

BEFORE THE LABOUR COURT AURANGABAD

Complaint ULP 35 of 2014

Remeshwar S/o Subhash Magar,
Aged: 26 years Occ: Nil,
R/o. House No.4-14-66
Near Siraj Hotel,
Kaisar Colony, Aurangabad. Complainant

Versus

Apex Super Speciality Hospital,
Through : Chief of Administrative Department,
5-8, Basaiyye nagar, Aurangabad. ... Respondent

CORAM: S.R.Salkute, Judge,

Advocates: Shri. Abhay Taksal, for the complainant.
Shri.S.V. Dankh, for respondent.

ORDER ON PRELIMINARY ISSUES

(Part – I)

(Dated 17.06.2015)

1 This is a complaint under Section 28 r/w Item 1(a), (b), (d), (f) & (g) of Schedule IV of the M.R.T.U. & PULP Act, 1971.

2 Facts of the Complaint in Short:

Since 01.03.2008 to till 15.04.2014 the complainant is in the employment as a Ward Boy. He alleged that, he being a union leader and as the Cases are pending before the Industrial Court, Aurangabad, the

management/ respondent is pressuring to withdraw those cases and thereby issued charge-sheet dated 11.10.2013 with a view to take revenge only. He alleged that during the domestic inquiry documents were not supplied to him and inquiry officer was bias in mind.

It is alleged that, on dated 29.09.2013 since 10.00 p.m. to 08.00 a.m. the complainant was on duty at I.C.U. He alleged that, the respondent failed to make inquiry about entangling the fingers of the patient. It is alleged that the patient was aggressive; therefore, his hand and legs were tied with knot. The C.C.TV was in front of the bed which could show the position about entangling of the hands. But, the C.C.TV footage are not produced. He alleged that there is no eye witness to prove the negligence by the complainant. It is alleged that, when he was changing clothes of the patient, he saw hand was entangled, therefore, he informed to the concerned doctor. It is alleged that during the inquiry he moved application to give C.C.TV footage and other documents; but, the Inquiry Officer rejected to give C.C.TV footage and details of the patient since the time of admission to discharge . He alleged that on the same date, since 07.15 to 07.45 a.m. he had been to toilet with the permission of the concerned doctor. He alleged that inquiry conducted by the Inquiry Officer is illegal, improper and void and the findings are perverse.

3 It is alleged that on 15.04.2014 he received second show cause notice issued by the management. The wife of his brother received second show cause notice. He was out of station on 11.04.2014. He moved application by registered post to extend the date for filing reply to the second show cause notice. It is alleged that the respondent did not extend time and issued order for dismissal since 15.04.2014.

4 Reply Filed by Respondent :

At Ex.C-6 the respondent filed reply and contended that the respondent did not commit any unfair labour practice. It is contended that fair and proper opportunity was given to defend the inquiry. It is contended that due to negligence of the complainant the patient caused injury. It is contended that, the findings given by the Inquiry Officer are as per the record and material. Respondent denied any bias by the Inquiry Officer.

It is contended that show cause notice was issued on 03.04.2014 with inquiry report in Marathi language. The complainant received second show cause on 07.04.2014 and failed to file reply within time. Therefore, dismissal order was issued w.e.f. 15.04.2014.

5 At Ex.O-4, I framed preliminary Issues. I have recorded my findings against each of them for the reasons given below:

Preliminary Issues	Findings
1 Whether the complainant proves that the inquiry conducted against him is illegal, improper and void ?	... No.
2 Whether the complainant proves that the findings of the inquiry officer are perverse ?	... No.

Reason :

6 The complainant filed documents at Ex.U-4 and Ex.U-8. The complainant has examined at Ex.U-7 and closed evidence by filing purshis Ex.U-10. The respondent filed documents at Ex.C5, Ex.C-8/1 to Ex.C-8/2. The respondent failed to produce

evidence on Preliminary Issues; therefore, the evidence of the respondent was closed vide order dated 21.01.2015 at Ex.U-1.

7 The counsel for the complainant argued that the respondent failed to make inquiry against another Ward Boy Shri More. The C.C.TV footage were not provided. A Negligence is not brought on record. He argued that there is no evidence against the complainant for any negligence. According to him fair opportunity was not given to defend.

8 The counsel for the respondent argued that, the record itself speaks that, an ample opportunity was given to the complainant to defend the inquiry. Inquiry officer observed negligence and held liable for the said negligence. He argued that the complainant is already dismissed from service.

After argument by both the parties as above, the matter was fixed for further argument of any of the party. But, till today both parties did not argue further.

9 To prove the Preliminary Issues the complainant has filed affidavit for examination-in-chief and deposed that he being union leader, management is pressuring to withdraw the case pending before the Industrial Court, Aurangabad. He deposed that the charge-sheet is imaginary. He deposed that, during the inquiry documents were not supplied to him. He deposed that the inquiry officer was bias in mind. According to him on

29.09.2013 since 10.00 p.m. to 08.00 a.m. he was on duty at I.C.U. The hands and legs of the aggressive patient were tied with knot. There was a C.C.TV camera in front of bed that can show the position about entangled hands. He deposed that C.C.TV footages are not produced; therefore, there is no evidence to prove his negligence. He deposed that there is no eye witness for the alleged negligence. He deposed that he had been to change clothes of patient and he saw the hand of the patient was entangled; so, he informed to the concerned doctor.

He also deposed that he had been to toilet with the permission from doctor since 07.15 to 07.45 a.m.

He deposed that the second show cause notice was received by wife of his brother as he was out of station; therefore, he moved application for extension of time by registered post; but, the respondent dismissed him from service from 15.04.2014.

In the cross-examination the complainant admitted that, the documents at Ex.C-8/1 page No.59 and Ex.U-8/5 are different. He deposed in cross-examination that he did not move against the inquiry officer for non-following of principles of natural justice and did not challenge rejection of application for production of C.C.TV footage.

10 From the above oral evidence it clearly shows that during the inquiry the complainant failed to take steps against the inquiry

proceeding or for the rejection of C.C.TV footage application.

11 The charge-sheet speaks that on 29.09.2013 when the complainant was on duty as a Ward Boy at I.C.U. At 06.15 a.m. (30.09.2013) while arranging bed press down of bed No.10 of unconscious patient, left hand's three fingers of the patient were seriously injured due to negligence of the complainant. Patient was unconscious and due to negligence blood came out from the injury. But, the complainant failed to notice this fact to others who were in the I.C.U.

12 In the above material charge, the Inquiry Officer has given findings that, "The hand of the patient was released by the complainant. The complainant failed to inform the fact to others. The evidence of Doctor Jaikumar speaks that the blood received within 15 seconds."

By this finding, the inquiry officer came to the conclusion that the complainant committed negligence.

13 In the above finding, the Inquiry Officer has gone through following material produced before him.

In the reply to the charge-sheet the complainant explained that at 06.00 a.m. he had been changed clothes of the unconscious patient with another Ward Boy More. The complainant removed

the side guard and released tied hand of the patient, at that time he saw that left hand of the patient was pressed beneath the bed. The complainant release it but he noticed that there was injury. He also explained that; Dr. Jaikumar reached there. He had shown the injury to Dr. Jaikumar. Then Dr. Jaikumar snatched photograph of the injury. The complainant had carried out dressing of the injury and thereafter changed clothes. In his explanation he stated that the Ward Boy More had made bed in the chair at night; so, he has no concern to move the patient.

14 Inquiry Officer has gone through the oral evidence produced by the management. Dr. Jaikumar deposed that curtain/ vail was not completely closed. When he was passing from the belt, he saw three fingers of the left hand of the patient were injured from which blood was coming. He deposed that the complainant was towards the left side of the patient. He asked the complainant and Ward Boy More to carry out dressing and call to Dr. Patel to show the incidence.

In the cross-examination he deposed that, he does not know how the patient was injured. According to his evidence, it might be happened by moving of bed towards down side. The witness could not surely deposed that the injury was caused due to complainant. Dr. Jaikumar also deposed that, within 2/3 seconds time requires to receive blood from injury.

Dr. Jaikumar also deposed that, Dr. Patel came to see at 06.20 to 06.40 a.m. and then again Dr. Patel came for round at 7.15 a.m. Witness deposed that; the handle to move upward and down, the bed was towards the foot side of the patient and he did not see who actually operated the said handle. He also deposed that the hands of the patient might have injured if the bed is moved towards down position.

15 Dr. Patel deposed that, when he reached at the spot he saw the position and asked to make dressing to the injury. According to him the complainant was carrying dressing to the injury, therefore it was the negligence from the complainant. He deposed that the complainant did not inform about the caused injury to other attendants. He admitted that injury was caused when bed was moved towards down.

16 In the reply to the charge sheet at Ex.C-8/1 page No.59, there is difference in signature about receipt of the explanation to the charge-sheet. The explanation speaks that, the complainant removed side guards and he released tied knot of the hand of unconscious patient. He saw hand of the patient was below the bed. He release it and he saw injury. In the defence statement during inquiry the complainant did not disclose who operated the handle. Further he stated that there is no evidence that injury was caused due to his negligence.

17 From the above documents & material, it clearly shows that, the complainant did not depose in his cross-examination that he had been to the patient at 06.15 a.m. The hands of the patient were already tied with knot. He removed the knot. He found that hand was pressed beneath the bed. He released it and found injury. But, he deposed that he called Doctor Jaikumar.

18 From the above evidence and the defence statement with the explanation given by the complainant to the charge-sheet, it clearly shows that, entire process i.e. release the hand, release the pressed hand was carried out by the complainant. Thus, the time to receive blood from the said injury is deposed by Dr. Jaikumar clearly connects to the incident. Therefore, in my view the observation observed by the inquiry officer regarding the negligence of the complainant is according to the evidence and material that was produced before him.

19 Another charge is that since 07.15 to 07.45 the complainant was absent without any intimation. In the reply to the charge-sheet, the complainant admitted that he he had been to the bathroom without informing to anybody and after completing the entire work.

20 Dr. Jaikumar deposed that, when Dr. Patel had been for round the complainant was absent without permission. But, in the defence statement, for the first time, the complainant

disclosed that he had been to the toilet with the permission from Dr. Jaikumar. During the inquiry this fact was not asked in the cross-examination of Dr. Jaikumar. Therefore, the findings given by the Inquiry Officer that the complainant was absent from 07.15 to 07.45 a.m. without any intimation or information is based on the reply/ explanation filed by the complainant and oral evidence adduced by Dr. Jaikumar.

21 The grievance of the complainant is that C.C.TV footage were not provided. In the reply/ explanation to the charge-sheet the complainant did not allege for C.C.TV footage. During his cross-examination he admitted that C.C.TV camera is not in the room of the patient.

22 The above evidence is supported by oral evidence of Dr. Jaikumar. Though in I.C.U. there is C.C.TV camera and when veil is opened then patient can be seen. Dr. Jaikumar has no knowledge about the management of C.C.TV. Dr. Patel also deposed that, he cannot see in the C.C.TV. But, in the defence statement, the complainant stated that, there is camera at each coat.

Findings given by the inquiry officer for rejection of C.C.TV footage is as per the situation. The observation and findings for negligence by the inquiry officer is not based on the C.C.TV vision or any other eye witness. The application for

C.C.TV footage was rejected on the ground that there is no independent camera at each bed. Therefore, I do not find any substance in the submission that any prejudice is caused to the complainant for non-production of C.C.TV footage.

23 The complainant filed documents from the son of the patient who has no complaint against the complainant. During the inquiry the said son of the patient was not examined by the complainant. This fact is clearly considered by the Inquiry Officer in his observation. Thus, I do not find substance about bias as alleged against the ensuing officer.

24 The documents filed by both the parties corroborate to the para No.3 of the inquiry papers speaks that on several dates inquiry was conducted. At the beginning the inquiry officer explained inquiry procedure, rights of the complainant to defend, to appoint defence representative, to file defence statement and to produce evidence. The complainant appointed to Shripad Kutaskar as defence representative. The management filed copy of original complaint that was lodged by Dr. Jaikumar. It was verified by the complainant's defence representative. The complainant moved application to produce the documents for duty list of the staff. Most of the documents were produced by the complainant and moved the application to produce the documents of the patient till discharge. This application was rejected by the Inquiry Officer because of no relevancy in the

inquiry.

25 Management has examined Dr. Jaikumar and Dr. Patel whom the complainant cross-examined at length. The complainant filed defence statement. He did not produce defence evidence. He had also filed documents in his defence.

26 Argument from complainant is for the non-providing opportunity to give reply to the second show cause notice. I perused the record. The second show cause notice dated 03.04.2014 was sent by post on 05.04.2014. The complainant did not dispute that the notice was received by the wife of his brother. But, according to me he was out of station and on 11.04.2014 he sent letter by post to the respondent for extension of time. Postal receipts speaks that the complainant sent said letter on 11.04.2014 at about 17.22 hours. The complainant has not filed acknowledgement or postal report about the receipt of said request letter. The complainant sent reply to the second show cause notice on 15.04.2014 at about 13.16 hours. The document filed by the respondent shows that on 15.04.2014 at 10.56 hours dismissal order was issued. This prima facie shows that much prior to filing reply by the complainant as alleged above, and after completion of time provided by the respondent, dismissal order was issued.

27 From the above documents and evidence it clearly shows

that, in the charge-sheet there are necessary particulars along with the time about the alleged misconduct. It shows that an opportunity was given to the complainant to submit explanation to the charge-sheet. Record speaks that during the course of inquiry opportunity was given to the complainant to choose defence representative. Inquiry officer explained procedure in the inquiry. Documents produced by the inquiry officer speaks that it was provided that as much detail as possible to show factual position. After recording the evidence of the witness of the management the complainant cross-examined them at length. It clearly shows that the evidence were recorded in presence of the complainant.

28 The above evidence & materil shows that, the patient was unconscious. His hands & legs were tied with knot. He was in a position of chair. By the use of handle, the chair portion goes downward & becomes flat bed. The fingers were clutched when bed was taken at downward. The complainant was at left side, near the moving portion; hence, it clearly shows that the Inquiry Officer has considered the evidence that was recorded before the complainant by giving him an opportunity to cross-examine the witness. He has considered defence statement and explanation connected with the oral evidence produced by the management and by objectively looking towards the fact he has omitted irrelevant facts and drawn his conclusion as per the material and evidence produced before him.

29 Thus it clearly shows that the inquiry officer followed rules and natural justice. Findings given by the inquiry officer are supported by evidence and material. Therefore, I come to the conclusion that the inquiry conducted by the Inquiry Officer is fair and proper. Findings given by the inquiry officer are not perverse. I answer the Preliminary Issues accordingly.

(S.R. Salkute)
Judge,
Labour Court-1, Aurangabad

Dtd. 17.06.2015