



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

963 WRIT PETITION NO. 9914 OF 2022

Ravindra Nandkishor Gupta
age 60 years, occ. Retired servant
r/o At Post "Vaibhav Building"
Behind Dr. Thatte Hospital,
Doubt Gin, Old Jalna, Jalna
Tq. & Dist. Jalna.

....Petitioner

VERSUS

1. The Executive Engineer
Maharashtra State Electricity
Distribution Company Ltd.
Division No. 1, Jalna
Tq. & Dist. Jalna.

2. The Assistant Engineer
Maharashtra State Electricity
Distribution Company Ltd.
Sub-Division Bhokardan,
Tq. Bhokardan, Dist. Jalna.

....Respondents

Mr. V. P. Golewar, Advocate for the Petitioner.

Mr. U.S. Malte, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 8th JANUARY, 2025.

JUDGMENT :

1. By consent of both sides, heard finally at the stage of
admission.

2. This Petition takes exception to the order dated 20.01.2022 passed by the learned Member, Industrial Court, Jalna in complaint ULP No. 257/2012 wherein, while deciding preliminary issue it is held that the enquiry conducted against the Petitioner/complainant is fair and proper and the findings of the Enquiry Officer are not perverse.

3. The parties are referred to as complainant and Respondents (MSEDCL) for the sake of brevity.

4. Complainant is permanent employee of the Respondents and joined services in the year 1978 as a daily wager. He was confirmed in the service as a Line Helper from 1986 and later came to be designated as Technician with effect from 2002. On 23.05.2012, charge-sheet came to be issued by Respondents against complainant under Rule 86(3) read with Item No. 1, 4, 6, 7, 9, 15, 22 and 23 of the Employees Service Rules. Amongst other allegations of misconduct, it is also alleged that he is negligent in his work. Complainant asked for the documents to substantiate his defence. The documents were not provided to him. However, departmental enquiry proceeded with. It is the case of complainant that the

enquiry conducted against him is not fair and proper and there is violation of principles of natural justice. On the basis of report of Enquiry Officer, show cause notice came to be issued to him on 18.10.2012 without supplying report of the Enquiry Officer. This has culminated into imposition of penalty of stoppage of three increments with cumulative effect. He filed complaint under Items 9 and 10 of MRTU and PULP Act taking exception to the said order.

5. Before the Industrial Court, preliminary issue was framed as to whether the enquiry conducted against complainant is fair and proper and findings are perverse. There is no dispute about the fact that both the parties did not lead any evidence but the said issue was decided on the basis of the proceedings of enquiry placed before the Industrial Court. The learned Industrial Court held that the enquiry is fair and proper and findings of enquiry are not perverse.

6. Learned counsel for complainant submits that in the said enquiry conducted against him, no evidence was adduced nor any document was proved. It is his submission that before conducting enquiry, request was made for providing relevant documents which

was not conceded and hence prejudice and irreparable loss has been caused to the complainant. It is his submission that learned Industrial Court has committed serious error in deciding the preliminary issue against the complainant only on the ground that he had admitted to have received charge-sheet and understood the charges levelled against him.

7. Learned counsel for Respondents though took pains to justify the impugned order, was unsuccessful in doing so. He submitted that since the Industrial Court has considered the proceedings of departmental enquiry as well as report of the Enquiry Officer and since said finding is recorded by the Enquiry Officer on the basis of documents placed on record, no interference is called for in the said order.

8. Perusal of the proceedings of enquiry shows that no witness was examined in order to prove mis-conduct alleged against the complainant. Enquiry Officer posed certain questions to the management representative. His statement was recorded. The Enquiry Officer has also considered the documents placed on record by the management representative. There is no dispute about the

fact that no witness was examined by the Respondents to prove the documents sought to be placed on record or to prove the alleged misconduct against the complainant. Since the documents sought to be relied upon were not proved through any witness, it was not open for the Enquiry Officer to place reliance on the same to hold complainant guilty of misconduct. Apart from this, the complainant was denied opportunity to defend himself by cross-examining the person who would have proved the said documents or who was the author of the said documents. This Court is conscious of the position of law that the proof of mis-conduct in departmental enquiry is permissible on preponderance of possibility and strict proof thereof is not required. This, however, does not mean that there is absolutely no evidence and still mis-conduct is held proved against the workman.

9. This is the case wherein without there being any evidence on record the Enquiry Officer has held the complainant guilty of some of the charges. On the basis of this report he was imposed penalty of stopping three increments with cumulative effect.

10. The impugned order passed by the learned Industrial Court indicates that only for the reason that the complainant has

admitted to have received charge-sheet along with all necessary papers and has admitted the charges, preliminary issue was decided against him. Though, nothing was proved against complainant, Industrial Court further proceeded to hold that it is proved that the complainant was in the habit of leaving head quarter without prior permission and not being serious in recovery of dues from the consumers and joining hands with them. This finding recorded by the Industrial Court is perverse for want of any evidence of whatsoever nature to support the same.

11. As a result of above discussion, the order passed by the Industrial Court cannot sustain. Hence, it is held that the enquiry conducted against complainant is not fair and proper and the findings of Enquiry Officer are perverse and hence not sustainable. In the result, appeal is allowed. Industrial Court to proceed further with Complaint ULP No. 257/2015 in accordance with law.

(R. M. JOSHI)
Judge

dyb