

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.619 OF 2011

Sharad Dalvi

...Petitioner

Versus

M/s. Mahindra and Mahindra Ltd.

...Respondent

....

Mr. Sagar G. Talekar *for the Petitioner.*

Mr. N.B. Jalota *with Mr. Vipul Patel & Mr. Rachit Bharwada i/b.
M/s. Haresh Mehta & Co. for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATED : 18 APRIL 2024.

JUDGMENT :-

1. Petitioner has filed this petition challenging Part-I Award dated 5 May 2008 on the issue of fairness of enquiry, further Part-I Award dated 23 October 2008 on the issue of perversity of findings and final Part-II Award dated 2 December 2008 rejecting the reference relating to his reinstatement with full backwages and continuity.

2. Briefly stated, facts of the case are that Respondent is an automobile manufacturer and has a Jeep Division at Kandivali, Mumbai. According to Petitioner he worked with the Respondent for over 24 years as an Assembler and had completed 240 days of service in the year 1980 and had become entitled for permanency benefit under the Standing Orders. That he filed complaint ULP No.1150/1988 for regularisation of his service, which was allowed on 6 February 2002 by the Industrial Court. The order of the Industrial Court was confirmed by this Court. That

Respondent has challenged order of the Single Judge of this Court before the Division Bench. The Petitioner claims to have filed total five complaints against Respondent alleging commission of unfair labour practices.

3. On 9 December 1999, a charge-sheet was issued to Petitioner alleging disorderly and rude behaviour on 1 December 1999, when he was also accused of assaulting his superior Mr. R.K. Rajeevan on his bottom chin with his hand fist. Petitioner replied the charge-sheet and denied the allegations. He was issued second charge-sheet dated 9 December 1999, which was served on him on 17 December 1999 alleging refusal to accept communication sought to be served on 9 December 1999. He replied the second charge-sheet and denied the charges.

4. The enquiry was conducted into the first charge-sheet dated 9 December 1999. The Enquiry Officer gave findings holding that the charges levelled against Petitioner were proved. The enquiry was also conducted into the second charge-sheet dated 9 December 1999 and on 6 September 2001, the Enquiry Officer held the charges to be proved.

5. It is the Petitioner's case that he was being forced to accept voluntary retirement and upon his refusal to do so, third charge-sheet was issued to him alleging wilful disobedience in domestic enquiry held on 17 January 2000. He denied the charges levelled in the third charge-sheet. Enquiry into the third charge-sheet commenced on 14 March 2000 and was conducted till 22 April 2002. The Enquiry Officer submitted his findings into the third charge-sheet on 15 June 2002 holding the charge to be proved.

6. Based on the report submitted by the Enquiry Officer in all the three charge-sheets, Respondent proceeded to impose punishment of dismissal from service of Petitioner by order dated 29 October 2002. On 11 November 2002 Petitioner raised demand for reinstatement with backwages. He filed his justification on 12 December 2002, which was replied by Respondent on 27 January 2003. As conciliation proceedings failed, the Deputy Commissioner of Labour made an order of reference to Labour Court on 25 April 2003. The Reference was registered as Reference (IDA) No.434 of 2003, 4th Labour Court, Mumbai. Petitioner filed his statement of claim on 6 October 2003. Respondent -Employer filed written statement resisting the statement of claim.

7. The Labour Court framed preliminary issues about fairness in the enquiry and perversity in the findings recorded by the Enquiry Officer. Petitioner led his evidence on the issue of fairness of enquiry. The Labour Court passed Part-I Award dated 5 May 2008 holding that the enquiry was fair and proper. Petitioner filed application for examination of the Enquiry Officer as a witness, which was rejected by the Labour Court by order dated 28 August 2008. Petitioner thereafter led his evidence to prove perversity in the findings of the enquiry. The Labour Court proceeded to pass order dated 23 October 2008 holding that findings of the Enquiry Officer are not perverse. Petitioner thereafter led evidence on the issue of proportionality of penalty. The Labour Court passed Part -II Award dated 2 December 2008 answering the Reference in the negative.

8. Aggrieved by Part-1 Awards dated 5 May 2008 and 23 October 2008 as well as Part -II Award dated 2 December 2008, the Petitioner has filed the present petition. By order dated 21 November 2011, the petition was admitted.

9. Mr. Talekar, the learned counsel appearing for Petitioner would submit that the Labour Court has erred holding that the enquiry was conducted in fair or proper manner by ignoring the fact that Petitioner was not given proper opportunity of defending himself in the enquiry conducted in the three charge-sheets. He would invite my attention to various discrepancies in the enquiry as detailed in paragraph 15 of the Part -I Award dated 5 May 2008. He would submit that Petitioner was denied an opportunity to cross examine the Enquiry Officer.

10. Mr. Talekar would further submit that the Labour Court erred in not appreciating the fact that no show cause notice was issued to Petitioner before issuance of the charge-sheets. That all the charge-sheets were stage managed out of vengeance against the Petitioner. That two charge-sheets were issued on the same day i.e. on 9 December 1999. That the fact that charge-sheets were falsely manufactured is clear from service of second charge-sheet to Petitioner on 17 December 1999. That the same bears date of 9 December 1999. That if the second charge-sheet was ready on 9 December 1999, why the same was served on the Petitioner on 17 December 1999, has not been explained in any manner. He would submit that the Petitioner was in fact not on duty on 9 December 1999 and therefore even the first charge-sheet was served on him on 10 December 1999. He would therefore submit that Part -I Award dated 5 May 2008 holding the enquiry as being conducted in fair and proper manner is unsustainable.

11. Mr. Talekar would further submit that the findings recorded by the Enquiry Officer are clearly perverse and that no cogent evidence was led in support of charge in the first charge-sheet relating to 1 December 1999. That the Enquiry Officer failed to appreciate that there

are inconsistencies in the statement of the witnesses about the exact hand allegedly used by Petitioner for committing alleged assault on the superior officer. That therefore in absence of availability of cogent evidence on record, the Labour Court ought to have held findings of the Enquiry Officer to be perverse.

12. Mr. Talekar would further submit that Part -II Award delivered by the Labour Court was also unsustainable on account of the Labour Court upholding harsh penalty of dismissal from service. That the Labour Court failed to appreciate that there were unsavoury relations between the parties on account of raising of several industrial disputes by Petitioner for himself as well as in respect of other employees. That Petitioner was deliberately implicated in false charge-sheets. That considering the background in which the allegations are levelled, the Labour Court ought to have interfered in the punishment imposed on him. That the charges proved against Petitioner are otherwise not grave so as to sustain severe penalty of dismissal from service. He would submit that the penalty of dismissal, therefore, is liable to be set aside by reversing Part-I and Part -II Awards of the Labour Court.

13. *Per contra*, Mr. Jalota, the learned counsel appearing for Respondent would oppose the petition and support the Awards passed by the Labour Courts. He would submit that Petitioner has committed gross misconduct of assaulting the superior Officer. That the charge is proved by examining all the witnesses. That there is sufficient evidence on record to prove the charges of threatening, abusing and assault on Mr. R.K. Rajeevan. That the enquiry has been conducted by offering full opportunity of defence to Petitioner, who has cross examined all the management witnesses. That the enquiry has been conducted with due

adherence to the principles of natural justice. In absence of any violation of any principles of natural justice or perversity in the findings recorded by the Enquiry Officer, no case is made out for interreference in writ jurisdiction of this Court. That the penalty of dismissal is commensurate with the misconduct proved. He would pray for dismissal of the petition.

14. I have considered the submissions canvassed by the learned counsel appearing for the parties and have gone through all the three Awards of the Labour Court as well as documents placed by the parties on record.

15. The Petitioner was subjected to disciplinary proceedings by issuance of three charge-sheets. The first charge-sheet dated 9 December 1999 is in respect of the incident of 1 December 1999. It was alleged that on 1 December 1999, Mr. R.K. Rajeevan, Petitioner's superior, was supervising the operations at Body Drop Stage of Vehicle Assembly Line and marking presence of incoming shift workmen. Petitioner reported his presence for second shift (by 3:00 p.m. to 11:00 pm.) and while marking his presence, questioned Mr. Rajeevan in loud voice and in an insolent manner about his shift. After Mr. Rajeevan responded that he was in the first shift and was about to go home, Petitioner responded in furious manner and loud voice that if Mr. Rajeevan would be leaving the factory, Petitioner would also go with him. At that time the Petitioner was found smoking and deliberately exhaled smoke on the face of Mr. Rajeevan. The place at which he was standing was 'no smoking' zone as brake oil was stored near the table for being used at assembly line. While Mr. Rajeevan tried to ignore rude Petitioner's behaviour, Petitioner assaulted him on his bottom chin with his fist hand. The incident was witnessed by Mr. R.A. Ingrole, Junior Engineer, who intervened and pulled back Petitioner. At that time

again, Petitioner threatened Mr. Rajeevan. The incident was also witnessed by Mr. D.P. Ludube. In the enquiry, the Management examined Mr. Rajeevan, Mr. Ludube and Mr. Ingrole. All had personally witnessed the incident. Thus, sufficient evidence was produced on record to prove the charges levelled in the first charge-sheet dated 9 December 1999. I therefore, do not find any error in the view taken by the Labour Court that the findings recorded by the Enquiry Officer *qua* charges in the first charge-sheet are not perverse.

16. So far as the second charge-sheet dated 9 December 1999 is concerned, Petitioner faced the charge of refusing to accept the charge-sheet dated 9 December 1999, and threatening the officials of consequences, if any action was taken against him. Petitioner has contended that the second charge-sheet dated 9 December 1999 was manufactured subsequently and served on him on 17 December 1999. In my view, merely because the charge-sheet was served on Petitioner on 17 December 1999, the same does not become illegal in any manner. The charge in the second charge-sheet has been proved in the enquiry.

17. The third charge-sheet dated 25 February 2000 was in respect of Petitioner's violent and unruly behaviour on 7 January 2000 and threatening Mr. Krishnan. The charge in the third charge-sheet is also held to be proved in the enquiry. In my view, it is the charge levelled in the first charge-sheet dated 9 December 1999 is of grave and serious nature. If the charges in the first charge-sheet are proved, it is not even necessary to go into the charges levelled in the second and the third charge-sheets, which do not appear to be too serious and mainly point to the inalcitrant behaviour of Petitioner in repeatedly exhibiting rude and violent behaviour.

18. As observed above, the charges in the first charge-sheet are proved by examining three eye witnesses. There is sufficient evidence on record to prove the charge of assault levelled in the charge-sheet. The charge of assault levelled against Petitioner is of grave nature. He has not made out any case of perversity in the findings recorded by the Enquiry Officer. In domestic enquiry the test is preponderance of probability and the charge need not be proved beyond reasonable doubt. So long as there is some evidence on record, the employer would be justified in punishing the errant employee. I therefore, do not find any ground to interfere with the Award dated 23 October 2008 holding that the findings of the Enquiry Officer are not perverse.

19. So far as the conduct of the enquiries is concerned, though Petitioner has sought to raise few grievances in respect of the manner of conduct of enquiry, in my view, what is required to be ensured is that principles of natural justice are particularly followed. Petitioner has cross examined three management witnesses in the first chargesheet. He was thus afforded full opportunity of defence in the enquiry. The discrepancies sought to be raised by him would not render the enquiry illegal so long as it is established that the principles of natural justice were complied with. The discrepancies sought to be raised by him are trivial in nature, which relate to keeping one set of enquiry proceedings with management, the Enquiry Officer preparing the typed papers and asking the Petitioner to sign them, payment of less amount of subsistence allowance, showing of file by the Enquiry Officer to the Management representatives, delay in issuance of charge-sheet, etc. In my view, none of these discrepancies would render enquiry conducted against the Petitioner illegal.

20. Petitioner has sought to contend that show cause notice was not issued to him before initiation of disciplinary proceedings. There is no rule or procedure for issuance of show cause notice before initiation of disciplinary proceedings. Petitioner's demand for cross examination of the Enquiry Officer before the Labour Court was also misplaced. Once the enquiry was held to be fair and proper and the findings of the Enquiry Officer was held to be not perverse, there was no question of the Management leading any evidence by examining the enquiry officer. Therefore Petitioner did not have any right to cross examine the Enquiry Officer.

21. The point of proportionality of penalty sought to be raised on behalf of Petitioner is also misplaced. Petitioner is found guilty of grave misconduct of assaulting his superior officer. Such misconduct is liable to be punished with harsh penalty of dismissal from service. Considering the nature of charges levelled and proved against the Petitioner, I am of the view that the penalty of dismissal from service is commensurate and does not warrant any interference of this Court.

22. Considering the overall conspectus of the case, I am of the view that no patent error can be traced in the three Awards rendered by the Labour Court. The Awards are unexceptionable. The Writ Petition is devoid of merits. The Petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

SANDEEP V. MARNE, J.