpower shortage’ with Code 620, which he failed to indicate in the MZE report and made false entries therein. Even Petitioner-Navnath also admitted in the reply dated 7 July 2017 to the charge sheet that he was asked by the Supervisor for making of false entry in the production report. He also could not substantiate the said defence in the enquiry. Thus the charges were virtually admitted by Petitioners and there is no question of any perversity in the findings of the Inquiry Officer.

6) In my view, the charges levelled against the Petitioners are proved by sufficient evidence on record. In the domestic enquiry, test of proving of charge is preponderance of probability and charges are not to be proved beyond reasonable doubt as in the criminal trial. There is sufficient evidence on record to sustain charges levelled against Petitioners. The findings recorded by the Labour Court that there is no perversity in findings of Inquiry Officer therefore does not warrant interference by this Court.

7) Coming to the issue of proportionality of penalty, Petitioner faced charges of cheating and dishonesty result in loss of confidence in the mind of employer. The charge is not of late reporting for duty alone. The charge also comprise of element of making false entries about production work, false claim of operation of machines, etc. The employer has viewed the misconduct as serious one and does not wish to retain such workmen who have reflected an element of dishonesty. It is not

for Labour Court or this Court to sit in appeal over the judgment of the employer and decide what would have been the appropriate penalty for such misconduct. It is in rare cases where the punishment shocks the conscious of the Court that it can interfere by invoking the doctrine of proportionality. In the present case the punishment has not shocked the conscious of Labour Court, which has held the charge to be serious, as it stems out of dishonest and fraudulent intention of Petitioners. Labour Court accordingly held that punishment is not shockingly disproportionate to proven misconduct. The punishment imposed does not shock the conscious of this Court as well.

8) No case is made out for warranting interference in the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution of India. Writ Petitions are accordingly rejected.

[SANDEEP V. MARNE, J.]