IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.550 OF 2020

Raptakos Breet & Company Ltd. …. Petitioner
Versus
Gajanan M. Sonawane …. Respondent

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Ms. Uma K. Wagle, for Petitioner (VC).
Mr. Ramesh D. Bhat, for Respondent.

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CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 12 DECEMBER 2023.
PRONOUNCED ON : 22 DECEMBER 2023.

JUDGMENT:

1. **Rule**. Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, petition is taken up for hearing.

2. Petitioner-Employer has filed this petition challenging Judgment and Order dated 23 April 2019 passed by the Second Labour Court, Mumbai in Complaint (ULP) No.06 of 2012 directing payment of 50% backwages to Respondent from 14 October 2011 till his age of superannuation. Petitioner also challenges Judgment and Order dated 22 October 2019 passed by the Industrial Court, Mumbai dismissing it's Revision Application (ULP) No.72 of 2019 and allowing the Respondent's Revision Application (ULP) No.68 of 2019 directing payment of full backwages to him from the date of termination till the

age of superannuation.

3. Briefly stated, facts of the case are that Petitioner is Pharmaceutical Company. Respondent was employed in the services of Petitioner-Company at it's Thane factory. A Show Cause Notice was issued to the Respondent on 19 May 2011 and after receipt of his explanation, Petitioner-Company initiated domestic enquiry after issuance of charge sheet dated 24 June 2011. In the charge sheet, it was alleged that on 29 April 2011, while being assigned duty in workshop from 3.00 p.m. to 11.00 p.m., Respondent was found loitering in the change room between 3.30 p.m. to 4.00 p.m. instead of being present at his workplace. He was also found to be chewing tobacco which is strictly prohibited in the premises of the company. For such act, an inquiry was intended to be held on 03 May 2011 and Respondent was called on 3.10 p.m. by Shri. S. M. Damle, Executive-Personnel for issuance of Order of suspension. However, Respondent refused to accept the letter sought to be served on him. It was further alleged that on 03 May 2011, while being on duty in the first shift from 7.00 a.m. to 3.00 p.m. Respondent and other co-employers were standing near the punching machine adjoining to personnel department at 3.00 p.m. and Respondent threatened Mr. P. V. Manjarekar and abused him in filthy language while he was passing by the punching machine.

4. On these charges, enquiry was proposed to be held by appointing Mr. M. K. Jadhav as Enquiry Officer. The domestic enquiry was held, in which respondent participated from 07 July 2011 to 29

September 2011. The enquiry officer held Respondent to be guilty of misconduct alleged in the charge sheet and submitted report dated 11 October 2011, which was served on Respondent. The second Show Cause Notice was issued to him in pursuance of the findings of the Enquiry Officer and after considering Respondent's reply, an order dated 14 October 2011 was passed imposing punishment of dismissal from service on the Respondent.

5. Aggrieved by the penalty of dismissal from service, Respondent approached Labour Court, Mumbai by filing Complaint (ULP) No. 06 of 2012. The complaint was resisted by Petitioner by filing Written Statement. The Labour Court framed preliminary issues and delivered part-1 Award dated 04 March 2017 holding that enquiry was not conducted in fair and proper manner and not according to the principles of natural justice. It also held that the findings of the Enquiry Officer were perverse. Part-1 Award was challenged by the Petitioner by filing Complaint (ULP) No. 42 of 2017 which came to be rejected by order dated 23 August 2018. Both parties led evidence before the Labour Court after delivery of part-1 Award. It appears that during pendency of the proceedings before Labour Court, Respondent attained age of superannuation in the year 2017. After considering the evidence, the Labour Court proceeded to deliver part-2 Award dated 23 April 2019 partly allowing the Complaint and directing the Petitioner to pay 50% backwages to the Respondent from the date of termination i. e. 14 October 2011 till the date of superannuation.

6. Both Petitioner as well as the Respondent were aggrieved by the Labour Court's decision dated 23 April 2019. Respondent filed Revision Application (ULP) No.68 of 2019 challenging the Labour Court's Award to the extent of denial of full backwages. The Petitioner-Company, on the other hand, filed Revision Application (ULP) No.72 of 2019 challenging the entire Award. Both the Revision Applications came to be heard together and decided by common Judgment by the Industrial Court dated 22 October 2019. The Industrial Court proceeded to dismiss the Revision Application (ULP) No. 72 of 2019 filed by the Petitioner. It however allowed the Revision Application (ULP) No. 68 of 2019 filed by Respondent and directed that the Respondent shall be entitled to full back wages from the date of termination till the age of superannuation. Petitioner is aggrieved by the common Judgment and Order dated 22 October 2019 passed by the Industrial Court and has filed the present petition.

7. Ms. Wagle, the learned counsel appearing for Petitioner would submit that the Labour Court and Industrial Court have erred in not appreciating the fact that the dismissal order is passed on the basis of cogent evidence on record. That Petitioner is a pharmaceutical company and chewing of tobacco by any employee in the premises of the company is highly dangerous. That therefore the conduct of the Respondent in chewing of tobacco was serious in nature. On the top of said serious charge, Respondent also threatened and abused Mr. P. V. Manjrekar. That all charges are proved by leading evidence by the employer. That this was

not the first time that Respondent had indulged into misconduct. That he has been punished on 9 occasions in the past and had failed to improve his conduct, despite being punished repeatedly. That in the past also he was found chewing tobacco during working hours. That threatening and abusing of higher officer is gross misconduct on the part of the Respondent for which penalty of dismissal from service was clearly warranted. That the Petitioner has discharged burden of leading evidence which is sufficient for proving charge in domestic enquiry. That once there is some evidence to prove the charge, the Industrial Court and Labour Court could not have interfered in the penalty imposed in enquiry. She would pray for setting aside the Orders passed by the Labour Court and Industrial Court.

8. *Per Contra* Mr. Bhat, the learned counsel appearing for Respondent would oppose the petition and support the Order passed by the Industrial Court. He would submit that Petitioner was deliberately implicated in false complaints for participation in union activities. He would invite my attention to paragraph No. 4 of the affidavit of evidence of Respondent in which evidence was led to prove that management was not happy with the Respondent's participation in union activities and that therefore the company wanted to remove him from factory premises and he was therefore transferred to registered office of company at Nariman Point before issuance of the charge sheet. That despite there being no work for the factory workers in the registered office, he was deliberately kept out of factory premises. He would demonstrate

contradictions in the charge sheet by pointing out that incident relating to alleged threat and abuse to Mr. Manjrekar is shown at 3:00 p.m. on 03 May 2011 whereas refusal to accept communications regarding enquiry and suspension is shown at 3:10. on same day. That there is no evidence in the entire enquiry about the Respondent indulging in act of chewing tobacco. That evidence of Ms. Suchita Ankolekar is hearsay and Mr. Chaughule, who allegedly saw Respondent chewing tobacco was not examined before the Labour Court. That the evidence of Mr. Manjrekar is required to be ignored and has rightly been ignored as no other co-worker is examined though several were admittedly present when the alleged incident occurred. That Shri. Manjrekar is not a credible witness as he has contradicted himself with regard to presence of other co-workers in examination in chief and in the cross-examination. He would submit that Labour Court and Industrial Court have recorded finding of fact which need not be interfered by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. That the concurrent findings recorded by the Labour Court and Industrial Court cannot be interfered by this Court in absence of any perversity in the same. He would pray for dismissal of the petition.

9. Rival contentions of the parties now fall for my consideration.

10. Respondent faced the following broad charges in the charge sheet dated 24 June 2011.

i) Loitering in the change room between 3:30 p.m. to 4:00 p.m. on 29 April 2011 when required to be present on workplace.

ii) Chewing tobacco between 3:30 p.m. to 4:00 p.m. on 29 April 2011.

iii) Refusal to accept letters of enquiry and suspension order from Shri. S.M. Damle, Executive-Personnel at 3:10 p.m. on 3rd May 2011.

iv) Threatening and abusing Mr. P. V. Manjrekar in filthy language at 3:00 p.m. on 3rd May 2011.

11. Since Part-I Award went against Petitioner, it examined following witnesses to prove the above charges:-

i) Mr. M. K. Jadhav as Enquiry Officer.

ii) Shri. Prakash Vishnu Manjrekar – Packing Supervisor in support of allegation of threat and abuse.

iii) Shri. Ravindra Rohidas Borade – Production Executive in support of allegation of not being found at the work place at 3.30 p.m. on 29 April 2011.

iv) Shriniwas Madhusudan Damle – Personal Executive in support of allegation of refusal to accept letter on 03 May 2011.

v) Suchita Gajanan Ankolekar – Senior Vice President (Personnel and Material) in support of allegation of Respondent being found chewing tobacco on 29 April 2011 and his past conduct.

12. All the management witnesses were cross-examined by the

Respondent. The Respondent has examined himself as witness and has been cross-examined by the Petitioner-Company.

13. I have gone through the entire evidence on record. While exercising jurisdiction under Article 227 of the Constitution of India over findings recorded by the Labour Court in its Original Jurisdiction and by the Industrial Court in its Revisional Jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, this Court cannot sit in Appeal over the said findings. The role of this Court is restricted essentially to find whether there is any perversity in the findings recorded by the Labour Court or Industrial Court. Keeping this limited scope in mind, I proceed to examine the evidence led by the Petitioner to prove charges before the Labour Court to examine whether the findings of the Labour Court and Industrial Court can be sustained.

14. The first charge is about loitering in the change room and not being present at the workplace between 3:30 p.m. to 4:00 p.m. on 29 April 2011. The evidence of Ravindra Rohidas Borade show that Respondent was not found at his workplace at 3:30 p.m. The witness has deposed that at least 05 workmen are required to be present at the filling and packing section for operation of machines and that absence of even one leads to non-functioning of the machines. The witness has deposed that on account of Respondent's absence at the place of work, the work was held up for half an hour between 3:30 p.m. to 4:00 p.m. The witness has further deposed that he later noticed presence of Respondent at about

4:15 p.m. Thus, the charge of missing from the place on duty is proved by evidence of Mr. Ravindra Rohidas Borade. Though cross-examination of the witness is conducted and admission is sought to be extracted from the witness to demonstrate that the production did not suffer on 29 April 2011, the witness further clarified that the production is part of teamwork. Therefore it cannot be inferred that mere non-effect on production would absolve Respondent of the charge of missing from the workplace on 29 April 2011.

15. The Labour Court and Industrial Court have proceeded to discard the evidence of Shri. Borade on account of absence of proof of less production on account of non-presence of Respondent during 3:30 p.m. to 4:00 p.m. on 24 June 2011. To my mind, the said findings of the Labour Court and Industrial Court are perverse. Whether Petitioner's absence from duty led to reduce production is a totally irrelevant factor. Respondent was charged with the misconduct of missing from duty between 3:30 p.m. to 4:00 p.m. on 29 April 2011 and the said charge has been proved. Weather such conduct had effect on production is an altogether different aspect.

16. The next charge leveled against Petitioner is about chewing tobacco when he found loitering near change room between 3:30 p.m. to 4:00 p.m. on 29 April 2011. Here the evidence of Smt. Suchita Ankolekar indicates that the act of chewing tobacco was noticed by Mr. Chaughule, Manager-Personnel and Administration. Though Mr. Chaughule was examined in the enquiry, the Petitioner did not examine Mr. Chaughule

before the Labour Court possibly because he had left the employment by that time. Thus the evidence of Smt. Suchita Ankolekar about chewing tobacco is hearsay. Though ordinarily hearsay evidence is not allergic to domestic enquiry as has been held by the Apex Court in it's Judgment in ***State of Haryana v. Rattan Singh***, (1977) 2 SCC 491, it would be dangerous to accept the testimony of Smt. Ankolekar who was posted in Petitioner's Nariman Point office and was giving evidence about happening of an incident in Thane factory premises. She has not recorded any statement of the witness who saw Respondent chewing tobacco. At the same time, I am not fully convinced with the findings recorded by the Labour Court and Industrial Court that the Petitioner failed to produce confiscated pockets of tobacco during enquiry. This is not a criminal trial where charge was to be proved beyond reasonable doubt. Therefore non-production of tobacco pouch could not have any effect on findings recorded in inquiry. However what is missing here is the evidence of the person who saw Respondent chewing tobacco. Since Mr. Chaughule is not examined before the Labour Court, there is no evidence in support of charge of chewing tobacco.

17. The next charge is about refusal to accept the communication sought to be served on 03 May 2011 by Mr. S. M. Damle on 03 October 2011. The charge is not very serious and the evidence regarding the charge need not be examined in detail. However the charge is to be read in conjunction with the next charge of threatening and abusing Mr. P. V. Manjrekar at 3:00 p.m. on 03 May 2011. Though the two charges are

unconnected, their timings are proximate. It is sought to be contended by Mr. Bhat that if Respondent was present near punching machine after end of his duty on 3:00 p.m. (where he alleged to have threatened and abused Mr. Manjrekar) how he could be summoned and present before S. M. Damle in his office at 3:10 p.m. Evidence of Shri. Damle indicates that at 3:00 p.m. Personnel Manager Mr. Chaughule directed Mr. Damle to call Mr. Sonwane in the office and accordingly he sent a message to the Respondent to visit the office. The exact time when Respondent arrived in the office of Mr. Damle is not indicated in the evidence. However it is contended that an attempt was made to serve letter of suspension on Respondent as per the directions of Mr. Chaughule and that the Respondent refused to sign and accept the same. Here the evidence of Shri. Rakesh Vishnu Manjrekar relating to the incident which had occurred 10 minutes before incident of refusal of letter sought to be served by Mr. Damle is required to be taken into consideration. The charge-sheet alleges that the Respondent's duty schedule was from 7:00 a.m. to 3:00 p.m. on 03 May 2011. Mr. Manjrekar states that after completing duty he approached to the out-punching point to mark his outgoing on the punching machine and he noticed Respondent standing near the machine. It is also alleged that at that time Respondent shouted at Shri. Manjrekar. After shouting when Shri. Manjrekar started walking towards Gate, Respondent threatened and abused him. Thus, the evidence of Shri. Manjrekar indicates that Respondent was already at the out-gate at 3:00 p.m. on 03 May 2011. However Shri. Damle claims and

the charge-sheet alleges Respondent's presence at Shri. Damle's office at 3:10 p.m. Mr. Bhat submits that this is a glowering contradiction. It cannot be stated that Shri Bhatt is entirely wrong in treating this as a contradiction. However, this contradiction may absolve Respondent in respect of charge of refusal to accept the letter sought to be served by Shri. Damle at 3:10 p.m. However so far as the charge of threatening and abusing Shri Manjrekar is concerned, there is a direct evidence in support of that charge. The Labour Court and Industrial Court have proceeded to disbelieve the evidence of Shri. Manjrekar on the ground that there were other employees present near the punching machine who were not examined to corroborate evidence of Mr. Manjrekar. In my view, corroboration of evidence is not required in a domestic enquiry where the charge is to be proved on the touchstone of preponderance of probabilities. There is direct evidence of Shri. Manjrekar about threat and abuse given to him for which he lodged police complaint on 04 May 2011. In my view, the charge of threatening and abusing Shri. Manjrekar is clearly proved and findings recorded by the Labour Court and Industrial Court in this regard are perverse.

18. It has come on record that the Respondent has been punished on 9 occasions in past during the period from 1992 to 2011. The past punishments have been taken into consideration apparently to impose extreme punishment of dismissal from service. However, in respect of the past misconduct, the penalties are insignificant like advice, warning or caution. On 3 occasions he was suspended for 1 or 2 days. The past

alleged misconduct is also in respect of long period of 19 years between 1992 to 2011.

19. The net result is that Petitioner employer was successful in proving charges of missing from duty between 3:30 p.m. to 4:00 p.m. on 29 April 2011 and threatening and abusing Shri. Manjrekar on 03 May 2011. The charge of missing from duty for half an hour is not serious. The charge of threatening and abusing Shri. Manjrekar is however serious in nature. The past penalties imposed on the Respondent during long duration of 19 years are not major. Respondent has served with the Petitioner for substantial period of time. He has attained the age of superannuation in the year 2017. Thus the penalty of dismissal from service has resulted in loss of wages from 14 October 2011 till he attained the age of superannuation in the year 2017. Considering the nature of allegations proved against Petitioner, relief of reinstatement with full backwages was not warranted. Respondent undoubtedly deserves same penalty for misconduct of missing from duty and threatening and abusing a co-employee. However, considering the long services rendered by him, instead of depriving him of any wages during the intervening period from dismissal till his retirement, grant of lump sum compensation would be adequate relief to the Respondent who has undoubtedly indulged in some misconduct. During the cross-examination a suggestion is sought to be given to the Respondent that he was working as Cash Collecting Officer for Twinkle Star, Wadala and was drawing Rs.10,000/- to 15,000/- per month. However the suggestion is denied by the

Respondent. It has come on record that in the Written Statement the last drawn wages of Respondent was Rs.16752.56 per month. In my view therefore lump sum compensation of Rs. 5,00,000/- would meet ends of justice in the present case.

20. Therefore I proceed to pass following order :-

i) The Judgment and Order dated 23 April 2019 passed by the Labour Court as well as Judgment and Order dated 22 October 2019 passed by the Industrial Court are modified by directing that Respondent would be entitled to lump sum compensation of Rs. 5,00,000 in lieu of reinstatement or back wages.

ii) Petitioner shall pay the amount of compensation to the Respondent within a period of 2 months from today.

21. With the above directions the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no orders as to costs.

SANDEEP V. MARNE, J.

22. After the judgment is pronounced, the learned counsel appearing fo the Petitioner seeks stay to the operation of the Order for a period of 06 weeks. It is a matter of fact that petition s partly allowed in favour of the Petitioner, the request for stay of the Judgment is therefore rejected.

SANDEEP V. MARNE, J.