



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15875 OF 2023

Nanded-Waghala City Municipal Corporation,
Through its Commissioner

.. Petitioner

Versus

Babu Munjaji Dhole

.. Respondent

Mr. R. K. Ingole, Advocate for the Petitioner.
Mr. D. M. Shinde, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 02nd JANUARY, 2025.

P C. :-

. Heard learned advocates for the parties. Taken up for final disposal by consent of the parties.

2. The Municipal Corporation, Nanded has approached this Court challenging the judgment and order passed by the learned Member, Industrial Court, Jalna dated 18.01.2022 in complaint (ULP) No. 102/2013. The learned Member by way of impugned judgment and order allowed the complaint holding and declaring that the petitioner has engaged in unfair labour practice of Item Nos. 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU & PULP Act). The

petitioner is directed to treat the period of suspension as the period of duty and also set aside the order of stoppage of two annual increments of the respondent with permanent effect.

3. The facts in short are that the respondent was in service as clerk who stood retired by now. Since he was holding requisite qualification he was given a charge of the post of Public Relation Officer without any right on the said post. It was thereafter found that the respondent was negligent and was not attending the duties and it is for this reason a show cause notice was issued on 19.05.2011 calling for explanation. The respondent submitted explanation on 23.05.2011. It is stated that because of the charge of Public Relation Officer he is required to various other works like collection of paper cuttings, giving of press-note, paper proclamations, giving notices etc. There is no negligence on his part. The Commissioner of the petitioner was not satisfied with the explanation. He passed an order of suspension on 26.08.2011 and decided to hold an enquiry.

4. The enquiry officer, after enquiry exonerated the respondent holding that no charges are proved. The Deputy Commissioner (Administration), however, disagreed with the enquiry report and imposed punishment of stoppage of two increments with permanent

effect and to treat the suspension period as such.

5. Against this order the respondent approached the standing committee. The standing committee accepted the grievance of the respondent. The committee passed a resolution on 10.08.2012. By resolution the committee resolved to drop the action by not accepting the order of the Commissioner. However, in spite of the same, the resolution was not implemented making him to approach the Industrial Court by way of filing complaint (ULP).

6. The learned Member, Industrial Court, Jalna, after going through the record and evidence held and declared that, the petitioner has engaged in unfair labour practice falling under Item No. 5 and 9 of Schedule IV of the MRTU & PULP Act and allowed his appeal. The petitioner Municipal Corporation is before this Court challenging the said judgment.

7. It is argued by the learned advocate for the petitioner that the respondent was an employee of the petitioner. The employer has every right to hold an enquiry by following procedure and law. The petitioner had rightly issued a show cause notice calling for an explanation. The explanation was found to be not satisfactory. The petitioner therefore decided to proceed with an enquiry by placing respondent under

suspension. No fault can be found with the action of the petitioner. The report of the enquiry officer is not binding on the employer. The employer can take action in case he disagrees with the finding and conclusion in the report. The Commissioner has every power to act on his own and to decide and to take appropriate action against an employee. Thus, learned advocate submits that no fault can be found with the action. He submits that the impugned order deserves to be quashed and set aside.

8. The learned advocate for respondent vehemently opposed the petition. He submits that, in fact, the enquiry officer had clearly gave a report stating that no charges are proved. There are no reasons assigned by the Deputy Commissioner (Administration) as to why the conclusion of the said report is not accepted and as to why he does not agree with the conclusion. He submits that, in any case of disagreement with the report, it was necessary to issue a fresh notice to the respondent stating that the petitioner does not agree with the report of the enquiry officer and call for explanation. No such notice was given and the respondent was deprived of his valuable right to give an explanation upon such notice, if, had been issued. He submits that the learned Member has rightly appreciated all these facts. Even the standing committee accepted his appeal. It was at least necessary after

resolution of standing committee to act upon the said resolution. Not acting on such resolution clearly shows that the action is malafide. The impugned action of the petitioner clearly amounts to arbitrary exercise of power. He thus submits that no interference is required and prays for rejection of the petition.

9. Having considered these rival submissions what clearly appears from the record that, after the submission of the enquiry report no notice was given to the respondent stating the reasons as to why the Deputy Commissioner disagrees with the said report. There is clear violation of principles of natural justice in taking action against the respondent by the petitioner.

10. This Court finds that, no illegality or perversity appear in the judgment passed by the learned Member of the Industrial Court. This Court does not find any reason to interfere with the impugned order. The petition, therefore, deserves to be dismissed. Hence, the writ petition stands dismissed. It is expected that the petitioner now to immediately act upon the impugned judgment and order within a period of two (02) month from today.

(KISHORE C. SANT, J.)

P.S.B.