

BEFORE THE JUDGE, LABOUR COURT AT AMRAVATI.**Complaint (ULP) No.24/2009****Exh.31**

Vilas Kisanrao Ade,

R/o. Khatkeshwar Nagar,

Lonar, Tq. Lonar,

Distt. Buldhana.

...

Complainant.

- Versus -

1) President,

Maharashtra State Secondary
and Higher Secondary Education
Board, Pune-4.

2) President,

Maharashtra State Secondary
and Higher Secondary Education
Board, Division Office, Amravati.

...

Respondents

Appearances : Shri D.B.Gawande Advocate for Complainant.
Shri A.K.Deshmukh, Advocate for Respondents

ORDER ON PRELIMINARY ISSUES 1 & 2.
(Delivered on 3.3.2017)

This complaint under Sec. 28 r/w Item 1 of Schedule IV of M.R.T.U. & P.U.L.P. Act filed by the complainant challenging termination order dated 9.11.2009 by which services of the complainant were terminated with retrospective effect from 2.9.2009.

2] The brief facts of the case of complainant are as under :-

According to complainant, he was working with the respondents as Junior Clerk since 21.1.2000. In the year 2007 he was working with the respondents in Amravati Division. For the purpose of extending the benefits of grace mark from the category of sport post, the

respondents have to accept application for giving the benefits of grace marks to the concerned student and for that to call application in the earlier month of the result and after scrutiny the respondent has to extend benefit of grace mark. Alongwith the complainant, 2 to 5 other employees were also discharging work of similar type like the complainant by name B.B. More, M.D. Dorlikar and others. After scrutiny list was prepared and in absence of complainant mark sheet was issued and there are some scoring in the mark sheet but the complainant has not made any scoring/manipulation. A show cause notice was issued to complainant and thereafter charge sheet was also issued. The complainant requested to supply documents as per letter dated 28.12.2007 but the documents were not supplied. Thereafter respondents have compelled to give reply to charge sheet. But without considering the reply to charge sheet, the respondent appointed enquiry officer who is advocate and representative of the management who is also advocate. No opportunity was given to complainant to represent through his representative. The enquiry officer has not examined any witness in presence of complainant and allowed them to prepare their evidence as per their choice. No opportunity was given to complainant to give his defence statement. The respondents did not supply enquiry report to complainant without any reason. Therefore according to complainant, the enquiry conducted against him is not fair, proper and according to the principles of natural justice and the findings of enquiry officer are totally perverse. No specific charges were levelled against the complainant. The respondents did not examine reporter so also not examined the concerned students or guardian or Head master or Principal of the concerned school. Thus according to the complainant, the enquiry conducted against him is not fair, proper and the findings of the enquiry officer is perverse and the punishment of dismissal is shockingly disproportionate. Thus the respondents have engaged in unfair labour practice. Hence the the enquiry conducted by respondents be declared as illegal and the findings of enquiry officer be held as perverse.

3] The respondents filed their written statement at Exh.15 and resisted the complaint. It is denied that the respondents have engaged in unfair labour practice by issuing termination order dated 9.11.2009. The appointment of complainant as Jr. Clerk since 21.1.2000 is denied. It is denied that the respondent has not conducted enquiry as per the principles of natural justice. It is denied that witnesses were not examined in presence of complainant and documents were not supplied to him as alleged. It is admitted that in the year 2007 complainant was working with the respondents in Amravati Division office. It is denied that for the purpose of extending benefits of grace mark from the category of sport post, the respondents have to accept application from the concerned student and after scrutiny of application the respondent has to extend the said benefit. It is denied that alongwith complainant 2 to 5 other employees are also discharging work of similar type; namely B.B. More, M.D. Dorlikar and others. It is denied that list was prepared and in absence of complainant the mark sheet was issued and there are some scoring in mark sheet. It is denied that complainant has not made any scoring/manipulation in mark sheet therefore he has not committed any kind of misconduct. It is denied that complainant requested to supply documents as per letter dated 28.12.2007 but they were not supplied to him. It is denied that respondents compelled complainant to give reply to charge sheet and without considering his reply appointed enquiry officer who is advocate and representative of management. It is denied that no opportunity was given to complainant to represent through his representative.

4] It is submitted that the witnesses are examined by enquiry officer through the Presenting officer in presence of complainant and the complainant had refused to cross-examine any of the witness and as such waived his right of cross-examination. Now the complainant is estopped from turning back and alleging about his own failure to exercise his valuable right. It is denied that no opportunity was given to give his

defence statement and important witnesses are not produced before the enquiry officer to support the documents placed on record. The complainant attended the enquiry proceeding against him without raising any objection against the procedure followed. The complainant had indulged in scoring of seat number of the student Abhay Ganpat Ade during Higher Secondary certificate examination Feb/March 2007 in regard to Yavatmal district Sports Marks concession. There were 15 proposal submitted to the Board out of which 10 were sanctioned, while preparing the notification in this regard the unsanctioned original seat number 101727 was unauthorisedly scored/ over written as V017421. Similarly sanctioned seat No.V101747 was also scored and changed as V017429 which belonged to Abhay Ganpat Ade. This was done by oblique motive hence there was violation of Rule 3 of Maharashtra Civil Services Rules 1979 and complainant was charged for the same. Full opportunity was given to him to defend himself. The charges are proved in the enquiry. The enquiry was conducted legally and as per the principles of natural justice. The enquiry officer has drawn proper findings. In case this court comes to the conclusion that the enquiry is not legal and proper or that the charges against the complainant are not proved during the enquiry then in that event opportunity be given to respondent to prove misconduct against the complainant. In short, according to respondents, the enquiry conducted by them be declared as legal and proper and the findings of the enquiry officer also be held as just and proper.

5] On the rival pleadings issues were framed at Exh.16. However, at this stage, we are concerned with legality and propriety of enquiry and findings of the Inquiry Officer, hence the relevant issues are reproduced as under. My findings thereon followed by reasons thereon are as under :

ISSUES

FINDINGS

1] Whether enquiry conducted against complainant in respect of charge sheet

- dated 7.12. 07 was in utter disregard
of principles of natural justice ? Yes
- 2] Whether findings of enquiry officer
is perverse ? Yes

REASONS

6] The complainant examined himself at Ex.20. The respondents did not adduce oral evidence. Heard learned counsel for both the parties.

7] **As to Issue no. 1 and 2**:- It is submitted on behalf of complainant that the employer has not supplied all the documents alongwith the charge sheet. It is also submitted that at the time of enquiry Advocate was appointed as an enquiry officer. Not only this, the employer was represented by the advocate. However, no such opportunity was given to the complainant. It is further submitted that no witness was examined in presence of complainant. After completion of enquiry, copy of enquiry report was not supplied to the complainant. Hence the enquiry in question was not conducted as per the provisions of law. In support of his submissions, he relied on **S.P.Vishwanathan -Vs- Union of India** reported in **1994 (69) FLR 1090** wherein it is held that copy of enquiry report not supplied before termination, such termination would be bad. He also relied on **Union of India and Ors. - Vs- Mohd. Ramzankhan reported in 1990 (61) FLR 136** wherein it was held that in view of 42nd amendment it is necessary to supply enquiry report proposing punishment. The delinquent is entitled to the copy of report, he is having right to make representation against it. Non-supply of copy would violate rules of natural justice.

8] On the other hand, learned counsel for respondents submitted that charge sheet was supplied to the delinquent. Later on he has submitted its reply. At the time of enquiry, ample opportunity was granted to the delinquent to defend himself. The delinquent has not appointed any lawyer to defend himself. Hence it is clear that the delinquent himself not

availed the opportunity to appoint a lawyer or representative. At the time of enquiry, complainant was present and in his presence witnesses were examined. Opportunity was given to him to cross examine the said witnesses. However, he himself decline to conduct cross-examination. Hence it is clear that principles of natural justice were followed by the enquiry officer. As such the enquiry so also the findings are not perverse.

9] Admittedly, at the time of enquiry the complainant was not represented by lawyer. It is also not in dispute that the enquiry officer was a lawyer so also the employer was represented by a lawyer. On perusal of enquiry record, it appears that it is not mentioned in the enquiry report that enquiry officer has explained the delinquent that he can appoint a lawyer/ representative for representing himself. Infact, it was the duty of enquiry officer to explain this fact to the delinquent. However, this was not done by enquiry officer. Certainly due to this fact, prejudice was caused to the complainant. As regards the contention of complainant that documents were not supplied to him alongwith the charge sheet. It appears that after receipt of charge sheet the complainant has submitted application with respondent and thereby sought time to file the reply to charge sheet. He has filed copy of that application alongwith list Ex.4. On perusal of said application, it appears that by that application complainant had demanded various documents. On perusal of copy of said application it appears that the said application was received by respondent. However, on perusal of enquiry record, it is clear that the employer has not filed all these documents before the enquiry officer nor he has supplied copies thereof to the delinquent. As such by non-supplying copies of material documents the complainant was deprived from defending himself properly due to which prejudice was caused to him, it appears that at the time of enquiry also the enquiry officer has not taken precaution to supply all the documents to the complainant.

10] As regards last submission of complainant that copy of enquiry report was not supplied to him, it appears that the complainant has

filed copy of order dated 9.11.2009. On perusal of said order, it appears that there is no whisper in it that enquiry report was supplied to the delinquent or his explanation was called. It further appears that without following proper procedure, the employer has straightway passed the order and thereby terminated the service of complainant. This act of respondent is amounting to unfair labour practice as held in **S.P.Vishwanathan -Vs- Union of India** reported in **1994 (69) FLR 1090** and **Union of India and Ors. - Vs- Mohd. Ramzankhan reported in 1990 (61) FLR 136** (cited supra). Considering the facts of present case and considering the ratio of above referred case law I came to the conclusion that the complainant has proved the fact that the enquiry conducted by the respondent is illegal and against the principles of natural justice. So also the findings of enquiry officer are perverse. Hence I answer issue no.1 and 2 in the affirmative. In the result, I pass the following order.

Order

It is hereby declared that the enquiry conducted by the respondents against the complainant is not just, proper and in accordance with the principles of natural justice. Further, the findings drawn by the enquiry officer are also held to be perverse. Therefore the enquiry is vitiated.

The respondents are permitted to prove the misconduct of the complainant before Court by adducing evidence.

Amravati.
Date : 3.3.2017

Sd/-
(S.S.Sahastrabudhe)
Judge,
Labour Court, Amravati.