

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

WRIT PETITION NO. 12930 OF 2024

Shri. Satish Yashwant Pawar

....Petitioner

: Versus :

M/s. Ceat Tyres Ltd. And anr.

....Respondents

Mr. Rohit D. Joshi, for the Petitioner.

CORAM : SANDEEP V. MARNE, J.

Date : 25 September 2024.

P.C. :

1) Petitioner has filed this petition challenging judgment and order dated 25 April 2024 passed by the Industrial Court, Mumbai allowing Revision Application (ULP) No.41/2023 and reversing the order dated 20 February 2023 passed by the Labour Court, Mumbai on preliminary issue relating to perversity in the findings of the Enquiry Officer.

2) It appears that in the complaint relating to unfair labour practices filed by the Petitioner challenging his dismissal order dated 13 April 2018, the Labour Court framed preliminary issues of fairness in the enquiry and perversity in the findings of the Enquiry Officer. The first issue of fairness in the enquiry was decided against the

Petitioner by holding that the enquiry is legal, fair and proper. So far as the second preliminary issue is concerned, the Labour Court proceeded to hold that the findings recorded by the Enquiry Officer are perverse and not based on the evidence and material before him. The Revisional Court has set aside the findings recorded by the Labour Court on preliminary issue no.2 relating to perversity in the findings recorded by the Enquiry Officer.

3) I have heard Mr. Joshi, the learned counsel appearing for the Petitioner and have considered the submissions canvassed by him.

4) The findings recorded by the Labour Court while answering second preliminary issue relating to perversity in the findings of the Enquiry Officer would show that the Labour Court has held that there is nothing in evidence to show that the Complainant had taken biscuits and tea from Shri. Hule or had abused him and Shri. Dalsingh Yadav, Canteen Supervisor. I have gone through the notes of evidence placed on record by Mr. Joshi. After going through the deposition of Shri. Hule and Shri. Dalsingh Yadav, it appears that there is sufficient evidence on record to prove the misconduct of abusing both Shri. Hule and Shri. Dalsingh Yadav. In that view of the matter, the Labour Court had committed an error in holding that the findings of the Enquiry Officer are perverse. In the departmental enquiry, the test of proof of charge is preponderance of probabilities. Minor inconsistencies in depositions cannot be a ground for interfering in the findings recorded by the Enquiry Officer. Since the test is not proof beyond reasonable doubt, corroboration by other witnesses is not necessary. There appears to be a direct evidence of

Shri. Hule and Shri. Dalsingh Yadav about abuses hurled towards them by the Petitioner. In my view, therefore the Industrial Court has rightly reversed the findings of the Labour Court on the second preliminary issue of perversity in the findings of the Enquiry Officer.

5) At this stage, Mr. Joshi would submit that the Petitioner has put in substantial period of service since the year 1989 till his dismissal in the year 2018 and for minor misconduct, that too for valid reason of serving expired biscuits, the Petitioner has been dismissed from service. In my view, this aspect needs to be agitated before the Labour Court. While deciding the issue of proportionality of penalty, the Labour Court would obviously decide whether penalty of dismissal from service is commensurate with misconduct proved against the Petitioner. The Labour Court shall take into consideration the past record of the Petitioner while deciding the issue of proportionality of penalty.

6) Leaving the issue of proportionality of penalty of dismissal from service open, the Writ Petition is **disposed of**. The Labour Court shall not be influenced by the findings recorded by the Industrial Court or by this Court in the present order while deciding the complaint finally.

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[SANDEEP V. MARNE, J.]