



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.36/2019

Gajanan Ukharda Bawne .Vs. President Satyanarayan Ranidas Harkut and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. D. Meghe, Advocate for petitioner.

Mr. A. V. Bhide, Advocate for respondent No.2.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 15, 2025

On 09.10.2024, following order was passed.

“After having heard for some time, it appears that the Labour Court has not decided the issue as regards misconduct of the petitioner – complainant. The Labour Court, on the basis of negative finding to the issue ‘Does the complainant proved that the enquiry conducted against him is not fair and proper’, held that the issue of misconduct does not survive.

2] On this point, the learned Counsel for the petitioner has invited my attention to the judgment passed by the Hon’ble Supreme Court in the case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe [(1975) 2 SCC 661], wherein the Court has held as under :

“When a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.”

3] As could be seen, once it is held that domestic enquiry has been or has been not conducted by following principles of natural justice, the Management will have to decide whether it will adduce evidence before the Labour Court to prove misconduct.

4] In the present case, I am informed that the Management chose not to lead evidence. The learned Counsel for respondent no.2 – Management submits that the Management intends to rely upon the evidence led before the enquiry officer.

5] Whether or not the Management decides to lead evidence, the Labour Court, to my mind, is duty bound to decide the issue of misconduct. Having not done so, the matter will have to be remanded back.

6] At this stage, the learned Counsel for respondent no.2 seeks time to take search on the point involved.

7] Stand over to 14/10/2024 high on board.”

2. Counsel for respondent No.2 submits that if at all matter is to be remitted back, let the management get an opportunity to lead evidence. As such, the Management has chosen to not lead evidence. However, if the management intends to lead further evidence to prove misconduct at the hands of petitioner, the management may make a request before the Labour Court which shall be considered on its own merit.

3. With the above observations and in terms of the reasons assigned in order dated 09.10.2024, the petition will have to be partly allowed. Hence, following order is passed.

ORDER

(i) The writ petition is partly allowed.

(ii) Judgment and order dated 19.06.2009, passed by Labour Court, Buldhana in Complaint ULP No.71/2005 as also judgment and order dated 15.02.2018 passed by Industrial Court in Revision (ULP) No. 84/2009, are quashed and set aside.

(iii) Complaint ULP No.71/2005 is remanded back to the Labour Court, Buldhana to consider it afresh, in accordance with law and what has been stated in body of the order.

(iv) Parties shall appear before the Labour Court, Buldhana on 04.02.2025.

No order as to costs.

(Anil L. Pansare, J.)

Kahale