IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3008 OF 2019

Dattaprasad Narayan Kulkarni,
Age – 53 yrs, Occ.- Nil, 3 Mangalmurti Apartment, Joshi Paland, Ratnagiri. .. Petitioner

Versus

1. M/s. Auchtel Products Ltd.
(Formerly Henkel Chemicals (i) Ltd.)
142/c, Victor House, N.M. Joshi Marg,
Lower Parel(W), Mumbai – 13,
Plant – Ratnagiri,
Through : The General Manager.

2. M/s. Auchtel Products Ltd.,
Mirjole, M.I.D.C., Ratnagiri. .. Respondents

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- Mr. Sandeep S. Koregave a/w. Ms. Pallavi Karanjkar, Advocates for Petitioner.

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CORAM : MILIND N. JADHAV, J.
DATE : NOVEMBER 07, 2023.

ORAL JUDGMENT:

1. Heard Mr. Koregave, learned Advocate for Petitioner.

2. This Writ Petition is filed under the provisions of Articles 226 and 227 of the Constitution of India to challenge the impugned common judgment dated 01.04.2017 passed by the learned Industrial Court No.1, Maharashtra at Kolhapur in Revision (ULP) Nos.90 of 2014 and 131 of 2014.

3. Revision Applications were filed under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "**MRTU and PULP Act**") by both parties to challenge the judgment and order dated 30.04.2014 passed by the learned Labour Court, Ratnagiri in Complaint (ULP) No.66 of 2001, wherein a mixed verdict was given by the Labour Court, *inter alia*, in respect of unfair labour practice having been committed by Respondent – Company and in pursuance thereof a direction was given to the Company to reinstate the Petitioner and pay Rs.60,000/- as lumpsum compensation to Petitioner in lieu of denial of back wages by the Petitioner. Company filed Revision Application No. 90 of 2014 for setting aside the findings and judgment of the Labour Court in respect of declaration of unfair labour practice,quashing of termination order and grant of compensation whereas Petitioner filed Revision Application No.131 of 2014 being aggrieved with non-granting of reinstatement with full back wages and continuity of service.

4. Briefly stated, Petitioner was employed as a Technical Officer with Respondent – Company since 1988. He was issued charge-sheet on 06.07.2001 for remaining repeatedly and unauthorizedly absent from duty / work without intimation / without leave for the period - 09.05.2001 to 16.07.2001. Record reveals that Petitioner remained habitually absent from work without intimation or

leave in the year 1998 (for 44.5 days), in the year 1999 (for 63.5 days) and in the year 2000 (for 144 days) and the said fact was mentioned in the charge-sheet dated 06.07.2001 issued to him. There is no denying of the fact that Petitioner was guilty of chronic absenteeism which is reflected in both the judgments passed by the learned Labour Court as also the learned Industrial Court. What is significant and crucial to note is the fact that before the Labour Court, Petitioner himself admitted the fact that he earned a net income of Rs.2,50,000/- per year by engaging himself in his milk business during the said period and was thus gainfully employed and in that view of the matter he had refused back wages.

5. The learned Labour Court held that in view of refusal of back wages by the Petitioner, he would be entitled to lumpsum compensation of Rs.60,000/- which, *prima facie,* on the face of record being a perverse finding was dealt with by the learned Industrial Court accordingly in Revision proceedings, the judgment of the Labour Court was thus interfered with and set aside.

6. That apart, on the merits of the matter, the charge-sheet issued to Petitioner stated that he was guilty of dereliction on charges in terms of the following clauses:-

(i) Clause 24(a) – willful and insubordination or disobedience;

(ii) Clause 24(f) – habitual absence without leave or absence

without leave for more than 10 consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation;

(iii) Clause 24(h) – habitual breach of any standing order or any law applicable to the establishment or any rules made thereunder; and

(iv) Clause 25(m) – habitual neglect of work or gross or habitual negligence as per the Model Standing Orders.

7. It is seen that apart from chronic absenteeism which was a repeated feature, Petitioner was given adequate opportunities for almost 4 years to improve his conduct by the Company prior to issuance of the charge-sheet in question in the year 2001. However, he failed and continued to remain unauthorizedly absent even then with impunity. Both learned Courts have given a finding and clearly held that the enquiry held by the Enquiry Officer was legal and proper and in accordance with the principles of natural justice and hence no fault whatsoever could be found with the findings of the Enquiry Officer which were based on the evidence placed on record and available before him for consideration.

8. In that view of the matter, perusal of the judgment passed by the Labour Court dated 30.04.2014 (Exhibit – D, page No.48) would reveal that while arriving at the conclusion that findings returned by the Enquiry Officer were not perverse, it is seen that the Labour Court did not appreciate the evidence placed before itself in its correct

perspective. It is trite that once the Labour Court concluded that findings of the Enquiry Officer were legal and proper, then there was very little scope for judicial review and/or interference with the same unless there was any illegality in those findings.

9. In the present case, once the Labour Court arrived at the conclusion that it did not see any illegality or perversity in the enquiry proceedings and charges levelled against Petitioner were duly proved as also the findings being legal and proper, then in that event the ultimate conclusion arrived at by the Labour Court ought to have been translated into an appropriate and cogent decision, unlike the decision returned by the Labour Court of rewarding the Petitioner with lumpsum compensation of Rs.60,000/- in view of his denial of backwages and setting aside termination of the Petitioner which was recommended by the Enquiry Officer and accepted by the Company. Though Mr. Koregave has drawn my attention to the judgment of the Labour Court, I am in disagreement with his submissions in view of the aforementioned observations and findings and the reasons given hereinafter.

10. According to me, once the Labour Court had come to the definite conclusion that there was no perversity whatsoever in the findings of the Enquiry Officer and most importantly coupled with clear admission of the Petitioner that he was gainfully employed as

alluded to herein above, there was no reason whatsoever for setting aside the termination of Petitioner and rewarding him with lumpsum compensation and reinstating him.

11. The punishment meted out to the Petitioner of termination cannot be termed to be shockingly disproportionate or not in good faith or colourable exercise of the employer's right in the facts and circumstances of the present case. In this regard, I would like to refer to and rely upon the decision of this Court in the case of ***Dhananjay S. Kamodkar Vs. M/s. Motor Industries Company Ltd.***[1], wherein an identical case of chronic absenteeism was dealt with by this Court. In that case, the concerned employee had repeatedly remained unauthorizedly absent over a period of 4 to 5 years intermittently and then sought benefit of the findings in the judgment passed by the Labour Court. In that case, the evidence of medical certificates issued by as many as 17 different Doctors over a period of 4 years was placed on record for the first time before the Labour Court, which evidence was never placed on record before the Enquiry Officer and also the delinquent employee had never intimated to the Company about his illness after availing unauthorized leave. This Court eventually dismissed the employee's case as chronic absenteeism was duly proved.

1 WP No.11376 of 2019 decided on 03.10.2023.

12. Another factor though argued vehemently but without any cogent evidence or effectively before me by Mr. Koregave is about the illness suffered by Petitioner and in that regard he has drawn my attention to two medical certificates issued by Dr. Sharad Kulkarni which are appended at page Nos.130 and 131 of the Petition. Save and except these two certificates, there is nothing brought on record by Petitioner. Therefore Petitioner's admission before the Enquiry Officer that he was gainfully employed in his milk business when he was away from work needs to be accepted and considered. I have perused copies of both these Medical certificates. Certificates are dated 11.07.2001 and 25.07.2001 and cannot be relied upon in support of Petitioner's ground of illness advanced by Mr. Koregave. The said certificates are not only vague but insufficient in particulars and thus are of no avail to the Petitioner. It is thus proven that Petitioner was running his milk business during his unauthorized absence from work and therefore remained unauthorizedly absent which has been admitted by him.

13. As seen above, Petitioner has habitually remained absent and the ratio of his absenteeism had abnormally increased since the year 1998 onwards which is an admitted fact on record. It is not denied by the Petitioner. Such misconduct cannot be countenanced.

14. For reference, the findings returned by the learned Industrial Court in paragraph Nos.15 to 18 of the Judgment dated 01.04.2017 are reproduced below:-

> *"15. According to me, once all these facts in respect of ill-health had come on record before the enquiry officer and inspite of the same, after considering the entire evidence and justification of Complainant on the ground of ill-health, the enquiry officer has come to the finding that the charges are held to be proved and after having confirmed the same by holding the findings of the enquiry officer as not perverse, the Labour Court was totally wrong in again considering the justification and holding that the Respondent company has not cross-examined the Complainant on the said point.*
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> *16. Again the Labour Court while passing the impugned order has come to a totally perverse finding that the proved misconduct of the Complainant was for the first time, since in the charge-sheet it is clearly mentioned that the Complainant was involved in such incidence even in the past and despite many oral warnings and also in writing he has not at all improved to the satisfaction of the management. Even in the order of termination the previous absenteeism of the Complainant for the year 1998 for 44.1/2 days, in the year 1999 for 63.1/2 days and in the year 2000 for 144 days is mentioned and in consideration of the charges and the past service record, the order of termination was issued. Therefore, there is utter perversity on the part of the Labour Court in reaching to such conclusion.*
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> *17. Even otherwise, if the Labour Court had come to a conclusion that the Respondent has engaged in unfair labour practice, there is no logical reason given as to why the consequential reliefs were not granted and instead, a compensation of Rs.60,000/- was awarded. Therefore, according to me, the findings of the Labour Court in respect of declaration of unfair labour practice and also awarding of compensation are perverse and exhibits legal error apparent on the face of record.*
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> *18. Admittedly, the Complainant was serving with the Respondent company as a Technical Officer. The charge of unauthorized absence against the Complainant for the period from 09.05.2001 to 16.07.2001 is proved. Also the past service record of the Complainant exhibits that he is habitually remaining absent unauthorizedly. These factors have been considered by the Respondent management while awarding him the punishment of termination of services. Also in the termination order the Respondent management has mentioned that the Complainant did not improve though opportunity was*

given to him by the management to improve. Awarding punishment to an employee for the proved misconduct is the prerogative and discretion of the management, the Labour Court can interfere into the same only if it is shockingly disproportionate and tainted with malafides/victimization. I do not find any reasonable ground put up by the Labour Court in arriving at a conclusion that the punishment of termination was shockingly disproportionate nor I find that the action of the Respondent in terminating the services of Complainant was not in good faith but in colourable exercise of employer's right."

15. Thus, it is seen that it has come in evidence that Petitioner was guilty of chronic absenteeism, was involved in similar repeated incidents in the past 3 years and despite many oral and written warnings did not improve his conduct. That record of absenteeism of Petitioner from 1998 onwards was duly reflected in the charge-sheet as well as the termination order issued to him by the Respondent – Company. Hence, declaration by the Labour Court that the Company had indulged in unfair labour practice and rewarding the Petitioner with one time lumpsum compensation of Rs.60,000/- could never have been granted to Petitioner in the facts of the present case. This is more so because Petitioner himself had denied back wages since he accepted that he was gainfully employed. His such denial of back wages for the period for which he had not worked cannot be sympathetically held in his favour when he himself had admitted that he was running a milk business and earned Rs.2,25,000/- per annum therefrom. In this context, awarding of lumpsum compensation by the Labour Court was itself illegal and arbitrary. It is seen that case of

the Petitioner cannot be categorized as a case of victimization of the Petitioner. It cannot be said to be tainted with any *malafides* also. There are three specific reasons for arriving at the above conclusion:-

(i) Admission of the Petitioner that he was running a parallel / alternate milk business and was in gainful employment and earning a handsome return of income therefrom;

(ii) Petitioner's reliance on medical certificates issued by Dr. Sharad Kulkarni being thoroughly insufficient, inadequate and unsustainable to prove his absence from work on ill-health ground; and

(iii) Petitioner being a Technical Officer could not remain unauthorizedly absent without intimation leading to loss and disruption in the production line of the Company, thereby causing prejudice and loss to the Company (employer).

15.1. Therefore services of Petitioner were rightfully terminated by the Respondent – Company and termination of services of Petitioner in the facts of the present case could not be termed as 'unfair labour practice'. Further grant of one time compensation to Petitioner because he denied backwages is an absolutely erroneous finding which is unsustainable in law and has been rightly set aside by the Industrial Court. The learned Industrial Court has rightly interfered in its revisional jurisdiction with the judgment of the Labour

Court and dismissed the Complaint of the Petitioner. Hence, I completely agree with the findings recorded by the learned Industrial Court and uphold the judgment dated 01.04.2017 in its entirety.

16. In view of the above observations and findings, I do not have the slightest doubt to disagree with the reasoned judgment passed by the learned Industrial Court in its Revision jurisdiction. I find no reason to interfere with the same as the reasons recorded in paragraph Nos.10 to 18 thereof are cogent and correct in law on the basis of the facts and circumstances of the present case. Therefore the common judgment dated 01.04.2017 passed in Revision Application (ULP) No.90 of 2014 and Revision Application (ULP) No.131 of 2014 by the learned Industrial Court No.1, Kolhapur is upheld.

17. Writ Petition is dismissed. No costs.

[MILIND N. JADHAV, J.]

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