

MHLC060000422012



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Decided on : 21/03/2023
Period : 11Y/01M/25D

In the Labour Court, Mahad, District – Raigad
(J.O. Code MH01906)

Complaint (ULP) No.04/2012
Exh.O-14

Shri. Ramesh Tukaram Pote)
R/o at :- Mandava,)
Po.- Dhokavade,)
Taluka – Alibag, District – Raigad.) **Applicant**

Vs.

1. **Managing Director**)
Maharashtra State Co-operative)
Marketing Federation Ltd.,)
Kanmir House, near Masjid Station))
Mumbai 400009)
2. **Maharashtra State Co-operative**) **Respondents**
Marketing Federation Ltd.,)
Ramwadi – Pen, District – Raigad.)
Kanmir House, near Masjid Station))
Mumbai 400009)

Coram : P. M. Unhale, Judge, Labour Court, Mahad.

Appearance :

Mr. M. M. Golamde : Advocate for complainant.
Respondents : Exparte.

Judgment
(Delivered on 21/03/2023)

This is a complaint under section 28 read with Item I(a)(b)(f) & (g) of Schedule IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred as M.R.T.U. & P.U.L.P. Act).

Complaint can be summarized as under:-

02. The complainant was in employment of respondent as Assistant District Marketing Officer. He was charge-sheeted with the allegation as follows;

i) During period 30/07/2005 to 05/04/2007 while he was working as District Marketing Officer, appointed Morba VKS Society Ltd. as Sub-agent for Mangaon Taluka to purchase grain under Grain Purchasing Scheme in the year 2005-06. Due to pilferage caused by the sake society and due to negligence of complainant, the federation suffered loss to the tune of Rs.1,17,80,671/-.

ii) Second charge was that though M/s. Swami Samarth Rice Mill, Pingalsai was not awarded any work of Milling the said society, for and on behalf of Roha Taluka Kharedi Vikri Sangh had purchased grains to the tune of 4622.54 quintal and it sold the grains directly. The value of said grains were to the tune of Rs.33,68,968/-. It was alleged that the complainant was aware about the said transaction, he did not lodge police complaint. As such, respondent suffered the loss to that extent.

03. It is contention of applicant that in pursuant to the charge-sheet, departmental inquiry was conducted against him for alleged misconduct. However, without furnishing copy of findings of inquiry, complainant was dismissed by order dated 19/11/2011. The copy of findings was served to him subsequently. It is contention of complainant that the inquiry was farce. No fair opportunity was given to him. The Inquiry Officer not followed the principle of natural justice. Findings of Inquiry Officer are perverse. Disciplinary Authority while disagreeing with the findings of Inquiry Officer not issued the notice to the complainant. It has not properly considered the evidence on record. The punishment of dismissal of complainant from service is shocking disproportionate to the alleged misconduct. Thus, respondents engaged in unfair labour practice.

04. Respondents earlier had appeared in the proceeding and raised an objection that the complainant is not workman. Consequently, my learned predecessor framed issues on the point of workman. After considering the evidence of the parties, my learned predecessor by judgment and order dated 01/10/2014 dismissed the complaint observing that complainant is not a workman, and the complaint is not maintainable.

05. The said order was challenged by respondent before the Hon'ble Industrial Court, Thane in Revision U.L.P. No.32/2015. The Hon'ble Revision Court by it's order

and judgment dated 17/06/2017 set aside the order of this Court observing that the complainant is a workman within meaning of section 2(s) of Industrial Dispute Act, 1947. Thus, directed this Court to decide the complaint in accordance with the law within one year from the date of receipt of order. The Hon'ble Revision Court had also directed the parties to appear before this Court on 11/08/2017. But inspite of directions, respondent failed to appear before this Court. Thereby Court on it's own motion had also issued notice of appearance to respondent. Despite receipt of notice, respondent did not appear in the proceeding. Thereby, my learned predecessor proceeded the complaint ex-parte against respondent. Lastly by judgment and order dated 10/04/2018, allowed the complaint declaring that respondent committed an unfair labour practice against the complainant under items No.1(A), 1(B), 1(F) & 1(G) of Schedule IV of M.R.T.U. & P.U.L.P. Act with direction to cease and desist from engaging in such unfair labour practices and set aside the punishment of dismissal from service with direction to reinstate the complainant in service with continuity from 19/11/2011 and pay full back wages to him.

06. The said judgment and order was challenged by respondent before the Hon'ble Industrial Court in Revision U.L.P. No.104/2018. The Hon'ble Revisional Court by judgment and order dated 25/04/2019 observing that *"there is no pleading of the complainant that he was not in*

gainful employment during the relevant period, thereby reinstatement should not be with full back wages” quashed and set aside, judgment and order dated 10/04/2018 of this Court. And remanded back matter to this Court for deciding it afresh as per law giving an opportunity of hearing/leading evidence to both the sides. The Hon’ble Revisional Court had also directed parties to appear before this Court on 03/06/2019. But again respondent did not respect the order of the Hon’ble Revisional Court by not appearing before this Court on given dates i.e. on 03/06/2019. Thereby this Court again on it’s own motion issued a notice to respondent to appear and process the complaint. But despite receipt of notice, respondent did not appear. Consequently, by order below Exh.U-1 dated 02/12/2019, complaint was proceeded ex-parte against respondent.

07. Considering pleadings of the complainant, my learned predecessor framed issues at Exh.O-9. Same are reproduced as follows to which I have recorded my findings with reasons given below:-

Sr. No.	Issues	Findings
1	Whether inquiry conducted against the complainant is fair and proper and in accordance with the principle of natural justice ?	No.
2	Whether the findings of Inquiry Officer are perverse ?	Does not survive.
3	Whether the punishment of dismissal from service is shockingly	Does not survive.

	dispropornionate ?	
4	Does the complainant prove that respondents have engaged in unfair labour practice ?	Yes.
5	Is complainant entitled for reinstatement in the service with full back wages and continuity of service ?	Yes.
6	What order ?	As per final Order.

Reasons

08. To substantiate claim, complainant filed his affidavit of examination in chief at Exh.U-3 and closed his evidence by pursis at Exh.U-34. Since the complainant proceeded ex-parte against respondent, there is no evidence on it's behalf. Heard learned advocate Mr. S. M. Golambe for complainant at length.

As to issue No.1

09. The complainant alleged that he was not supplied with inquiry report. Inquiry Officer was not impartial and he was not allowed to appoint the pleader for his defense. Having gone through the inquiry report, it is seen that the complainant participated in the inquiry and cross-examined respondent witnesses. The Inquiry Officer held him not guilty for the first charges and recommended for lieant while awarding the punishment to the complainant. If these aspects are considered, the allegation of complainant that Inquiry Officer was partial does not hold any water.

10. The complainant also alleged that he was not allowed to appoint the pleader for his defense. However, rule 36(1) of Service Conduct Rules under part III of Employees Service Rules for respondent federation, prohibits appointment of legal practitioner for inquiry. The employee can present it's defense of the case with the assistant of any other employee. Here in the case in hand, complainant even cross-examined the witnesses and at no point of time not raised said defense. Thus, if these aspects are considered, I do find no merits in the allegation of complainant that he was not allowed to appoint the pleader for it's defense.

11. The another allegation of complainant is that he was not supplied with the inquiry report. Record speaks that the complainant was dismissed on 19/11/2011 and he was supplied with inquiry report on 17/01/2012. Thus, it manifest that inquiry report was not supplied to the complainant prior to his dismissal from service. Now it has to be seen that whether non supply of inquiry report can be the ground to held inquiry improper ?. Advocate for complainant submitted that due to non supply findings of Inquiry Officer, complainant caused with great prejudice as he could not show his innocence and had no opportunity to deal with the disagreement with findings of Inquiry Officer. Evidence on this aspect was not challenged by respondent. In support of this submission, learned advocate cited judgment in the case of *Sudhakar Nilaba Naik & others Vs. Prabhakar Sinari & others 1969 Lab. I.C. 1441 (Vol.*

2, C.N. 321) wherein the Hon'ble High Court held that *“the disciplinary authority while serving show cause notice on the delinquent, servant as to why he should be removed from service is bound by law to supply the delinquent servant, the copy of the report of findings of inquiry authority as required by the provision of R. 15(4)(i)(a). The failure to supply such copy of report amounts of not giving reasonable opportunity of making a representation on the proposed penalty of removal, therefore, is in contravention of article 311(2) of Union Constitution and Central Civil Services (Classification Control and Appeal) Rules 1965”*.

12. In addition to above cited judgment, I find it useful to refer the judgment in the case of ***Punjab National Bank & Ors. Vs. Kunj Bihari AIR 1988, S.C. 2713***, wherein the Hon'ble Supreme Court held that, *“according to the Constitution Bench decision in Karunkar case, a delinquent officer is entitled to represent to the disciplinary authority where the finding in the enquiry report are against him. It will not therefore stand to reason that when the findings are in favour of the delinquent officer but they are proposed to be overturned by the disciplinary authority then no opportunity should be granted. According to Karunkar case, disciplinary enquiry is divided into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of evidence, enquiry officer's report and the delinquent employees's reply to it. The second stage begins when the disciplinary authority decides to impose*

penalty on the basis of its conclusions. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the Enquiry Officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard, for otherwise he would be condemned unheard. In departmental proceeding what is of ultimate importance is the finding of the disciplinary authority”.

13. Here in the case in hand, disciplinary authority not agreed with the findings of Inquiry Officer and directly issued notice dated 23/03/2009 (Exh.U-23) in respect of proposed punishment. As such, disciplinary authority not issued show cause notice to the complainant mentioning so called reason as to disagreement with the findings of Inquiry Officer in respect of charge No.1 which was held not proved by Inquiry Officer.

14. In the judgment of Punjab National Bank, the Hon'ble Supreme Court observed that “whenever

disciplinary authority disagree with the Inquiring Authority of any article of charge then before it's record with findings on such charge, it must record it's tentative reason for such disagreement and give delinquent officer an opportunity to represent before it records with findings. The report of inquiry officer containing it's findings will have to be conveyed and delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion. The principle of natural justice requires that the authority which has to take final decision and can impose penalty, to give an opportunity to the officer charge of the misconduct to file the representation before the disciplinary authority record it's findings on the charges framed against the officer".

15. Here in the case in hand, it is not in dispute that the Inquiry Officer recorded the findings of charge No.1 i.e. charge of negligence and dereliction duties. He also exonerated the complainant from second charge partly. But disciplinary authority has turned the findings of Inquiry Officer. Record shows that disciplinary authority not assigned any special reason for disagreement with the Inquiry Officer and held that the complainant is responsible officer and is guilty for alleged misconduct. Having considered discussed aspects, it is observed that the departmental inquiry conducted against the complainant is vitiated on account of not following the principle of natural justice. Resultantly, issue No.1 is answered in negative.

As to issues No.2 & 3:-

16. In view of findings of issue No.1, issues No.2 & 3 does not survive for consideration. Thus, issues No.2 & 3 answered accordingly.

As to issue No.4:-

17. Answering issue No.1, it has been observed that the inquiry conducted against the complainant is against the principle of natural justice. The complainant in his affidavit of examination in chief (Exh.33) reiterated the contents of complaint at Exh.U-1 alleging that the respondent engaged in unfair labour practice under items No.1(a), 1(b), 1(f) & 1(g) of Schedule IV of M.R.T.U. & P. U.L.P. Act. He has also stated that since the date of termination, he is unemployed. He tried to get job with other employer. But due to termination of his service for alleged misconduct, he could not get the employment anywhere. After termination of his service, he along with his family are starving.

18. As stated earlier, complaint proceeded ex-parte against respondent. Even after passing ex-parte order, respondent did not care to appear and file it's defense on record. Thus, evidence of complainant remained unchallenged on behalf of the respondent. I do not find any reason to disbelieve the complainant's evidence. Thus, it is observed that the complainant has been able to establish that respondent has engaged in an unfair labour practice as alleged. Resultantly, issue No.4 is answered affirmative.

As to issue No.5:-

19. Discussing issue No.1, it has been observed that inquiry conducted against complainant is not in accordance with the principle of natural justice. While answering issue No.4, it has been held that the respondent engaged in an unfair labour practice as alleged. Even the evidence of complainant that he was unemployed since the date of termination, he was and is not in gainful employment till date remained unchallenged. Having considered these aspects, it is observed that the complainant is entitled for reinstatement in service with full back wages. Consequently, issue No.5 is answered in affirmative.

As to issue No.6:-

20. In result of findings to issue Nos.1 to 5, following order.

ORDER

1. The complaint is allowed.
2. It is hereby declared that respondent has committed an unfair labour practice under Item 1(a),(b),(f) & (g) of Schedule IV of the M.R.T.U. & P.U.L.P. Act and directed to cease and desist from engaging in such unfair labour practice.
3. Punishment of dismissal of complainant from service is hereby set aside.

4. Respondent is directed to reinstate the complainant in service with continuity of service with effect from 19/11/2011 and pay full back wages to him.
5. In peculiar facts and circumstances of the case, no order as to costs.
6. Order is enforceable from today.
7. Order be published on notice board of this Court vide Rule 69 of the Labour Court (Practice and Procedure) Rules 1975.
8. Pronounced in open Court.

Place: Mahad
Date : 21/03/2023

(P. M. Unhale)
Judge, Labour Court, Mahad
District – Raigad

Argued on : 02/03/2023
Dictated & typed on : 21/03/2023
Checked & Signed on : 23/03/2023