

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5575 OF 2016

Ambadas s/o Pandurang Gurav/ Waghmare,
Age : 55 years, Occupation : Service,
R/o Shriram Colony, Nagar Pune Road,
Kedgaon, Taluka and District
Ahmednagar.

...PETITIONER

-VERSUS-

Kintetic Engineering Ltd.,
Nagar Daund Road,
Near Arangaon, Taluka and
District Ahmednagar.
Through it's Chairman.

...RESPONDENT

...

Advocate for Petitioner : Shri Markad Dattraya R.

Advocate for Respondent : Shri V.S.Bedre a/w Shri Tejas Bedre.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st August, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the judgment dated 16.03.2013

delivered by the Labour Court by which his Complaint (ULP) No.37/2010 was dismissed. The Labour Court concluded that the punishment of dismissal from service for a proved misconduct of sleeping on duty was not shockingly disproportionate.

3 The Petitioner is also aggrieved by the judgment dated 29.02.2016 delivered by the Industrial Court by which Revision (ULP) No.1/2014 filed by the Petitioner has been dismissed.

4 The Petitioner has strenuously criticized the impugned judgments. It is not in dispute that the part-1 judgment dated 21.04.2012 delivered by the Labour Court by which the enquiry was held to be fair and proper and the findings of the Enquiry Officer were sustained, was not challenged by the Petitioner/ workman before the Industrial Court as well as before this Court.

5 The submissions of the Petitioner can be summarized as follows:-

- (a) He joined the Respondent Company as a Job Trainee on 02.05.1980.
- (b) He was appointed as an Assistant Grinder on 09.05.1991.
- (c) In 1997, he was recognized as the Best Worker.

- (d) On 20.11.2008, he was found sleeping on duty at 05:10 am in the third shift.
- (e) His act of sleeping on duty was recorded by an electronic gadget.
- (f) He was issued with the show cause notice on 12.12.2008.
- (g) He replied to the show cause notice on 18.12.2008.
- (h) He was served with the charge sheet on 19.12.2008.
- (i) The Enquiry Officer was appointed to conduct a domestic enquiry under the Model Standing Orders framed as per the Industrial Employment (Standing Orders) Act, 1946.
- (j) The Enquiry Officer submitted his report on 30.11.2009.
- (k) The second show cause notice dated 25.05.2010 was served upon the Petitioner thereby calling upon him to show cause as to why the findings of the Enquiry Officer should not be accepted.
- (l) He submitted his reply on 02.06.2010 and denied all the charges.
- (m) He was dismissed from service on 09.06.2010 by way of punishment.
- (n) He was placed under suspension during the period of enquiry and was paid subsistence allowance.
- (o) He filed Complaint (ULP) No.37/2010 before the Labour

Court challenging the findings of the Enquiry Officer, the domestic enquiry and the proportionality of the punishment.

- (p) By the part-1 judgment dated 21.04.2012, the Labour Court upheld the enquiry and the findings of the Enquiry Officer.
- (q) By the impugned judgment dated 16.03.2013, the Labour Court concluded that the punishment of dismissal for sleeping on duty in the Heat Treatment Department was a serious misconduct and hence, the punishment cannot be termed as being shockingly disproportionate.
- (r) The revision petition filed by the Petitioner was dismissed by the Industrial Court vide judgment dated 29.02.2016 concluding that the judgment of the Labour Court is neither perverse nor erroneous.
- (s) He had put in 30 years in service till the date of his dismissal and which was unblemished.

6 Shri Markad, learned Advocate for the Petitioner/ workman, has placed reliance upon the judgments of the Apex Court in the matter of *M/s Hind Construction and Engineering Company Limited vs. Their Workmen*, **AIR 1965 SC 917** (three Judges Bench) and in the matter of *Colour Chem Limited vs. A.L.Alaspurkar*, **AIR 1998 SC 948** (three Judges Bench).

7 Shri Bedre, learned Advocate for the Respondent/ Company, has strenuously supported the impugned judgments. He submits that the Petitioner has not challenged the part-1 judgment by which the enquiry was sustained and so were the findings of the Enquiry Officer. As such, the issue as regards the fairness of the enquiry and the findings of the Enquiry Officer cannot be reopened.

8 He submits that the employee was working in a very sensitive area. He was in the Heat Treatment Department and operating the short blasting machine which is fed with energy from LPG cylinders. There were about 13 to 14 workers working around him. Because of the Petitioner going to sleep, an explosion could have occurred and that would have resulted in fatalities. It is only by providence that such a blast did not take place or else the Petitioner would have been the first person to be affected by such blast. Shri Bedre, therefore, voiced a concern that had the blast taken place, there would have surely been loss of lives.

9 Shri Bedre submits that in similar circumstances, the Division Bench of this Court in the matter of *Uttam Manohar Nakate vs. Bharat Forge Company Limited, Pune*, **2002 (93) FLR 293** had sympathized with the employee and converted his punishment of dismissal from service into

an order of lump-sum compensation of Rs.2,50,000/-. The Company approached the Honourable Supreme Court in the matter of *Bharat Forge Company Limited vs. Uttam Manohar Nakate*, **AIR 2005 SC 947** and the Honourable Supreme Court reversed the judgment of the learned Division Bench of this Court. The order of punishment of dismissal was held to be proportionate after considering the following judgments :-

- (a) Regional Manager, Rajasthan State Road Transport Corporation vs. Sohan Lal, AIR 2004 SC 4828 : (2004) 8 SCC 218.
- (b) Cement Corporation of India Ltd. vs. Purya, AIR 2004 SC 4830 : (2004) 8 SCC 270.
- (c) U.P. State Road Transport Corporation vs. Subhash Chandra Sharma, AIR 2000 SC 163 : (2000) 3 SCC 324.
- (d) U.P. State Road Transport Corporation vs. Mohan Lal Gupta, AIR 2001 SCW 2330 : (2000) 9 SCC 521.
- (e) Colour Chem Ltd. vs. A.L.Alaspurkar, AIR 1998 SC 948 : (1998) 3 SCC 192.
- (f) Bharat Iron Works vs. Bhagubhai Balubhai Patel, AIR 1976 SC 98 : (1976) 1 SCC 518.
- (g) Hind Construction and Engineering Company Ltd. vs. Their Workmen, AIR 1965 SC 917.

10 Shri Bedre, therefore, submits that the view taken by the Honourable Supreme Court is, therefore, crystal clear and the law is now settled that in cases of sleeping on duty, no sympathy can be shown towards the employee. He, therefore, prays for the dismissal of this petition.

11 I have considered the submissions of the learned Advocates and have gone through the reports cited.

12 The facts of this case as recorded above, through the submissions of the learned Advocates, are not in dispute. There was a video recording of the Petitioner sleeping on duty in the third shift at 05:10 am. The fairness of the enquiry and the findings of the Enquiry Officer cannot be reopened considering that the Petitioner has not challenged the part-1 judgment.

13 The only issue, therefore, is as regards the proportionality of the punishment. The Honourable Supreme Court in the matter of *Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain*, **2005 (104) FLR 291**, has concluded that merely because the punishment may appear to be disproportionate would not warrant interference by the Court. The punishment must appear to be shockingly disproportionate and only then

the Court can exercise its jurisdiction of suitably modifying the punishment.

14 It is, therefore, settled that unless it is found that the punishment is shockingly disproportionate, the order of dismissal cannot be set aside. In this backdrop, it needs to be considered as to whether, the past service record of the Petitioner has any blemishes. In the *Bharat Forge Company case (supra)*, the employee (Uttam Manohar Nakate) was found sleeping on duty at 11:40 am in broad day light. He was previously punished on three occasions for misconducts in 10 years of service. In the case in hand, the Petitioner has put in 30 years of clean and unblemished service record barring one minor warning. The act of sleeping on duty has occurred for the first time in these 30 years of employment and that too at 05:10 am after working in the entire night third shift.

15 Considering the total effect of the facts as above, I do not deem it proper to reinstate the Petitioner in service. He is presently 55 years old considering his date of birth to be 01.06.1961. I am causing indulgence in this petition only on considering that the entire 30 years of service of the Petitioner did not give any reason to the Respondent / Management to issue him a charge sheet or suspension or cause any disciplinary enquiry or punish him except with one minor warning.

16 As such, I am of the view that the Labour Court should have modified the punishment by converting his dismissal into discharge, though the Model Standing Orders do not prescribe any punishment in between the maximum punishment of dismissal from service and suspension for four days.

17 In the light of the above, this Writ Petition is, therefore, partly allowed. The dismissal of the Petitioner dated 09.06.2010 shall stand converted into an order of discharge w.e.f. the date of this judgment. He will not be entitled for any back-wages. His gratuity shall be calculated from the date of his joining 02.05.1980 till 31.08.2016 on the basis of his last drawn gross wages on an average for the months of March, April and May, 2010. He shall be entitled for retiral benefits, provident fund accumulation, pensionary benefits, if any, as may be payable to him in accordance with law and the service conditions applicable to him. The impugned judgments of the Labour Court and the Industrial Court are, therefore, modified with these directions.

18 Rule is made partly absolute in the above terms.