

**BEFORE SHRI. A.G. MAGARE, PRESIDING OFFICER,
SECOND LABOUR COURT, PUNE.**

REFERENCE(IDA)NO. 18 OF 2020
(CNRNO MHLC120001792020)

BETWEEN

M/s. Seco Tools India Pvt. Ltd.

Gat No.582, Pune – Nagar Road,
Koregaon Bhima, Tal. Shirur,
Dist. Pune – 412 216.

... **FIRST PARTY.**

AND

Shri. Navnath Bhagchand Fargade.

At Post :- Karlewadi,
Tal. Shirur, Dist. Pune.

... **SECOND PARTY.**

C O R A M : SHRI. A.G. MAGARE, PRESIDING OFFICER.

Appearances :Shri. A.R. Joshi, Advocate for First Party.

Shri. N.A. Kolhatkar, Advocate for Second Party.

ORDER ON PRELIMINARY ISSUES
(PASSED ON: 22/10/2024)

1] This is a reference under Section 12(4) of the Industrial Disputes Act 1947 (hereinafter referred to as the I.D.Act,1947) referred for adjudication of the dispute arose between parties in respect of reinstatement of second party in the establishment of first party with continuity of service and full back wages w. e. f. 27.05.2019. Wherein, the issue of fairness of enquiry and its findings also arose between the parties and the same is accordingly taken up for passing order on it.

2] According to the second party, he was working as a “Machine Operator” with the first party company since 15.10.1995, wherein he has rendered continuous service of more than 24 years. Besides, his last drawn wages were Rs.50,000/- p.m. and his entire service

record was clean and unblemished. Despite, he was issued with charge sheet dated 20.12.2017, alleging that, he remained absent unauthorizedly and without prior permission since 01.11.2017 till the date of issuance of charge sheet and inspite of receipt of letters dated 01.12.2017 and 05.12.2017 by him, rather not reported to duty. Therefore, he sent letters dated 01.12.2017 and 08.12.2017 and mentioned reasons for his absenteeism, but those are not considered by the management of first party and alleged that, he has committed misconduct under Standing Orders. Upon which, the enquiry conducted against him by the first party is not fair, proper and not in accordance with the principles of natural justice. Because the enquiry officer while concluding the said enquiry, has failed to appreciate the evidence adduced before him and wrongly held guilty to him for the charges as mentioned in charge sheet. Therefore, he submitted that, the enquiry conducted against him be declared as not fair and proper and against the principles of natural justice as well as the findings of the enquiry officer be declared perverse.

3] In response the first party appeared and filed its written statement below Exh.C-2, by which denied the entire contentions of the second party, in respect of manner of conducting enquiry against him and its finding. Because, the said enquiry was conducted against second party on the basis of charge-sheet-cum-show cause notice issued to him on 20.12.2017 under Clauses-24(a)(f) & (h) of Model Standing Orders for his unauthorized absenteeism w. e. f. 01.11.2017 till the date of issuance of charge sheet and despite of receipt of letters dated 20.11.2017 and

05.12.2017, he did not report for duty. Accordingly, the aforesaid enquiry was conducted against second party pursuant to the said charge sheet, therein, second party has fully participated and he was given sufficient opportunity to defend those charges levelled against him, since he was represented through Advocate Nitin Kolhatkar and Advocate Arati Gunbharit, who cross examined the witnesses of its management at length. Thereafter, second party has examined himself and also examined witness in his defence. So also, he has submitted his defence statement on 28.03.2019. Wherein, upon conclusion of the enquiry, enquiry officer submitted its report and findings of dated 13.05.2019, therein, second party found guilty for aforesaid charges. Accordingly, the copy of the same forwarded to second party by letter dated 25.05.2019, but he did not submit his comments on the same. Thereafter, considering proved misconduct of second party in the aforesaid enquiry, he was issued with dismissal order of dated 27.05.2019. Therefore, in the circumstances, an enquiry conducted against second party is just and proper and its findings are not perverse and based upon the same, the dismissal of second party from its company is just and proper. Hence, the reference deserves to be dismissed with cost.

4] Considering the pleadings made by both the parties, Ld. Predecessor of this Court has framed the Issues below Exh.O-6 and out of which Issue No.1 and 2 treated as Preliminary Issues and accordingly, I record my findings to the same together with reasons thereon as under:

Sr No.	ISSUES	FINDINGS
1.	Whether departmental enquiry is fair, proper and in accordance with the principles of natural justice ?	In the affirmative.
2.	Whether findings of the enquiry officer are perverse ?	In the negative

REASONS

AS TO ISSUE NO.1 AND 2 :-

5] In view of the judgment and order dated 07.01.2014 in Writ Petition no. 1593 of 2013 and judgment and order dated 07.05.2018 in Writ Petition no. 2730 of 2004 [2014 (I) CLR 878], passed by our **Hon'ble Bombay High Court, Bench at Aurangabad**, this court directed the parties to make their oral submissions instead of recording oral evidence on the aspect of fairness of enquiry and its findings on the basis of the enquiry proceeding. In the above back ground, the matter was kept for arguments on preliminary points. Wherein, this Court vide order dated 23.08.2024 passed below Exh.U-7 granted last chance to both the parties to argue on preliminary points by next date and it was also directed, if failed, they will be treated as heard. Despite, the Advocates for the second party and first party argued on preliminary issues on 27.09.2024 and 17.10.2024 respectively and today the matter posted for order on those preliminary issues.

6] Besides, it is seen by pleadings of both the parties that, admittedly, the second party was issued with charge-sheet dated 20.12.2017 for the charges of misconduct under Clauses -24(a)(f)

& (h) of Standing Orders framed under the provisions of Maharashtra Industrial Employment (Standing Order) Rules, 1959. Wherein, the first party company filed on record the original proceeding of enquiry conducted against the second party, below list Exh.C-5 and photo copy of the same filed at Exh.C-3.

7] Heard. Having regards to the submissions made by Ld. Advocates for first party and it is evident from the enquiry proceeding filed at Exh.C-5 that, the charge sheet of dated 20.12.2017 was issued to the second party. By which, it is stated that the second party remained absent unathorizedly w. e. f. 01.11.2017 till the date of issuance of charge sheet and since despite receipt of letters dated 20.11.2017 and 05.12.2017, he did not report for duty. Accordingly, the aforesaid enquiry conducted against second party into the charge sheet under Model Standing Orders Clauses -24(a)(f) & (h) therein, second party has fully participated and he was given sufficient opportunity to defend those charges levelled against him, since he was represented through Advocate Nitin Kolhatkar and Advocate Arati Gunbharit, who cross examined the witnesses of management of first party at length. Thereafter, second party examined himself and also examined witness in his defence. So also, he has also submitted his defence statement on 28.03.2019. Wherein, upon conclusion of the enquiry, enquiry officer submitted its report and findings of dated 13.05.2019, therein, second party found guilty for aforesaid charges. The copy of the same also forwarded to second party by letter dated 25.05.2019, but he did not submit his comments on the same. Thereafter, considering proved misconduct of second

party in the aforesaid enquiry, he was issued with dismissal order of dated 27.05.2019 by the first party.

8] Besides, it is further seen by the enquiry proceeding that, on 15.02.2018, the enquiry officer explained the procedure of the enquiry to the second party and his preliminary statement was also recorded. Thereafter the first party management examined Suparna Robire as its witness and Advocate Nitin Kolhatkar and Advocate Smt. Gunbharit, representatives of second party cross examined the said witness. Then, the first party also examined Shri. Prashant Bekal and Shripad Adkar as its witnesses and those were duly cross examined by Smt. Arati Gunbharit, Advocate. Wherein, it appears that after completion of evidence of the first party, the second party examined himself and also examined Shivaji Pund as his witness and they were duly cross examined by the management representative of first party. Thereafter, second party closed his evidence. It also appears that, the documents filed in the enquiry and proceedings of the enquiry were supplied to the second party from time to time. In the above back ground, it is clear that, the second party was given full opportunity to cross examine the management witness as well as to defend himself in enquiry. He has examined himself and also examined witness in his defence. In that view of the matter, in my opinion, enquiry conducted against the second party is in a fair manner and in consonance with the principles of natural justice and thus, it is fair and proper.

9] So far as, findings of enquiry officer are concerned, it is the contention of the second party that, the enquiry officer while concluding enquiry has not properly considered the evidence adduced before him and as such, the findings of enquiry are perverse. However, on perusal of record, it is established that, the second party remained absent unauthorizedly and without prior permission since 01.11.2017 till the date of issuance of charge sheet and since despite of receipt of letters dated 01.12.2017 and 05.12.2017 he did not report for duty. Thus what can be inferred from the aforesaid enquiry report and findings is that, the enquiry officer has considered all the evidence brought forward by both the parties in an enquiry. Wherein, while concluding enquiry, the enquiry officer has discussed and analyzed the said legal evidence in detailed and thus, its findings are very well based on the same. Besides, deciding the issue of perversity of findings, the Court has to see whether there was some evidence or no evidence before the enquiry officer while arriving at his findings. Which in the present case, concrete oral as well as documentary evidence was available against second party in the said enquiry. Apart, as per settled law, the court cannot re-appreciate or reassess the evidence adduced in the enquiry. Likewise, Court cannot arrive or substitute its own findings in place of the findings of the enquiry officer. It is only see whether the findings are in consonance with the evidence and that they are based on and flows from it.

10] In the light of aforesaid factual and legal discussions, I am of the opinion that the enquiry officer has given reasoned findings on 13.05.2017, which is a possible right conclusion of holding guilty

the second party for charge of misconduct under Model Standing Orders 24(a)(f) & (h) as mentioned in the charge sheet. In view of above reasons, I hold that the second party has miserably failed to prove that, the findings of the enquiry officer are perverse. I therefore answer Issue No.1 in the affirmative and Issue No.2 in the negative and proceed to pass the following order.

ORDER

1. The enquiry conducted against the second party is fair, proper and accordance with the principles of natural justice.
2. The findings of the enquiry officer are not perverse.
3. Matter be proceeded further for remaining issues.

PLACE : PUNE.

DATE : 22.10.2024

PRESIDING OFFICER,
SECOND LABOUR COURT, PUNE.