IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7817 OF 2018

Ambadas Mahadev Khade] … Petitioner

Vs.

The State of Maharashtra & Anr.] … Respondents

…

Ms. Gunjan Shah i/b Mr. Kayval P. Shah for the petitioner.

Mr. S.H. Kankal, A.G.P. for the respondent-State.

…

CORAM : RAVINDRA V. GHUGE, J.

DATED : 24TH FEBRUARY, 2022.

ORAL ORDER:-

1. By this petition, the petitioner has challenged the Part-I Award dated 11/01/2018 by which, the Labour Court had upheld the enquiry and had also sustained the finding of the Enquiry Officer. The petitioner has also challenged the Final Award dated 21/04/2018 by which, the Labour Court answered the Reference in the negative and concluded that the punishment of dismissal from service awarded to the petitioner is an appropriate punishment.

2. Prayer clauses (a), (b) and (c) of the petition read as under:

"a. Rule be issued.

b. this Hon'ble Court be pleased to issue a Writ of mandamus or Writ of certiorari or Writ in the nature of mandamus/certiorari or any other appropriate Writ, Order or direction thereby calling ofr the records and proceedings of the Reference IDA No.42 of 2014 from the office of the 2nd Labour Court, Nashik and on perusal thereof be pleased to quash and set aside the Impugned Award dated 11-01-2018 and 21-04-2018 passed by the Learned presiding officer, 2nd Labour Court, Nashik in Reference (IDA) No.42 of 2014;

c. this Hon'ble Court be pleased to reinstate the petitioner into the service with the Respondent Company along with backwages."

3. By an order dated 29/09/2021, this court came to a *prima facie* conclusion that the punishment awarded to the petitioner was harsh, as compared to the gravity of the charges levelled against him. This court also noted that there is no evidence to indicate that the locker, in which certain items were found, belonged to the petitioner or was allotted to the petitioner. This court, therefore, questioned as to whether any relevance can be attributed to the evidence led by the management. The petition was, therefore, admitted and was posted for a peremptory final hearing on 27/10/2021 at 04.00 p.m.

4. By order dated 15/02/2022, this petition was listed for final hearing on 23/02/2022. On 23/02/2022, I had passed the following order:

> *"1. This matter was specifically posted today for final hearing. The learned Advocate representing respondent No.2-employer is absent.*
>
> *2. The learned Advocate for the petitioner has already commenced her submissions.*
> *3. Stand over to 24/02/2022 as part-heard.*
>
> *4. If the learned Advocate for respondent No.2 remains absent tomorrow, this matter would be heard in his absence."*

5. Even today, none appeared for the management.

6. The learned advocate for the petitioner canvassed her final submissions and with her assistance, I have gone through the record available. The factors disclosed in the petition and the record, are as under :-

(a) On 01/11/1985, the petitioner joined the respondent-company as a permanent worker.

(b) On 07/12/2011, the locker, purportedly allotted to the petitioner, was sealed.

(c) On 20/12/2011, a panchnama was purportedly carried out.

(d) On 21/12/2011, the petitioner was placed under

suspension, pending disciplinary proceedings.

(e) On 28/02/2012, a charge-sheet was issued to the petitioner, specifically alleging that the locker was allocated to him, situated in the EP Shed of R & D Department.

(f) 49 items were found in the locker, which are as under:

S.No.	**Description**		**Nos.**
1.	Plastic tool bag	-	02 Nos.
2.	Bag cloth	-	01 No.
3.	Kohinoor condom	-	1 Packet (10 Nos.)
4.	Tool Kit	-	Spanner – 23 Nos. Adj. Spanner – 2 Nos. Screw Driver – 5 Nos. Players – 4 Nos.
5.	Alignment Ball	-	5 Nos.
6.	Face Plate Cover	-	03 Nos.
7.	M-seal Photo plate	-	03 No.
8.	Thermo Hygrometer	-	01 No.
9.	AC Fitter	-	01 No.
10.	Bulb	-	Headlamp – 2 Nos. Parking Lamp – 9 Nos.
11.	Audio Remote	-	2 Nos.
12.	Air Pressure Gauge	-	01 No.
13.	AC Fitter Cover	-	01 No.
14.	Paper Cutter	-	03 Nos.
15.	I Card Balancer	-	01 No.
16.	Socket (size 9-16)	-	04 Nos.
17.	Relay (180 IFA0050 m)	-	02 Nos.
18.	12mm Box Socket	-	10 Nos.
19.	Allen key	-	5 Nos.

20.	2 way tape	-	2 Nos.
21.	0 rings	-	02 Nos.
22.	Camber angle	-	10 Nos.
23.	Keys	-	13 Nos.
24.	Marker, Pencil, Sketch pen	-	12 Nos.
25.	Painting Brush (Small Letters)	-	02 Nos.
26.	Fuse elec. (10 Amp.)	-	01 No.
27.	Hacksaw Frame with blade (sealed)	-	01 No.
28.	Gasket (Turbo)	-	03 Nos.
29.	Extension Board & Socket	-	01 No.
30.	Appron Half sleeve	-	01 No.
31.	Waste Cloth 2” x 2”	-	01 No.
32.	Measuring Tape	-	02 Nos.
33.	Speaker Mounting Brackets	-	02 Nos.
34.	Stamp	-	01 No.
35.	Teflon tape	-	01 No.
36.	Power steering belt	-	02 Nos.
37.	Tape Wire Loom	-	3 Nos.
38.	Tap (01 Box) (10 x 1.5 Ass)	-	03 Nos.
39.	Nozzles (Air)	-	02 Qty.
40.	Aluminum vin Plate	-	50 Nos.
41.	Key Remote	-	03 Nos.
42.	(Eng) lifting hook	-	01 No.
43.	Godrej lock (7 lever)	-	01 No.
44.	Pad Clip	-	01 No.
45.	Indicator lamp (Ford)	-	02 Nos.
46.	Pencil Cell	-	01 No.
47.	Universal socket	-	07 Nos.
48.	Extension	-	02 Nos.
49.	10 mm Recital Spanner	-	01 No.

(g) He was charged with committing an offence, which amounts to misconduct under Standing Order 24(d)

and 24(l), which read as under:

> *"24(d) - theft, fraud or dishonesty in connection with the employers' business or property or the theft or property of another workman within the premises of the establishment".*
>
> *24(l) - commission of any act subversive of discipline or good behaviour on the premises of the establishment.*

(h) Four witnesses were examined on behalf of the management.

(i) The Enquiry Officer submitted his report on 22/11/2012.

(j) The petitioner was dismissed from service on 24/01/2013.

(k) On 07/02/2012, the petitioner raised a demand notice.

(l) After the conciliation proceedings failed, the Appropriate Government passed an order on 04/04/2014 referring the matter to the Labour Court for adjudication

(m) On 11/01/2018, the Part-I Award upholding the enquiry and the findings of the Enquiry Officer, was delivered.

(n) On 21/04/2018, the final award was delivered by the Labour Court.

7. Since the petitioner has challenged the Part-I Award, it would be appropriate to deal with the said challenge before the Part-II Award could be dealt with.

8. Having considered the submissions of the learned advocate for the petitioner and having gone through the record available, my observations are as under:

Sealing of the Locker

(a) The locker at issue is said to have been sealed on 07/12/2011.

(b) MW-1 Mr. Wable deposed that he has no evidence to support his stand that the locker was sealed.

(c) MW-2 Mr. Mayekar submits that it was not sealed.

(d) MW-3 Mr. Palave submits that the locker was not

sealed.

(e) MW-4 Mr. Raskar submits that the locker was sealed two to three days before 20/12/2011.

(f) The charge-sheet does not whisper, as to when was the locker sealed.

(g) On the aspect of sealing of the locker, the petitioner contended that it was not sealed in his presence. MW-1 and MW-3 stated that the petitioner was not informed. MW-4 stated that he has nothing in writing to indicate that the petitioner was informed.

Allocation of the Locker.

(h) The case of the management in the charge-sheet is that the locker was allocated to the petitioner.

(i) The petitioner denied such allocation.

(j) The management did not produce any document to establish that the locker was allocated to the petitioner.

(k) MW-1, MW-2, MW-3 and MW-4, all have deposed that they do not have any evidence to establish that

the locker was allocated to the petitioner.

Panchnama

(l) With regard to the panchnama, the petitioner claimed that it was not conducted in his presence. MW-1 stated that it was conducted in between 7.45 a.m. to 8.30 a.m. on 20/12/2011. MW-2 stated that the panchnama was carried out between 9.00 a.m. to 10.00 a.m. MW-3 stated that it was carried out at 7.45 a.m. MW-4 stated that he reported for duties at 8.40 a.m. and the panchnama was not done in his presence.

(m) To the extent of the identification of the locker on 20/12/20211, MW-1 stated that MW-4 showed him the locker. MW-4 stated that MW-1 told him about the panchnama. MW-2 and MW-3 stated that MW-1 called both of them for the panchnama.

(n) To the extent of the purported de-sealing of the locker and opening it on 20/12/2011, MW-1 initially stated that he opened it and, later on, stated that the petitioner had opened it. MW-2 and MW-3 stated that MW-1 opened it. MW-4 stated that he was not at the site of the locker.

(o) To the extent of tendering a copy of the panchnama to the petitioner, MW-1, MW2 and MW-3 have stated that it was not given to them. MW-4 did not depose on this count.

(p) To the extent of the petitioner's signature not found on the panchnama, MW-1 stated that he did not sign in his presence. MW-2, MW-3 and MW-4 did not depose on this count.

49 Items.

(q) To the extent of the 49 items found in the locker, it is an admitted position of the management that they were not produced before the Enquiry Officer and a document indicating verification of the documents belonging to the company was also not placed before the Enquiry Officer. Surprisingly, one of the items found in the locker was a packet of 10 Kohinoor condoms, which apparently did not belong to the management. One half-sleeved apron at Item No.30 is admitted by the petitioner to be belonging to him, and he has honestly stated that it belonged to him right from the first instance.

(r) The report at Exh.11, which is submitted by MW-4

to the security, indicates that the panchnama was carried out in the presence of MW-4 Raskar at 8.30 a.m. on 20/12/2011. However, in the deposition, the same MW-4 submits that he reported for duties at 8.30 a.m. and the panchnama was not done in his presence.

(s) The report also does not mention that the de-sealing, the opening of the locker and the panchnama, were done in the presence of the petitioner. The presence of MW-1, MW-2 and MW-3 is mentioned in the report. However, it is nowhere mentioned that the petitioner was also present.

9. Considering the above evidence, which was before he Enquiry Officer as well as the Labour Court, the entire issue turns upon, whether the locker was allocated to the petitioner. There is no iota of evidence on record to indicate that the locker was allocated to the petitioner, who is a workman in the factory. The employer could have produced the evidence of the locker being allocated to the petitioner since the entire issue in this disciplinary proceedings turns on whether the locker was allocated to the petitioner. Had it been so allocated, the keys would have been with the petitioner and, even if it was assumed that the locker was sealed on 7/12/2011 in the absence of the petitioner, and was de-

sealed and opened on 20/12/2011, in his absence, the issue would have been, as to who had the keys to unlock the locker. The management certainly has a master key with itself. However, that is not the case of the management that the master key was used to open the locker. It is also not the case of the management that the petitioner opened the locker since MW-2 and MW-3 have deposed that MW-1 opened the locker. MW-1 initially admitted that he opened the locker and then took an opposite stand stating that the petitioner opened the locker. In these circumstances, the inescapable conclusion that I can arrive at, is that the locker was not allocated to the petitioner by the employer. Who sealed it, who de-sealed it, who conducted the panchnama and who unlocked it, are questions begging for answers.

10. The next question would be as to the allegation of the employer that the petitioner had hidden 49 items belonging to the management, in the locker. If that be so, can the cloth bag, 10 Kohinoor condoms, 2 rings, a half-sleeve apron, a Key Remote and a pencil cell also belong to the management?

11. The petitioner has honestly stated that the half-sleeve apron belongs to him and the locker was such that it was used by several workmen. The statement of the management witnesses and the fact situation do not advance the case of the management. Barring the admission of the petitioner that the half-sleeve apron belonged to him, which he kept in the locker being used by several workers,

the charge of theft, and dishonesty, in connection with the employers business or property under the Model Standing Order 24(d) is not established.

12. Insofar as Model Standing Order 24(l) is concerned, it is not the case of the management that the workmen was not entitled to place anything inside the locker. If that be the case, why was the locker kept at the said place, if it was not to be used by any worker. It is common knowledge that workers have lockers (in some factories) to keep their belongings, which they do not have to carry inside the actual working area or while going home. A half-sleeve apron could be one such items. However, presuming that the petitioner wrongly kept the half-sleeve apron in the locker, it would be a minor misconduct of the nature of an irregularity if at all Model Standing Order 24(l) is to be made applicable.

13. It is settled law that the Enquiry Officer can base his conclusions of holding the employee guilty on the analysis of evidence. With the type of evidence that is brought on record as discussed above, could a prudent man conclude that the charge of theft and hiding stolen property of the management, has been established in this case? When the very allotment of the locker to the petitioner was not established, and he fairly stated that the half-sleeve apron belonged to him, it would not entitle the management to brand him as a thief, who has stolen 48 items out of the 49 found in the locker. Moreover, the very sealing of the locker, de-

sealing of the same, opening of the locker, in the absence of the petitioner, is apparently circumspect and, on the basis of such type of evidence, it would be too harsh to hold that he is guilty of theft and award him the punishment of dismissal from service, which is civil death to a worker.

14. In view of the above, the Part-I Award delivered by the Labour Court dated 11/01/2018, cannot be said to be sustainable. The Labour Court allowed the Enqury Officer to be examined, though the enquiry was sustained and virtually relied upon the evidence not recorded in the enquiry, to conclude that such evidence supports the findings of the Enquiry Officer. The Labour Court cannot permit the recording of the oral evidence of the Enquiry Officer and, based on such evidence recorded before the Labour Court, conclude that the evidence recorded in the enquiry was enough to prove the charges. It is well settled for atleast five decades that the Enquiry Officer draws his conclusions only on the basis of the evidence recorded in the enquiry. These conclusions are to be analyzed by the Labour Court by looking at the evidence recorded in the enquiry and not by permitting the management or the Enquiry Officer to bring forth additional evidence in the Labour Court to support the findings of the Enquiry Officer, which were based not on such new evidence, but on the evidence recorded before him, in the enquiry. (***Divisional Controller, MSRTC Latur v. Bhyushan J. Bulbule***[1])

1 2018 (5) Mh.L.J. 936

15. Once the Part-I Award is quashed and set aside for the finding of the Enquriy Officer having been held to be perverse, the entire enquiry stands watered down and is vitiated. In such circumstances, the employer can conduct a *denovo* enquiry before the Labour Court, in the light of the judgment of the Honble Supreme Court (Five Judges Bench) delivered in ***KSRTC v. Lakshmidevamma & Anr.***[2], which means that the employer must exercise it's right to conduct a *denovo* enquiry if the enquiry is vitiated.

16. In this context, I have perused the written statement of the management, which runs into six pages. In paragraph No.15, the management has stated as "*The company will file necessary documents at an appropriate stage. The company will also examine relevant witnesses before this Hon'ble Court*". This does not in any way, even remotely suggest that the employer has reserved it's right to conduct a *denovo* enquriy, if the enquiry conducted under the Model Standing Order is vitiated by the Labour Court. It is quite strange that the management did examine the Enquiry Officer before the Labour Court, when it was purposeless to bring him before the court as the enquiry was sustained and the findings were also upheld. In this situation, the Labour Court only had to assess whether the punishment is shockingly disproportionate or not, as the enquiry and the finding

2 2001 (2) CLR 640

being upheld lead to the conclusion that the charges are proved. The management has conducted the case in a most unusual manner. Evidence is led even before the enquiry is upheld and no right is reserved to conduct a *denovo* enquiry, if the original enquiry is vitiated.

17. Considering the above, the Part-I Award having been set aside, the Part-II Award also needs to be quashed and set aside, since the Labour Court has actually delivered a two paragraph judgment, which was based on the enquiry and the findings of the Enquiry Officer being sustained.

18. Now that I have set aside the Part-I Award, I could have remitted the Reference to the Labour Court to enable the management to conduct a *denovo* enquiry, since this is the legal position in law that once the enquiry is vitiated, the management can conduct a *denovo* enquiry. However, as discussed above, the law is that if the management does not reserve it's right to conduct a *denovo* enquiry in the written statement itself, in the light of ***Lakshmi Devamma (supra)***, no right can be granted to the management to conduct an enquiry in such circumstances.

19. The petitioner, though honestly, has admitted that his half-sleeve apron was kept in the locker, this could be termed as an irregularity or at the most, a minor act of indiscipline. The petitioner can be awarded a minor punishment since, awarding the

punishment of dismissal from service in the light of the fact and circumstances recorded above, would be a shockingly disproportionate punishment. Section 11A enables the court to modify the quantum of punishment.

20. As such this petition is partly allowed in terms or prayer clause (b) reproduced above. The petitioner is therefore, consequentially, reinstated in service with continuity with effect from 24/01/2013. He would be entitled for all monetary consequential benefits incidental to reinstatement in service. Insofar as the back wages are concerned, and in the light of the minor misconduct committed by the petitioner and the evidence adduced by him that he is not gainfully employed, and keeping in view that the respondent-employer is one of the largest Automobile Industry in India, I am depriving the petitioner of the back wages to the extent of 25% for the minor misconduct of depositing the half-sleeve apron in the locker, unauthorizedly.

21. Before parting with the matter, I need to record my appreciation for the assistance rendered by the learned advocate Ms. Gunjan Shah and who has also placed a ready reference chart, containing the dates and events and the comparison of the testimonies of the management witnesses, before the court.

22. Rules is made partly absolute in the above terms.

[RAVINDRA V. GHUGE, J.]

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