



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1200 OF 2023

Ku. Surekha Domaji Bele, B.Sc. LLM, DCM
Aged about 60 years, Occu. Nil,
R/o. Jatpura Ward, Chandrapur,
Tahsil and District Chandrapur.

.... PETITIONER.

// **VERSUS** //

Executive Engineer,
Testing Division, MSEDCL,
Babupeth, Chandrapur.

.... RESPONDENT.

The Petitioner in person.
Shri A.D.Mohgaonkar, Advocate for Respondent.

CORAM : ANIL S. KILOR, J

DATE OF RESERVING THE JUDGMENT : 16/01/2024
DATE OF PRONOUNCING THE JUDGMENT: 05/04/2024

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel for the parties.

3. This petition takes exception to the judgment and order dated 18/01/2023, passed by the Industrial Court, Chandrapur confirming the judgment and order dated 08/08/2019 passed by the Labour Court, Chandrapur, dismissing the complaint preferred by the petitioner against her dismissal.

The brief facts of the present case are as under :

4. The petitioner was initially appointed as “Lower Division Clerk” under the employment of Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as “MSEDCL”) on 02/04/1985, at GAD Circle Office, Chandrapur. Thereafter, she was promoted as “Upper Division Clerk” on 11/04/1988, and was transferred to Warora Pole Factory from Ballarshah. She had challenged the transferred order by filing complaint ULP No. 55/2002, which was partly allowed by the Industrial Court Nagpur. Therefore, petitioner has filed various proceedings regarding transfer and reversion against respondent management in the Court to get her grievances redressed.

5. It is contended that the respondent, being annoyed by the complaints filed by the petitioner, suspended the petitioner by order

dated 04/09/2006, the same was challenged by the Petitioner in Complaint (ULP) No. 02/2007. The petitioner was served with the charge sheet dated 19/09/2006. The charges of absenteeism were levelled against the petitioner.

6. Thereafter, the enquiry was conducted against her and on the basis of such enquiry she was served with show cause notice of dismissal dated 25/04/2008, which was challenged by the petitioner before Labour Court, Chandrapur in the Complaint (ULP) No. 34 of 2008.

7. The said complaint came to be dismissed by Judgment and order dated 27/06/2017. Thereafter, respondent dismissed the petitioner from the service of respondent by order dated 12/07/2017, and ordered to treat her period of suspension as punishment.

8. The said order of dismissal was challenged by the petitioner before Labour Court, Chandrapur by filing Complaint (ULP) No.28 of 2017. The Learned Labour Court, Chandrapur dismissed the Complaint (ULP) No.28 of 2017 by order dated 08/08/2019. Thereafter, petitioner

challenged the judgment and order dated 08/08/2019 before the Industrial Court at Chandrapur by filing Revision Application (ULP) No. 14 of 2019. The said revision was dismissed by the Judgment and order dated 18/01/2023. Hence, this petition.

9. I have heard Ms Surekha Bele-petitioner-in-person and Shri Mohgaonkar, learned counsel for the respondent Company.

10. The petitioner-in-person makes the following submissions:

- a) Both the Courts below have committed error in dismissing the appeals.
- b) The termination order was not issued by the Competent Authority.
- c) The explanation in the form of Complaint (ULP) No. 34 of 2008 was not considered.
- d) The respondents ought to have issued fresh show cause notice before termination.
- e) In the show cause notice there is no mention of treating the period of suspension as punishment.
- f) The subsistence allowance during the period of suspension was not paid to her by the respondent-company.

- g) There is no Schedule “G” (ग) in Service Regulation, but as per the impugned dismissal order, she was dismissed under Schedule “G”(ग). Therefore, the power of awarding the punishment have been purportedly exercised by the respondent in violation of the MSEDCL Employees’ Service Regulations, 2005 (hereinafter referred to as “the Service Regulations, 2005”)
- h) She was appointed as Lower Division Clerk by the Superintending Engineer, but the punishment was inflicted by the Executive Engineer who is lower in rank than the Superintending Engineer.
- i) The order of termination is not in a given format.
- j) The punishment is disproportionate.

11. The petitioner in person has relied on the judgments of the Hon’ble Supreme Court of India, this Court and various other High Courts in the cases reported in **AIR 1977 SC 747** (*Mysore State Road Transport Corporation ..vs.. Mirja Beg*), **AIR 1988 SC 344** (*Union of India(UOI) ..vs. Babu Ram Lalla*), **2006(1) Mh.L.J. 495** (*Sunil Vs. Maharashtra State Mining Corporation*), **2014(2)Mh.L.J.480** (*Deepali Surwase ..vs.. Kranti Junior Adhyapak Mahavidyalaya*), **2015(2) Mh.L.J. 107** (*Raghubir Singh..vs.. Haryana Roadways*), **2015(4) Mh.L.J. 71** (*Seema Ganpat More ..vs.. President/Secretary, Shishu Vikas Mandir*),

2018(4) Mh.L.J. 299 (*Union of India ..vs.. Manoj Kumar Vs. Kumare*), **2002 LIC 2070** (Calcutta HC) (*Kanailal Das ..vs.. C.S.T.C. & Ors.*), **2005(107) FLR 960** (Kerala HC) (*Gopa Kumar M.V. ..vs.. Kerala State Nirmiti Kendra*), **2006(108) FLR 793** (Patna HC) (*Chandra Bhushan Vs.. State of Bihar*), **2008 LIC 4200** (Jharkhand HC) (*Devendra Prasad Singh ..vs.. State of Jharkhand*), and **2016 I CLR 396** (Gujarat HC) (*Mugatlal P. Pandya ..vs.. Guj. S.R.T.C. & Ors.*).

12. On the other hand, the learned counsel for the respondent submits that both the authorities below have considered all the points raised in this petition and answered against the petitioner.

13. It is submitted that there are concurrent findings recorded by both the Courts below and since there is no perversity or illegality committed by both the Courts below this Court may not interfere with the same.

14. It is further submitted that, the charges against the petitioner were proved by leading evidence before the Court and considering the nature of the charges and the evidence produced against the petitioner, the punishment is just and proper.

15. In light of the rival contentions of the parties, I have perused the record and the impugned orders.

16. From the record following facts emerged as admitted facts:

- (a) The petitioner was served with a charge-sheet dated 19/09/2006 which was not replied by her.
- (b) Thereafter, domestic enquiry was conducted, and the petitioner was served with show cause notice of dismissal dated 25/04/2008 to which also complainant did not submit her explanation.
- (c) The show cause notice of dismissal dated 25/04/2008 was challenged by filing Complaint (ULP) No.34/2008 before Labour Court, Chandrapur.
- (d) In Complaint (ULP) No.34/2008 the preliminary issue regarding fairness of enquiry and findings of the Enquiry Officer were held as perverse.
- (e) The respondent challenged the said order before the Industrial Court, Chandrapur which was partly allowed and

matter was remanded back to the Labour Court with the direction to give opportunity to respondent to prove alleged misconduct.

- (f) After remand of the case, respondent examined five witnesses and thereupon, it was held that the misconduct against the petitioner was proved. It was further held that the impugned show cause notice of dismissal dated 25/04/2008 is legal and proper.
- (g) The petitioner challenged the order of the Labour Court by filing Revision (ULP) No.37/2017 (Exh. C-16) which came to be dismissed.

17. In the above referred admitted facts let us examine the matter on merit. The learned trial Court observed in its judgment that the complainant herself is treating the Complaint ULP No. 34/2008 as her explanation to the show cause notice. Hence, it is held that, her contention that she was not given opportunity to submit explanation is not acceptable. Moreover, it is evident from the show cause notice dated 25/04/2008 that, the complainant was asked to submit her explanation

but, undisputedly, without submitting her explanation, she approached to the Court.

18. The complainant has not replied to the show cause notice for a period about 11 years. In the circumstances, it cannot be expected that the respondent ought to have waited for issuing termination order against the complainant, till the time she files reply to the show cause notice.

19. As regards the submissions made by the petitioner that the termination was not in the format, it is to be noted that such proforma/format is applicable to the termination of services on the ground of conviction, as per Service Regulation 10(a). Dismissal of complainant from the services in this case does not fall under the category of Service Regulation 10 (a). Hence, the argument as regard not having the termination in a format, is rejected.

20. It is not disputed that the complainant falls in the Pay Grade-III employee. As per the Schedule-C, the Competent Authority for imposing punishment to the employees in Pay Grade-III is prescribed as Executive Engineer. As per regulation 91 note 4, the competent

authority is empowered to impose major penalty, obviously it includes dismissal. Thus, the termination cannot be faulted on the ground that the Competent Authority has not issued the termination order.

21. Regulation 88 (a) (v) on the point of suspension provides that, when an employee has not been wholly exonerated and the period of suspension has been treated as punishment, the employee shall not be eligible to any arrears or allowances for the period of suspension. Therefore, considering this provision, the competent authority is empowered to treat the period of suspension as punishment as such it cannot be treated as separate punishment requiring separate notice. Therefore, the dismissal order cannot be termed as illegal on this count.

22. The regulation 88 (a)(i) of the Service Regulations 2005 as applicable to the employees of MSEDCL provides that, the Competent Authority may in its discretion direct an employee who has been suspended to report to it or to any other officer at such interval as may be deemed necessary by it during the period of suspension.

23. In the case at hand it is not the case of the complainant that in spite of complying with the said condition mentioned in order of suspension the subsistence allowance is not paid to her. On the other hand, the record shows that the condition put in the order of suspension was not complied with by the petitioner.

24. It is evident that on the conclusion of the enquiry, the show cause notice was issued which was not replied by the petitioner but it was challenged by filing Complaint (ULP) No. 34 of 2008. The said complaint was decided without giving opportunity to the respondents and therefore, it was set aside by the Industrial Court in revision and remanded the matter. The respondents, thereupon, examined the witnesses and proved the misconduct before the Labour Court. Thereupon, the learned Labour Court dismissed the Complaint (ULP) No. 34 of 2008 vide judgment and order dated 27/06/2017. The said judgment and order dated 27/06/2017 was the subject matter of challenge in Revision No. 37 of 2017, which came to be dismissed vide judgment and order dated 08/06/2018. The said judgment and order was not challenged by the petitioner and thus, attained finality.

25. It is thus evident that the finding holding the misconduct as established and proved has attained finality. In the circumstances, I do not find any merit in the present writ petition.

26. Rulings cited by the petitioner are not helpful to her, since the said rulings are not pertaining to MSEDCL employee to whom MSEDCL Employees' Service Regulations 2005 are applicable.

27. Having held that there is no merit in the present writ petition for the reasons recorded herein above. Hence, the Writ Petition is **dismissed**. Rule stands discharged. No order as to costs.

(ANIL S. KILOR, J)