

MHIC120006362018



IN THE COURT OF MEMBER, INDUSTRIAL COURT, PUNE.

Presided Over by Shri. S. M. Bukke

Application IT/376/2018

M/s ZF Steering Gear (India) Ltd.
1242/1244, Vadu Budruk, Tal. Shirur,
Dist. Pune 412 216

... Applicant

VERSUS

Kiran Shivaji Daphal
At post Bori, Tal. Indapur,
Dist. Pune

... Opponent

Advocate for the applicant : Shri. A. K. Gupte.
Advocate for the opponent : Shri. S. A. More.

ORDER ON PRELIMINARY ISSUES

(Date :- 06.02.2025)

This is an application under Section 33 (2)(b) of the Industrial Disputes Act, 1947 (for short 'ID Act') for grant of approval of the action of termination of employee.

2. The applicant ZF Steering Gear India Ltd. is a private limited company registered under the Companies Act, 1956 (for short 'company') and engaged in manufacturing of steering gears. Opponent Shri. Kiran Shivaji Daphal was in the employment of the applicant company. On 06/02/2018, the applicant company has issued charge sheet to opponent therein alleging for serious misconduct of unauthorized absence for more than 44 days

continuously from 02/12/2017 to 16/01/2018 without permission and sanction of his leave by competent authority of the applicant company and thereby committed misconduct as mentioned in Clause 2 of charge sheet. The applicant has conducted domestic inquiry of opponent by following principles of natural justice. The opponent has participated in the said inquiry. After conclusion of the inquiry, the Inquiry Officer has drawn his findings and held the opponent guilty for his misconduct. The applicant company had issued dismissal order. Reference (IT) No. 2/2018 is pending before this Tribunal. The applicant has complied with Section 33(2)(b) by crediting salary to the account of the opponent. Lastly, the applicant craved to grant approval to the action of dismissal dated 27.10.2018.

3. The opponent resisted the claim vide written statement Exh.U-2 thereby denying all contentions. The opponent submitted that the general demands of the employees are referred to this Hon'ble Court for adjudication by the Additional Commissioner of Labour, Pune vide an order of reference dated 25.1.2018. The matter is pending before this Court under Reference (IT) NO. 2/2018. The inquiry conducted against the opponent is not legal, fair and proper. The union gave a call for stoppage of work by notice dated 30.11.2017 w.e.f. 02.12.2017 in respect of demand submitted by the union. If that being deposition according to the management it amounts to illegal strike assuming without admitting that stoppage of work amounts to strike, then it will not amount to absenteeism without a leave and thereby will not amount to a misconduct for remaining absent. The inquiry conducted against the principles of natural justice. The findings of the Inquiry Officer are worst than

perverse. The punishment of dismissal for misconduct of remaining absent is absolutely absurd. The action of company dismissing 236 employees by same charge-sheet is absolutely illegal and void-ab-initio. Lastly, the opponent craved to reject the application.

4. In order to establish the legality and fairness of the inquiry, the applicant company has relied upon the documents at Serial Nos. 1 to 3 below list Exh. C-3 and Serial Nos. 1 to 3 below list Exh. C-9. The applicant company has filed photo copy of all documents of domestic inquiry.

5. The learned counsel for the opponent has submitted written notes of argument on the preliminary issues vide Exh. U-12. Heard the learned counsel for the applicant. Perused the record.

6. This Court has framed following issues at Exh. O-2. The Issue Nos. 1 and 3 are treated as preliminary issues. I have reproduced the same and answered each of them with reasons as follows :

<u>PRELIMINARY ISSUES</u>	<u>FINDINGS</u>
1. Whether the applicant proves that the enquiry conducted against the opponent is legal, fair and proper ?	In the affirmative.
2. Whether the findings of the Enquiry Officer are not perverse ?	In the affirmative.
3. What order ?	As per final order.

REASONS

As to Preliminary Issue Nos. 1 and 2 :

7. While deciding preliminary issues pertaining to fairness of inquiry and perversity of findings, this Court has to scrutinize the record and proceedings of inquiry only.

8. Cautious scrutiny of the inquiry papers below Exhs. C-3 and C-9 as well as the total compilation of inquiry proceedings, it appears that on 06.02.2018, charge-sheet was issued to the opponent for committing act of misconduct i.e. unauthorizedly remaining absent without prior sanction for leave from 02.12.2017 to 16.01.2018 without justifiable reasons. On 09.02.2018, the opponent has filed his reply to the charge-sheet and denied the charges. On 14.04.2018, the company has appointed Shri. Mukund Kulkarni as Inquiry Officer. On 14.04.2018, notice was issued to the opponent and directed him to remain present to face the inquiry on 21.04.2018. The opponent accepted the charge-sheet dated 06.02.2018 on 07.02.2018. On 21.04.2018, the opponent sought permission for appointment of defence representative. The applicant company has examined its witness Tushar Kulkarni. The defence representative cross examined the witness of applicant company in detail. On the other hand, the opponent Kiran Shivaji Daphal has examined himself and his three witnesses viz. Mr. Santosh Gaikwad, Sudheer Bhujbal and Kishore Ghule. The opponent has filed defence statement. The entire inquiry proceedings and documents on record shows that the Inquiry Officer has followed the principles of natural

justice. Fair and ample opportunity to defend himself was given by the Inquiry officer to the opponent. Neither the inquiry was conducted in haste nor opportunity to cross examine the witnesses and to lead the evidences was rejected. As such, the inquiry conducted against the opponent is fair and proper.

9. The learned counsel for the applicant company Shri. Vaidya vehemently argued that the documents, evidence, which was not adduced during the inquiry cannot be produced before the Court to prove the perversity of findings of the inquiry. Therefore, whatever submissions made in written notes of argument (Exh. U-12) cannot be accepted as evidence while deciding the fairness of inquiry and the findings of the Inquiry Officer. In support of his argument, he relied upon the verdict of Hon'ble Bombay High Court reported in 2014 I CLR 878 in the case of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Nagpur through its Mg. Director & Anr. Vs. Vasant Ambadas Deshpande, Nanded, wherein the Hon'ble High Court observed that, *"Perversity in the findings of an Enquiry Officer is to be pointed out on the basis of the evidence placed before the Enquiry Officer. It, therefore, necessarily needs the consideration of the evidence before the Enquiry Officer and analyzing the findings of the Enquiry Officer. Material which was not before the Enquiry Officer can not be brought on record before the Labour Court to brand the findings as being perverse. In fact, normally there is no requirement of leading fresh evidence before the Labour Court on such preliminary issues like fairness of an enquiry and the findings of an Enquiry Officer. In both these situations, what has transpired in the domestic enquiry is*

to be looked into to find out, firstly, whether principles of natural justice were adhered to in conducting the enquiry and secondly, whether there was any evidence on record to support the findings or as to whether the findings are based on no evidence.”

10. The ratio laid down in aforesaid cited case law is squarely applicable to the case in hand. Though the opponent has tried to bring new material on record vide Exh. U-12, it cannot be looked into to find out the fairness of inquiry and findings of the Inquiry Officer are perverse.

11. The learned counsel for the opponent submitted vide Exh. U-12 that the opponent as well as the union has tried to contact management and demanded equity shares vide letter dated 16.08.2017. Instead of accepting the demand of workmen, the applicant company has neglected it and not paid wages and legal dues on equal footing to all workmen. The union had issued letter dated 30.11.2017 for stoppage of work from 02.12.2017. The applicant company has neither declared the stoppage of work as illegal nor obtained any order from the competent court. This shows that the applicant company has accepted the stoppage of work. The opponent resumed duty on 17.01.2018 with security / undertaking without accepting it the applicant company has issued false charge-sheet. No opportunity was given to the opponent to defend himself and without conducting fair and proper inquiry, the opponent is terminated.

12. Except the written notes of argument at Exh. U-12, nothing is brought on record from the documents of the inquiry proceedings that the inquiry was conducted in haste and bias manner. Therefore, I found no substance in the argument of the opponent counsel.

13. The learned counsel for the applicant company submitted that in his argument vide Exh. U-12, the opponent has accepted that the applicant company has conducted the inquiry. The opponent has received the charge-sheet. He has filed his defence statement, examined three witnesses. Therefore, the admitted facts need not be proved. In support of his argument, he relied upon the verdict of **Hon'ble Supreme Court of India reported in 2005 (1) LLN 643 in the matter between Vice Chairman Kendriya Vidyalaya Sangathan & Anr. Vs. Girdharilal Yadav** wherein the Hon'ble Constitution Bench of Apex Court observed that, *"In terms of Section 58 of the Evidence Act 1872 facts admitted need not be proved. It is also a well settled principle of law that the principles of natural justice should not be stretched too far and the same cannot be put in a straight jacket formula."*

14. The ratio laid down in the case cited supra is applicable to the case in hand because once the inquiry is admitted and the opponent has actively participated in the inquiry, he cannot subsequently deny that no opportunity was given to him to defend himself. Perusal of record, it appears that the applicant company has examined one witness. On the other hand, the opponent has examined three witnesses. This shows that fair and ample

opportunity was given to the opponent and the Inquiry Officer has strictly adhered to the principles of natural justice.

15. The learned counsel of the applicant further submitted that the procedure under Section 33(2)(b) is of summary nature and the Court has to see whether the domestic inquiry is conducted properly or not and the principles of natural justice are followed properly by the Inquiry Officer or not. The Court cannot go beyond the record of inquiry proceedings. In support of his argument, he relied upon the verdict of Hon'ble Supreme Court of India reported in **John D'Souza Vs. Karnataka State Road Corporation** wherein the Hon'ble Apex Court held that, *"The proceedings under Section 33(2) (b) are summary in nature. The scope of inquiry by Labour Court / Tribunal is in two phases first it has to satisfy on the basis of record of domestic inquiry that same conducted properly in compliance with principles of natural justice and prima facie case of discharge / dismissal made out and punishment does not amount to unfair labour practice and victimization. Second only when the Labour Court / Tribunal points domestic inquiry suffers from inherent defect or infirmity, it has to come to its conclusion on assessment of evidence adduced by parties. Standard of proof required is preponderance of probability and not proved beyond all reasonable doubt."*

16. The verdict of Hon'ble Apex Court serves a critical reaffirmation of the limited and specialized role of this Court under Section 33(2)(b) of the I.D. Act. This Court has to confine its inquiry to the fairness of domestic inquiry and existence of prima facie case.

17. The rule of evidence strictly not applicable as contemplated under the provisions of Indian Evidence Act to the domestic inquiry. The material before the Inquiry Officer and the evidence of both the parties adduced during the inquiry shows that the Inquiry Officer has come to reasonable and logical conclusion of the guilt of opponent. The findings drawn by the Inquiry Officer are based on the evidence laid in the inquiry. The decision is arrived at on the basis of evidence which is reliable. The view taken by the Inquiry Officer is possible view on the basis of evidence on record.

18. Perusal of the inquiry papers, it appears that the management has examined one witness who has unequivocally deposed that the opponent unauthorizedly remained absent since 02.12.2017 till 16.01.2018. This evidence is direct evidence. The witness is responsible person and claiming to be eye-witness of the incident. The absence from the work without prior intimation is not denied by the opponent. His defence is that he went on stoppage of work by issuing letter dated 30.11.2017. It was the decision of the union. The specific defence of opponent is that, it is neither illegal strike nor unauthorized absenteeism. It was stoppage of work. However, nothing is brought on record to disbelieve the evidence of witness of applicant.

19. The opponent has examined three witnesses in addition to him. However, no material brought on record to show that the absence of opponent from 2.12.2017 was legal and proper. The Inquiry Officer has categorically dealt with the evidence of all

witnesses and considered the material questions asked in cross examination to these witnesses. Near about 121 questions were put to the witness of applicant. On the basis of this evidence, the Inquiry Officer arrived at the conclusion that misconduct alleged against the opponent is duly established.

20. The Inquiry Officer has discarded the theory put-forth by opponent as defence in the inquiry. The conclusion of Inquiry Officer appears to be arrived on the basis of material which is submitted before him. The evidence which is reliable is considered. Therefore, the findings of the Inquiry Officer cannot be treated as perverse. The interference at the hands of this Court in the said findings is not required.

21. The material placed before this Court i.e. the documents of domestic inquiry prima facie establishes the misconduct of the opponent. The Inquiry officer has rightly relied upon the said material and reached to the proper decision. As such, said finding is not drawn without evidence on record. The findings of the Inquiry officer are fair and proper. Hence, I answer Preliminary Issue Nos. 1 and 2 in the affirmative.

22. Hence, I pass following order :

ORDER

1. Inquiry conducted against Kiran Shivaji Daphal is legal, fair and proper.
2. The findings of the Inquiry Officer dated 25.10.2018 are not perverse.

3. No order as to costs.

Date : 06.02.2025

(Shri. S.M. Bukke)
MEMBER,
INDUSTRIAL COURT, PUNE.

Argued on : 06.02.2025
Order Dictated on : 06.02.2025
Order checked on : 06.02.2025
Order signed on : 06.02.2025

nsp/direct dictation