



Received on :- 30.07.2020  
Registered on :- 30.07.2020  
Decided on :- 29.10.2020  
Duration :- 02 M.29 D.

**IN THE COURT OF LABOUR COURT NO. II, KOLHAPUR**

**AT - KOLHAPUR**

***(Presided over by – A. G. Behere)***

**Complaint (ULP)No.24/2020**

**CNR No. MHLC090003122020**

Shri. Sagar Shankar Devkule,

Age : 35 Years, Occupation : Service

(Presently suspended)

R/o. A/p. Vadakshivale, Tal. Karveer,

Dist. Kolhapur.

... Complainant

**V/s**

Raymond Luxury Cottons Limited,

Plot No. T-5,

Kagal Hatkanangale Five Star Industrial Area,

Kasaba Sangaon, Tal. Kagal, Dist : Kolhapur

Through its H. R. Head.

... Respondent

**APPEARANCES :-**

**Mr. A. P. Chougule, Ld. Adv. for Complainant.**

**Mr. D. S. Joshi, Ld. Adv. for Respondent.**

**: ORDER BELOW EXH. U-2 :**

(Delivered on this 29<sup>th</sup> day of October, 2020)

1. Present application is filed for interim relief under Sec. 30(2) of the MRTU & PULP Act, 1971 to prevent proposed dismissal. Perused application and say. Perused documents on record. Heard Ld. Advocates for both sides.

2. According to complainant, he is working as a operator in yarn department of respondent. His service record is

satisfactory. On 25/05/2018 complainant was served with chargesheet and he was suspended pending inquiry by order dated 25/05/2018. It was alleged that on 22/04/2018 while complainant was working in general shift, Shri. Vivek Swami who was officer in P.P.C. section gave oral requisition about 40S single count soft material of 2009 kg. Said order was not posted or no e-mail of said order was sent. Thereafter, complainant posted that order and reduced said material from stock, however complainant failed to make entry thereof in GY-10 register. In spite of reduction in stock and sending material, it was alleged that said material was not received in yarn dyeing department. So also it was alleged that complainant had reduced material without order, complainant had made bogus entry of 2009 kg and misappropriated said material worth Rs. 6 lakhs. Complainant replied said chargesheet and denied all the charges leveled against him. During enquiry respondent has examined Shri. Sandip Jadhav, the head of Dyeing Yarn Godown Department of respondent and Shri. Vivek Swami, the officer of P.P.C. section. Respondent had issued chargesheets to Sandip Jadhav and Vivek Swami also and had conducted inquiry against them on the same issue. Both of them had given various material admissions during their cross-examinations. However, inquiry officer has not considered their evidence in proper perspective. There was no legal evidence at all in the inquiry from the management side. The enquiry conducted by respondent is not legal and proper. It is conducted in violation of principles of natural justice. The respondent has not examined material witnesses. Even then without application of mind inquiry officer has recorded findings in favour of respondent and submitted his report on 27/01/2020.

Finally, complainant was served with show cause notice of dismissal dt. 15/07/2020. Thus, respondent has engaged in unfair labour practices. Therefore, complainant is constrained to file present application for interim relief.

3. The respondent submitted its say at Exh. C-3 and have denied all the contentions of complainant. According to it, complainant is a technician in yarn godown department. Complainant was served with chargesheet dated 25/05/2018 to which he has replied on 08/06/2018. After considering the facts and circumstances chargesheet was amended to which complainant has replied on 03/12/2018. Without proper demand for 2009 kgs of yarn, complainant had debited the same in the records of yarn godown without sending the same and made false entries. Said yarn did not reach to dyeing department and it was not dyed and thus complainant has committed theft, dishonesty in the business of employer. Complainant has admitted said misconduct in writing dated 08/05/2018. Complainant also made false entry of dyeing yarn immediately on the date of dispatch i.e. on 22/04/2018 that too within two minutes. There was no e-mail nor the programme of dyeing of 2009 kgs of yarn from PPC department. Enquiry proceeding conducted against complainant was in accordance with principles of natural justice. Complainant was given fair opportunity to defend himself. The report of the enquiry officer is legal, fair and proper. Therefore, no interference is called for at this stage. Complainant has committed serious misconduct. Respondent has not engaged in any unfair labour practices as alleged. Therefore, it has prayed for rejection of application.

4. In view of rival pleadings, following points arise for determination, to which findings are recorded alongwith reasons given below :-

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether complainant has made out prima facie case in his favour ?	Yes
2)	Whether complainant proves that balance of convenience lies in his favour ?	Yes
3)	Whether complainant proves that he will suffer irreparable loss, if no interim relief granted to him ?	Yes
4)	What order?	As per final order

**-: R E A S O N S :-**

**AS TO POINT NOS. 1 TO 4 :-**

5. It is not seriously disputed that, complainant is working in respondent's yarn godown department as technician. Admittedly, complainant is not the head of yarn godown department. Admittedly, one Shri. Sushil Mirashi is the administrative head and one Shri. Tanaji Patil is the head of yarn godown department. Admittedly, Shri. Sandip Jadhav was the head of dying yarn godown and Shri. Vivek Swami is an officer in P.P.C. department of respondent. Admittedly, there is no SOP given or provided by respondent company or by any of it's department especially by yarn godown department. From the perusal of inquiry proceeding it is clear that there was usual practice in respondent company that yarn was being supplied on oral request and no receipt therefore was being issued. In it's say also respondent has admitted that rarely oral demand of yarn is made.

6. Admittedly, respondent had initiated departmental inquiry against complainant, Shri. Vivek Swami and Shri. Sandip Jadhav. It was alleged that on 22/04/2018 Shri. Vivek Swami entered the quantity of yarn material number SO92040031C in the system, verbally gave order SO92040031C to the complainant, intentionally failed to send e-mail, deliberately canceled the posting verbally and gave room for suspicion and opportunity to commit misconduct. It was alleged that on 22/04/2018 Shri. Sandip Jadhav was in charge of godown department and his subordinate Shri. Sagar Devkule i.e. complainant posted S50924040031C 40 single count soft material 2009 kg of yarn, the same was not recorded in GY-10 logbook nor in the YD-10 register, the yarn of 2009 kg though debited from the stock, did not reach to the dying department. It is alleged that Shri. Sandip Jadhav has failed to look and take follow up of the entry of debits and whereabouts of the yarn, which gave opportunity for the pilferage of 2009 kg of yarn amounting to Rs. 6 lakhs. Admittedly, Shri. Sandip Jadhav had resigned his job and therefore, enquiry against him is not proceeded further. Admittedly, inquiries initiated against complainant and Shri. Vivek Swami are complete and inquiry officer has submitted his reports to respondent. Admittedly, since issuance of chargesheet complainant is under suspension, however, till today Shri. Vivek Swami is on duty.

7. According to complainant, as per oral requisition made by Shri. Vivek Swami he has debited 2009 kgs of yarn from computer record and sent the yarn to dying department. Though it is the contention of respondent that said yarn did not reach dying department, by way of amended chargesheet respondent has alleged that said yarn was shown to be dyed in dying department

on the same day of dispatch i.e. on 22/04/2018 that too within two minutes. It is the further contention of respondent that said yarn was shown to be dyed in dying department by complainant by using email Id and password of dying department. However, said consumption is not reflected in yarn dying production register of dying department.

8. The crux of oral argument advanced by Ld. Advocate for respondent is that, according to respondent complainant adjusted short falls of material by making false entries in computer of godown department and e-mail ID of dying department, which is not the allegations reflected in chargesheet issued against complainant. If that been the reality, then the head of yarn godown i.e. Shri. Tanaji Patil and Shri. Sushil Mirashi are the most responsible persons for accepting less yarn than shown in record. The primary responsibility of any misappropriation that may take place in yarn godown is on them and the complainant, being their subordinate cannot alone be held responsible for the same.

9. Admittedly, to prove the debit of 2009 kgs of yarn from godown department, respondent is relying merely on computer entries. Complainant is not denying the fact that he has debited 2009 kgs of yarn from godown stock, has failed to make relevant entry thereof in concerned register. However, according to respondent said 2009 kgs of yarn though debited from stock of godown department, did not reach to the dying department and thus, complainant has committed theft, misappropriation, dishonesty etc. serious misconducts. Respondent's witnesses has admitted that Tanaji Patil used to do physical verification of yarn

in godown twice in the year and used to report to Sushil Mirashi. Said witnesses has further admitted that, Tanaji Patil used to make system entries of the yarn received in godown. Therefore it appears that, Tanaji Patil and Sushil Mirashi are mainly or equally responsible for alleged pilferage that had taken place in yarn godown. However, respondent had not taken any steps against them.

10. Admittedly, it is not the contention of respondent that said 2009 kgs of yarn was taken out of the company premises by complainant. Therefore if according to respondent yarn debited from computer stock in yarn godown department did not reach dying department, then it must be in yarn godown itself. But there is no verification report on record showing that in yarn godown there is actual short fall of 2009 kgs of yarn. Admittedly, complainant is not the only employee working in godown department and it is not the duty of complainant to transfer the yarn physically from godown to dying department. Admittedly, this work is being carried out by contract labour under the administrative supervision of Shri. Sushil Mirashi. So said Tanaji Patil, Sushil Mirashi and contract labour working in yarn godown department can be said to be the star witnesses. But respondent has failed to examine them during enquiry. So also there are chances that yarn might have reached in dying department, but workers therein had failed to take the same on record. There is no physical verification report on record to show that no excess yarn is found in dying department. In such circumstances, without there being any evidence of actual debit and non credit, it cannot be said that complainant has stolen the same or has misappropriated the same for his own use.

11. It must be noted that, respondent has issued chargesheet to complainant, Vivek Swami and Sandip Jadhav regarding same issue. Even then during the inquiry of complainant, respondent has examined Vivek Swami and Sandip Jadhav as the witnesses on it's behalf. The witnesses who themselves had been charged with misconduct, naturally will depose false so as to rescue themselves from the allegations. Therefore, so called evidence brought forth by respondent to discharge the burden of proving charges on preponderance of probabilities appears not to be sufficient and reliable.

12. By way of amended chargesheet respondent has alleged that said yarn was shown to be dyed in dying department on the same day of dispatch i.e. on 22/04/2018 that too within two minutes, by complainant by using email Id and password of dying department. However, there is no iota of evidence to show that said entry in e-mail ID of dying department also is made by complainant who is not working in dying department. There is no material on record to show that only complainant was knowing the password of e-mail ID of dying department, so that he could be held responsible for any entries made therein.

13. The grant or refusal to grant interim relief is covered by three well established principles viz. 1) whether complainant has made out prima facie case; 2) whether complainant would suffer irreparable injury in the absence of interim relief; and 3) whether balance of convenience lies in his favour. The burden to prove these three necessities lies on the person seeking interim relief. The court has to see whether the claim is bonafide and whether there is a fair and substantial question to be tried. While

determining whether a prima facie case had been made out the relevant consideration is whether on the evidence it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. All that the court has to see is that on the face of it the person applying for an interim relief has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. In arriving at the balance of convenience, the court has to weigh the mischief likely to be caused to the applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted. So also the court has also to consider as to whether grant or refusal to grant interim relief will cause any irreparable injury to party to the proceeding. The injury means a legal injury.

14. Complainant has alleged that respondent corporation has engaged in unfair labour practice and therefore, he is seeking interim relief. Therefore, it is incumbent on the part of complainant to made out some kind of unfair labour practice adopted by respondent corporation. According to complainant, the enquiry conducted by the respondent corporation is not legal and proper and it is conducted in violation of principles of natural justice. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All material which are logically probative for a prudent mind are permissible. Same ratio is laid down in *Lalit Popli V/s Canara Bank & Ors. - 2003(2) L.L.N. 313* and *G.M. (Operations) S.B.I. & Anr. V/s R. Periyasamy - 2015 I CLR 373*, relied upon by Ld. Advocate for respondent.

15. From the above discussion it is clear that, alleged enquiry conducted by respondent, prima facie appears not to be legal and reliable. The conduct of respondent in not taking any action against responsible persons of yarn godown department, not examining necessary witnesses, examining only co-accused and different treatment given to co-accused, are the sufficient instances for prima facie inference that principles of natural justice are not followed during enquiry and respondent has acted in colourable exercise of employer's right and is about to dismiss complainant by way of victimisation. Therefore, it appears desirable to pass interim order to prevent such unfair labour practices from getting fructified. Strong prima facie case is made out so as intercept disciplinary action initiated against complainant. If no preventive order is passed as prayed by complainant, the very purpose of complainant in approaching this court will get frustrated and he will suffer irreparable loss. Therefore, balance of convenience lies in favour of complainant. Therefore, following order is passed :-

**: ORDER :**

1. Application Exh. U-2 is allowed.
2. Respondent is hereby directed not to terminate the services of complainant during the pendency and final disposal of present complaint.

Kolhapur.  
Date :- 29.10.2020

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

Argued on :- 20.10.2020  
Judgment Dictated on :- 29.10.2020  
Judgment transcribed on :- 29.10.2020  
Judgment checked & signed on :- 29.10.2020