

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

WRIT PETITION NO.1754 OF 2008

Antu Prasad

... Petitioner

Versus

M/s. Rajendra Electrical
Industries Ltd. & Anr.

... Respondents

...

Ms. Kajal Wadhwana, a/w. *Mr. Tanmay Gujarathi i/b. Mr. H. Kumar Vaidyanathan, for Petitioner.*

Mr. Anand Pai, a/w. *Mr. Netaji Gawade i/b. Sanjay Udeshi & Co., for Respondents.*

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CORAM : SANDEEP V. MARNE, J.

DATED : 21 MARCH 2024.

ORDER :

Petitioner has filed this petition challenging Judgment and Order dated 27 April 2005 passed by the Presiding Officer, 4th Labour Court, Mumbai dismissing the Complaint (ULP) No.845 of 2000 and Judgment and Order dated 6 October 2007 passed by Member, Industrial Court, Mumbai rejecting Revision (ULP) No.54 of 2005.

2. Briefly stated, facts of the case are that Petitioner was employed as Press Machine Operator in Respondent No.1 Company on 18 February 1978. Respondent No.1 is engaged in the business of manufacturing of electric materials. Petitioner claims to have been confirmed in service on 1 February 1979. His last drawn wages were Rs.3724/- per month. Petitioner become member of Bhartiya Kamgar

Sena, a trade union, which was not appreciated by Respondent No.1. A charter of demands was submitted by the Union. According to Petitioner, he was issued charge sheet dated 22 November 1999 with a view to pressurize him to withdraw from union activities. That false and concocted allegations were leveled against him in the charge sheet. Petitioner denied charges by submitting reply. The farcical show of conduct of disciplinary enquiry was made by appointing a rank outsider as Inquiry Officer. That a practicing advocate functioned as Inquiry Officer. Mr. J. R. D'Costa, Manager in the establishment of Respondent No.1 functioned as Management Representative. He also gave evidence as witness and thus acted in a dual role of prosecutor and witness. The Inquiry Officer gave report holding that the charges were proved. Show cause notice dated 12 October 2000 was issued based on findings of Inquiry Officer and before Petitioner could reply the show cause notice, dismissal order was passed on 20 October 2000.

3. Petitioner approached Labour Court, Mumbai by filing Complaint (ULP) No.843 of 2000 challenging dismissal Order. The Complaint was resisted by Respondent No.1 by filing Written Statement. Though Petitioner filed application for interim relief, the same was not pressed. Petitioner examined himself as witness. The Labour Court passed Order dated 13 July 2003 on preliminary issue of fairness in the enquiry and held that the enquiry was fair and proper. Petitioner did not challenge the said findings at that stage and proposed to challenge the same in the event of final order going against him. The Labour Court thereafter delivered final Judgment and Order dated 27 April 2005 and dismissed Petitioner's complaint.

4. Aggrieved by the Labour Court's decision, Petitioner filed Revision (ULP) No.54 of 2005 before the Industrial Court, Mumbai

which proceeded to dismiss the Revision by its Judgment and Order dated 6 October 2007.

5. Aggrieved by the decisions of Labour Court and Industrial Court, Petitioner has filed the present petition. By Order dated 16 September 2008, this Court has admitted petition.

6. Ms. Wadhwana, the learned counsel appearing for Petitioner would submit that the Labour Court and Industrial Court have failed to appreciate that Petitioner has been implicated in false accusations by the employer on account of raising valid demands. That the enquiry was conducted in a biased manner. That conduct of enquiry by outsider advocate was in violation of Model Standing Orders. That Mr. D'Costa acted as a prosecutor, witness and Judge in his own case, thereby vitiating the entire enquiry proceeding. No opportunity of defence was provided in the enquiry by the Management. Ms. Wadhwana would submit that Petitioner rendered long service from 18 February 1978 till his dismissal on 20 October 2000. That he is not paid any benefits in respect of 22 long years of services rendered by him. That he attained age of superannuation in the year 2015 and without prejudice to the right of full backwages, atleast some compensation to be provided to the Petitioner.

7. *Per contra*, Mr. Pai, the learned counsel appearing for Respondents would oppose the petition and support the Orders passed by the Labour Court and Industrial Court. He would submit that Petitioner never objected to conduct of enquiry by an advocate or Mr. D'Costa issuing chargesheet or deposing as witness. That Petitioner fully participated in the enquiry and thoroughly cross-examined the Management's witnesses. That the charges proved against Petitioner

are of grave nature where Petitioner, alongwith his cohorts, abused and threatened the Managerial Officers and they further locked them inside the cabin by keeping them under confinement. That the officials were required to be rescued by the Police. That an F.I.R. was lodged against Petitioner and others who have engaged in such unruly behavior endangering the lives of the managerial officers. That the charge has been proved by cogent evidence and the penalty of dismissal from service is commensurate with the gravity of charge proved. Mr. Pai would submit that no interference is warranted in concurrent findings of the Labour Court and Industrial Court. He would pray for dismissal of the petition.

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

9. In charge sheet dated 22 November 1999 Petitioner faced following charges:

- (i) willful insubordination and disobedience;
- (ii) Riotous, disorderly and indecent behavior;
- (iii) Commission on act subversive of discipline and good behavior;
- (iv) Absence without leave and without sufficient cause from the appointed place of work and;
- (v) Holding meeting inside the premises without previous permission of Management.

10. The charges stem out of incident which took place on 4 November 1999. It was alleged that Petitioner approached the cabin of Mr. D'Costa alongwith 3 committee members and forcibly entered the cabin and demanded settlement of bonus in an arrogant manner. That

Mr. D'Costa was abused and threatened of dire consequences, who thereafter made a telephone call to Mr. Tamhane, Chief Executive. Thereafter two committee members went out of the cabin and called some of permanent workmen to join them and all started shouting to settle the bonus demand. The Petitioner, alongwith other workmen, thereafter went out of the cabin and bolted the cabin door from outside. When the Security Officer approached the cabin for opening the door, he was prevented by 4 committee members including Petitioner from doing so. This is how Mr. D'Costa and Mr. Tamhane were confined in the cabin till 3:30 p.m. The Police were required to be called, who ultimately opened the door of the cabin. It appears that the Petitioner and other 3 Committee Members were taken to police station and were arrested. F. I. R. was lodged against them on 4 November 1999.

11. Enquiry was held into the charges as Petitioner denied the charges by filing his reply dated 11 January 2000. In the enquiry, the Management examined 3 witnesses viz. Shri. D'Costa (Manager), Shri. Nitin Tamhane (Chief Executive) and Shri. S. R. Yadav (Security Officer). Petitioner participated in the enquiry and was represented by defence representative Mr. S. V. Gola and lateron by Mr. Dongre. Petitioner's defence representative conducted cross-examination of all the 3 witnesses. Mr. D'Costa was put to as many as 164 questions and Mr. Tamhane and Mr. Yadav were asked 44 and 27 questions in cross-examination respectively. Petitioner was also given opportunity to record his statement, which was given in writing and was treated his defence statement. Proceedings of the enquiry run into 68 pages in which 20 documents were exhibited. This shows full and complete participation in the enquiry by the Petitioner and following of

principles of natural justice thereby belying the allegation of enquiry being farce as sought to be alleged.

12. After considering the depositions on record, the Inquiry Officer held that the charges leveled against Petitioner were fully proved. I have gone through the report of the Inquiry Officer and I find that the findings recorded therein are supported by evidence on record.

13. After going through the entire proceedings of the enquiry, it is seen that Petitioner was given full opportunity of defending himself and therefore all objections raised by Petitioner, regarding violation of principles of natural justice, deserves to be rejected.

14. Ms. Wadhwana has contended that Mr. D'Costa's role as prosecutor, witness and Judge has vitiated the enquiry. However, it appears that Petitioner never raised the issue of Mr. D'Costa's participation in the enquiry at any point of time. The enquiry has been conducted by independent Inquiry Officer. Therefore, mere participation in the enquiry by Mr. D'Costa as Management Representative would not vitiate the enquiry proceedings, especially when Petitioner never raised any objection in that regard.

15. Objection of an advocate acting as Inquiry Officer was again not raised during the course of enquiry and the Petitioner cannot be permitted to raise same at a later point of time.

16. After going through the findings of the Inquiry Officer, it is seen that the charges leveled against the Petitioner were of grave nature. Putting managerial officials under confinement and abusing and threatening them is a grave misconduct, which has been proved against Petitioner. The penalty imposed on the Petitioner is thus commensurate with the gravity and misconduct. Both Labour Court

and Industrial Court have concurrently upheld the penalty of dismissal. No interference is warranted by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. Petitioner's services from 1978 to 2000 cannot be a reason for awarding him any monetary benefits, when grave charge of unlawful confinement, threatening and abusing the Managers is proved in the enquiry. Therefore, no interference is warranted in the penalty of dismissal. Since the penalty of dismissal is upheld, there is no question of awarding any compensation to the Petitioner.

17. Writ Petition filed by the Petitioner is thus devoid of merits and it is dismissed without any orders as to costs. Rule is discharged.

SANDEEP V. MARNE, J.

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