



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4608 OF 2024

Sanjay Nivrutti Ghogare

....Petitioner

VERSUS

The Secretary

Karyawah Vivekanand Medical Foundation

And Medical Research Centre & another

.....Respondents

Mr. M. N. Kalyane, Advocate for the Petitioner.

Mr. S. V. Natu, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 26th SEPTEMBER, 2025.

PER COURT :

1. This Petition takes exception to dismissal of complaint ULP No. 23/2020 by Labour Court and confirmation of the said order in revision ULP No. 22/2022 by the Industrial Court whereby the challenge to the order of dismissal of Petitioner became unsuccessful.

2. The facts which led to filing of this Petition can be narrated in brief as under :-

Petitioner was employed as a male nurse in Respondent/hospital since June 1998. It is the case of the Petitioner that he rendered unblemish service till he was dismissed from service by order dated 06.10.2020. It is claimed that on the basis of

the allegations that he has unauthorisedly taken the medicine and syringe out of the hospital, without issuing charge-sheet against him, he was terminated directly by issuing order of dismissal. He, therefore, sought challenge to the said order before Labour Court by filing complaint under Section 28 of the MRTU & PULP Act.

3. Before the Labour Court, Respondent/management has sought permission to lead evidence to prove mis-conduct committed by the Petitioner. Such leave was granted by the Labour Court and witnesses were examined to prove the mis-conduct. Consequently, Labour Court held that the Petitioner has committed mis-conduct and having regard to the nature of mis-conduct and its gravity, the order of dismissal is held to be legal. Industrial Court in revision refused to cause interference in the said order. Hence, this Petition.

4. Learned counsel for Petitioner submits that the Petitioner has performed 22 years of service and in such circumstances, it was unacceptable that his services are terminated without following due process of law. It is his submission that Section 25F of the Industrial Disputes Act is not complied with and consequently, the order of dismissal cannot sustain. Insofar as the alleged proof of mis-conduct

before the Labour Court is concerned, it is argued that the management has not examined the watchmen who were on duty at the relevant time. Thus, according to him, it cannot be held that there is proof of mis-conduct while leading evidence before the Labour Court.

5. Learned counsel for Respondent/Management supported the impugned order. It is his submission that unless perversity is shown, findings of fact recorded by the Labour Court confirmed by Industrial Court cannot be interfered with. It is his submission that the position of law is well settled to say that even if enquiry is not conducted it is open for the employee to prove mis-conduct before the Labour Court. He drew attention of the Court to the evidence led before the Labour Court which, according to him proves mis-conduct committed by the Petitioner on preponderance of probabilities. It is his submission referring to the order passed by the Labour Court that past record of the Petitioner is not unblemish and the Labour Court has rightly taken into consideration gravity of mis-conduct and past record in order to confirm the order of dismissal.

6. Admittedly, in this case, charge-sheet was not issued to the Petitioner before his dismissal from service. It is pertinent to note that at the time of dismissal of service, Covid 19 Pandemic was on set and that is the reason for non-conducting of enquiry. In this respect, it is settled position of law that even in case there is termination of an employee on the allegation of mis-conduct and no previous enquiry is conducted, it is open for the employer to prove mis-conduct before the Court. In this regard, leave was sought which was rightly granted by the Labour Court.

7. The principles applying domestic enquiry to the extent of proof of mis-conduct would also apply for proof of mis-conduct before the Labour Court. Thus, management is required to prove mis-conduct committed by the employee on preponderance of probabilities. Perusal of the record indicates that the Management has examined three witnesses. They were duly cross-examined by the Petitioner. Learned Labour Court has recorded finding about proof of mis-conduct alleged against the Petitioner. It has also taken into consideration the nature of mis-conduct so also past service record of the Petitioner.

8. The law on the point of power of this Court to cause interference in the findings of facts recorded is well settled to say that unless the findings are perverse no interference therein is permissible. Similarly, it would not be open for this Court to substitute the findings/opinion of Labour Court based upon the evidence led before it.

9. In the facts of the case, the evidence led before the Labour Court proves the charges against the Petitioner. There is nothing on record to indicate that the action initiated against the Petitioner is malafide or biased. The perusal of evidence led before Labour Court sufficiently proves the mis-conduct against Petitioner.

10. For the purpose of sustaining any order of dismissal, the nature of mis-conduct and its gravity becomes relevant. So also, past service record or any mitigating circumstances also need to be taken into consideration. In this regard, if it is proved that during Covid 19 Pandemic period, a male nurse working in Respondent hospital is found taking away medicines and syringe without permission, there cannot be any graver mis-conduct than this said to have been committed by the employee/Petitioner. At the same time, the

contention of learned counsel for Petitioner of Petitioner having clean past service record is also not found correct. Labour Court has aptly taken into consideration his past record and found that there are no other mitigating circumstances in order to cause interference in the order of dismissal.

11. In view of above discussion, there is no merit in the Petition. Petition, therefore, stands dismissed.

(R. M. JOSHI)
Judge

dyb