



Received on :- 30.06.2020
Registered on :- 03.07.2020
Decided on :- 16.02.2023
Duration :- 02Y; 07M; 17D.

THE COURT OF LABOUR COURT NO. II, KOLHAPUR
AT - KOLHAPUR
(Presided over by – Archana G. Behere)
(JO Code – MH-1873)

Complaint (ULP)No. 20/2020
CNR No. MHLC090003002020
Exh. No. O -

Amar Sanjay Patil

Age : 27 Years, Occupation : Nil,
R/o. A/p. Koregaon, Tal. Walva,
Dist. Sangli.

... Complainant

Versus

Gnat Engineering
A-31/2, M.I.D.C. Shirol, Kolhapur
(Through its authorized signatory)

... Respondent

APPEARANCES :-

Mr. V. S. Chavan, Ld. Adv. for Complainant.

Mr. A. T. Vaze, Ld. Advocate for Respondent.

: JUDGMENT – PART I :

(Delivered on this 16th day of February, 2023)

1. Being aggrieved with termination of his services, complainant has filed present complaint under Section 28 read with Schedule-IV, Item No. 1 (a), (b), (d), (f) & (g) of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. According to complainant, respondent is a proprietary firm doing job work. Complainant was working with respondent since 2014

as skilled employee. He was working as per the directions of senior officers. As there was difference in the nature of work of complainant and the wages paid to him, he had filed complaint before Hon'ble Industrial Court for wages of skilled work. Out of misunderstanding and with mala fide intention, complainant was served with charge-sheet dt. 26/02/2019 and departmental inquiry was conducted against him by appointing independent inquiry officer. Complainant had submitted his written explanation to charge-sheet on 20/03/2019 and denied all the charges leveled against him. Prior to serving charge-sheet, complainant was suspended from service as per order dt. 22/01/2019 without giving him any prior notice. The inquiry was conducted against complainant without following principles of natural justice. All the charges leveled against complainant are baseless. Without there being any evidence to prove charges leveled against complainant, inquiry officer has wrongly recorded his findings in favour of respondent and has acted as an agent of respondent. Without considering complainant's reply and request to allow him to join his duty, enquiry officer has submitted his report dated 09/03/2020. Respondent has terminated services of complainant as per order dated 13/05/2020. The enquiry officer as well as respondent have not followed principles of natural justice. Alleged inquiry is illegal and findings drawn by enquiry officer are perverse and even then respondent has terminated services of complainant. Thus, respondent has indulged into unfair labour practices. Therefore, complainant is constrained to file present complaint.

3. Respondent filed its written statement at Exh. C-4 and denied all the contentions of complainant. According to it, the complaint is false, frivolous and misconceived. On 15/01/2019 while working in night shift, complainant had unauthorisedly entered in the cabin of owner, had taken photographs of some files, had slept during working hours. Thus, complainant has breached the discipline

and has committed misconducts. Therefore, complainant was suspended from service as per order dt. 22/01/2019. In reply thereto complainant has not uttered a single word about the misconducts alleged against him. Thereafter, charge-sheet dated 26/02/2019 was served upon him and departmental inquiry was initiated against him. Complainant appeared in that proceeding alongwith his advocate. Full fledged inquiry was conducted against complainant by appointing independent inquiry officer. Fullest opportunity was given to complainant to cross examine witnesses examined by respondent. So also opportunity to lead evidence was also given to complainant. After assessing entire evidence on record, the inquiry officer found that the misconducts charged against complainant are duly proved. Accordingly, the inquiry officer has submitted his report dt. 09/03/2020. Complainant's explanation thereon was called thereon. But complainant failed to reply. As the misconducts of complainant are proved, complainant is dismissed from service as per order dt. 13/05/2020. Said order is just, proper and legal. Respondent has not engaged in any unfair labour practices as alleged or otherwise. Therefore, respondent has prayed for rejection of complaint.

4. In view of rival pleadings, following preliminary issues are framed at Exh. O-3, to which findings are recorded alongwith reason given below :-

<u>SR. NO.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
(1)	Whether enquiry conducted against complainant is in utter disregard of principles of natural justice ?	No
(2)	Whether findings of enquiry officer are perverse ?	No

-: REASONS :-

AS TO ISSUE NOS. 1 & 2 :-

5. Procedure for carrying out domestic inquiry has not been prescribed under any statute or notification and has been evolved

through practice and judicial precedence. It is well settled principle of law that unless following points are not fulfilled the enquiry conducted cannot be said to be legal and proper :-

- i) the inquiry should be fair, impartial and should not be conducted in undue haste
- ii) person issuing charge sheet has authority to issue the same
- iii) the employee proceeded against has been informed clearly of the charges levelled against him and there should not be any ambiguity
- iv) opportunity must be given to employee of being defended by the person of his choice
- v) witnesses are examined ordinarily in the presence of the employee – in respect of charges
- vi) the employee is given fair opportunity to cross examine witnesses
- vii) the employee is given a fair opportunity to examine witnesses including himself in his defence and to produce relevant documents
- viii) the inquiry officer must be an independent person and
- ix) the enquiry officer must record his findings, alongwith reasons, on some evidence.

6. From the same it is manifest that the departmental/domestic enquiry must be conducted strictly in adherence with the rules of natural justice. Fair opportunity and fair trial are elements of principles of natural justice. If above quoted legal mandates are not strictly followed then it can be construed that the principles of natural justice are not followed, invalidating the whole enquiry.

7. On this backdrop of settled legal propositions, facts of present matter must be scrutinised. Admittedly, complainant was served with charge-sheet dated 26/02/2019 alleging breach of discipline, dishonesty etc. In complaint itself, complainant has contended that he has submitted his reply to charge-sheet on

20/03/2019. Thus, it is clear that complainant had received copy of charge sheet and he was given opportunity to submit his reply thereto. It is not the contention of complainant that due to vagueness, he was unable to understand charges leveled against him and therefore, could not have given proper reply. From the perusal of inquiry proceeding it is clear that charges leveled against complainant are specific and to the point. Charge-sheet is not obscure.

8. Admittedly, complainant was working with respondent. Thus there is no dispute regarding employer-employee relationship between respondent and complainant. The authority of respondent of issuing charge-sheet is not at all challenged by the complainant. It is not the case of complainant that the respondent was having no authority to issue charge-sheet against him. Hence, question of raising any doubt upon the authority of employer does not arise. By relying on admission of respondent's witness Sagar Powar that respondent is a private limited company, Ltd. Advocate for complainant has argued that the charge-sheet signed by the proprietor is not legal. However, respondent has produced xerox copy of its GST Registration Certificate to show that it is a proprietorship. Therefore it cannot be said that charge-sheet signed by proprietor is illegal.

9. From perusal of inquiry proceeding it is clear that charge-sheet dated 26/02/2019 was served upon complainant. He had filed his reply thereto on 20/03/2019. Admittedly, complainant had appeared and participated in inquiry proceedings. During said inquiry complainant has appointed Adv. Shri. V. S. Chavan. From the same it is clear that, complainant was given opportunity to defend himself through the person of his own choice. So also respondent has appointed Adv. K. T. Vaze. Adv. Shri. S. C. Patil was the inquiry officer and respondent has examined two witnesses in inquiry proceeding. Complainant was given fullest opportunity to cross-examine

respondent's witnesses. So also opportunity to lead defence evidence to substantiate his defence was given to complainant. Accordingly, complainant has examined himself in inquiry proceeding. Thus, it is clear that, after giving fullest opportunity to both sides, inquiry is conducted on merit. Actual inquiry proceeding commenced on 25/04/2019 and inquiry officer submitted his report on 09/03/2020. From the same it is clear that, there is no haste on the part of enquiry officer. Thus, it can be gathered that the delinquent employee i.e. complainant was given fair opportunity to participate in the enquiry proceeding.

10. In case of *U.P.S.R.T.C. V/s .R.Yadav (2000 III CLR 27)*, it is held that "Rules of natural justice are not embodied rules and it is sufficient if the delinquent employee knew nature of accusations and he was given opportunity to state his case." Applying similar legal proposition in present case too the complainant was made aware about the charges specifically. He was given chance to put forth his case and defend the charge. It is not the contention of complainant that, during inquiry proceeding he was not supplied with copies of documents relied upon by respondent. Therefore, it can not be held that rules of natural justice are not duly followed with. Consequently, it cannot be said that there is even slight violation of principles of natural justice in holding impugned enquiry. Thus, all the above legal formalities are fairly complied in its true sense.

11. From the perusal of record it is clear that during inquiry respondent has examined witness Shri. Sagar Powar who is working as supervisor with it and was on duty at the relevant time. He has specifically stated on oath that at the relevant time he found that complainant and Solankure were not present at their work place, when he was going to search them he saw some suspicious movement in owner's cabin, so he went there and found that complainant and

Solankure were taking photographs of some documents. He has further contended that he took their photographs in his mobile and asked them to go to their work. He has further contended that, again at 1 to 2 a.m. he found that complainant and Solankure were slept in owner's cabin, had switched on air conditioner etc., again he took their photographs. His oral testimony is duly corroborated by the photographs, attendance register, in-out register etc. documentary evidence produced before inquiry officer. Likewise the respondent has examined Shri. Sachin Kale who is working as Manager H. R. with it.

12. From thorough perusal of cross-examination taken by complainant's advocate it is clear that he has failed to impeach the credibility of statement on oath of respondent's witnesses. Merely because no evidence is produced to prove that at the relevant time any production loss has occurred, it cannot be said that he is deposing false that complainant has left his work place and complainant is justified in unauthorisedly using owner's cabin. So also merely because no evidence is brought on record to show for what purpose complainant has misused said photographs, it cannot be said that complainant is justified in unauthorisedly entering into owner's cabin, taking photographs of documents.

13. Moreover, in his affidavit of examination-in-chief filed before inquiry officer, complainant has merely denied to have committed any misconduct. During his cross-examination firstly he tried to deny presence of supervisor Shri. Sagar Powar in third shift, but later on when he was confronted with attendance register and in-out register, he has admitted that on 15/01/2019 when he was working in third shift, Sagar Powar was present. Further he has clearly admitted that his place of work is one and the same and he do not require to wander anywhere. He has further admitted that place of work cannot be left without prior permission of supervisor. When he

was confronted with his photographs, he has replied that he cannot tell of which documents he was taking photographs. (चौकशीकामी नि. क. ८ (४) वर दाखल केलेले माझे फोटो आता मला दाखविले ते पाहून सांगतो की, मी व श्री. श्रीमंधर सोळंकरे दि. १५.०१.२०२० रोजी रात्री मालकांच्या केबिनमध्ये जावून कोणत्या कागदपत्रांचे फोटो घेत होते हे मी सांगू शकत नाही.). He has further replied that he cannot tell as to why he and Solankure had gone to owner's cabin on that day. (सदर दिवशी मी व श्री. श्रीमंधर सोळंकरे कामाची जागा सोडून मालकांच्या केबिनमध्ये का गेलो होतो हे मला सांगता येत नाही.). He has further answered that he did not know whether he and Solankure left when they came to know that supervisor Sagar Powar had seen them while taking photographs of documents. (तुम्ही व श्री. श्रीमंधर सोळंकरे मालकांच्या केबिनमध्ये जावून काही कागदपत्रांचे फोटो घेत असल्याचे सुपरवायजर श्री. सागर पोवार यांच्या निदर्शनास जाणीव झाल्यानंतर त्या ठिकाणाहून तुम्ही व श्री. श्रीमंधर सोळंकरे लगेच निघून गेला - मला याबाबत माहिती नाही.)

14. In such circumstances inquiry officer's reliance on testimony of respondent's witnesses appears to be quite reasonable and proper. Therefore it cannot be said that inquiry officer has wrongly relied upon oral as well as documentary evidence produced by respondent. From perusal of enquiry officer's report it is clear that enquiry officer has considered oral as well as documentary evidence thoroughly. Complainant has failed to discredit oral as well as documentary evidence produced by respondent. Inquiry officer could not find out any reason to disbelieve the oral as well as documentary evidence produced by respondent and comes to the conclusion that complainant is guilty of misconducts charged against him. In such circumstances it cannot be said that inquiry officer has not applied his mind while appreciating evidence. Therefore, ratio laid down in *Association of Engineering Workers vs. Hindustan Motor Manufacturing Company - MANU/MH/0264/2004, Anil Kumar vs.*

Presiding Officer - MANU/SC/0207/1985, Khardah Co. Ltd. vs. Their Workmen - MANU/SC/0155/1963 etc. relied upon by Ld. Advocate for complainant is not applicable to the facts of present complaint.

15. Therefore, approach of the inquiry officer appears not to be unreasonable or perverse. The findings are based on sufficient documentary as well as oral evidence on record. In service law, the standard of proof is not proving anything beyond reasonable doubt but the findings of enquiry proceeding must be based upon preponderance of probabilities and strict rules of law of evidence are not applicable. In evidence, there may be either no evidence or there is some evidence. If earlier is prevailed then certainly entire course of enquiry gets vitiated, however, if later is followed it cannot be construed that the findings are utmost perverse. From the above discussion it is clear that in present matter there is enough evidence attracting alleged misconduct against complainant. Aforesaid evidence is acceptable and it is not the position that there is no evidence at all against the complainant. In the event, it is not open for this court to doubt evidence which is acceptable on the preponderance of probabilities. Ultimately, there was some evidence available to enquiry officer to raise the probabilities and render his findings against the complainant. It cannot be said that the enquiry officer had misdirected himself while assessing the evidence and other material before him. It is settled position of law that judicial authority cannot sit in appeal over the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are such which would be drawn by man of an ordinary prudence, such findings are not to be interfered by the judicial authority. In present matter, there is no extraordinary reason to interfere with the findings recorded by the enquiry officer as they do not exhibit any perversity or impropriety. Findings of enquiry officer are based upon sound evidence and justifiable grounds.

16. From the above discussion it is eminent that the enquiry officer has considered all evidence in complete perspective. The evidence is reasonably assessed and thereafter the enquiry officer has substantiated the finding. The enquiry officer was within his empowerment. Ultimately, it reveals that findings are not perverse. Therefore, issue nos. 1 and 2 are answered accordingly and following order is passed :

: ORDER :

1. The enquiry conducted against the complainant is in consonance with principles of natural justice and is legal.
2. The findings recorded by enquiry officer are just and proper without there being any perversity.

Kolhapur
Date :- 16.02.2023

(A. G. Behere)
Judge,
Labour Court No. II, Kolhapur

Argued on :- 02.02.2023
Judgment Dictated on :- 16.02.2023
Judgment transcribed on :- 16.02.2023
Judgment checked & signed on :- 16.02.2023