



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO.7849 OF 2019

Indo Rama Synthetics (I) Ltd.
A-31, MIDC Industrial Area, Butibori,
Nagpur, Through its Vice President
(Finance and Accounts)

...Petitioner
Org. Respondent

// VERSUS //

1. Ashok Sahebrao Badiye,
R/o 103, Savitri Vihar, Somalwada,
Wardha Road, Nagpur. Occ- Nil. Org. Complainant
2. Member, Industrial Court, Nagpur
Temple Road, Civil Lines, Nagpur –
440001. ... Respondents
3. Presiding Officer, Fourth Labour Court,
Temple Road, Civil Lines, Nagpur –
440001. ... Respondents

**WITH
WRIT PETITION NO.159 OF 2022**

Ashok S/o Sahebrao Badhiye, Aged about
47 years, Occ.Nil, R/o 103, Savitri Vihar,
Somalwada, Wardha Road, Nagpur.

...Petitioner

// VERSUS //

1. Indo Rama Synthetics (I) Ltd., A-31,
MIDC Industrial Area, Butibori Nagpur,
through its Vice President (Finance &

Accounts).

2. Member, Industrial Court, Nagpur Temple Road, Civil Lines, Nagpur – 440001.
3. Presiding Officer, 4th Labour Court, Temple Road, Civil Lines, Nagpur – 440001. ... Respondents

In Writ Petition No.7849 of 2019

Shri R.B. Puranik, Advocate for Petitioner.

Shri G.N. Khanzode, Advocate for Respondent No.1.

Shri N.S. Rao, A.G.P. for Respondent Nos.2 and 3/State.

In Writ Petition No.159 of 2022

Shri G.N. Khanzode, Advocate for Petitioner.

Shri R.B. Puranik, Advocate for Respondent No.1.

Shri N.R. Rao, A.G.P. for Respondent Nos.2 and 3/State.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 28/02/2024

DATE OF PRONOUNCING THE JUDGMENT : 30/05/2024

JUDGMENT :

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. Since in both the writ petitions questions involved on facts and law are similar, both the writ petitions are heard and decided together.

4. This petition takes exception to the order dated 05.02.2019 passed by the Industrial Court, upholding the order dated 07.08.2017 passed by the Labour Court, allowing the complainant and thereby, directing the petitioner to reinstate the complainant/respondent No.1 with continuity of service and back-wages.

5. The brief facts of the present case are as under: (The parties are referred to as per their status in Writ Petition No.7849 of 2019)

The respondent No.1 was appointed as 'Store Helper' with the petitioner on 01.03.1999 and on the ground of serious misconduct committed by the respondent No.1, he was served with the charge-sheet and an enquiry was held. At the end of the enquiry, the Enquiry Officer held that the charges levelled against the respondent No.1 were not proved.

6. However, the petitioner disagreeing with the view of the Enquiry Officer, dismissed the respondent No.1 from service.

7. Thereupon, the respondent No.1 preferred the complaint before the Labour Court vide Complaint (ULP) No.148 of 2007, which came to be allowed vide judgment and order dated 07.08.2017, directing the petitioner to reinstate the respondent No.1 and to pay full back-wages.

8. In the revision filed by the petitioner, questioning the correctness of the judgment and order of the Labour Court, the learned Industrial Court partly allowed the revision and thereby, modified the order of back-wages by granting 50% back-wages instead of full back-wages vide judgment and order dated 05.02.2019.

9. The learned counsel for the petitioner submits that both the Courts below have committed error in allowing the complaint and directing the petitioner to reinstate the respondent No.1.

10. The learned counsel for the petitioner submits that no challenge was raised by the respondent No.1 to the fairness of the enquiry and the findings of the Disciplinary Authority.

11. It is submitted that the Disciplinary Authority, on arriving at a conclusion to record disagreement with the findings recorded by the Enquiry Officer, granted opportunity to the respondent No.1 to submit his explanation and after considering such explanation, the order of dismissal was issued. It is submitted that both the Courts below discarded important facts and allowed the complaint. The learned counsel for the petitioner, in support of his submission, placed reliance on the judgments of the Hon'ble Supreme Court of India in the cases of *Panjab National Bank Vs. Kunj Behari Misra*¹, *Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane*², *State of Haryana Vs. Rattan Singh*³, and the judgment of the Division Bench of this Court in the case of *Suryabhan Maruti Avhad Vs. M/s. Mahindra and Mahindra Ltd., Mumbai*⁴.

1 (1998) 7 SCC 84

2 (2005) 3 SCC 254

3 (1977) 2 SCC 491

4 2011 AIR Bom.R 690

12. On the other hand, the learned counsel for the respondent No.1 submits that no perversity has been committed by both the Courts below in allowing the complaint and directing the petitioner to reinstate the respondent No.1.

13. It is further submitted that the learned Industrial Court committed error in modifying the order of back-wages. It is submitted that though the respondent No.1 is entitled for full back-wages, the learned Industrial Court has granted 50% back-wages. Accordingly, he prays for quashing and setting aside the order of the learned Industrial Court, to the extent of modifying the order of back-wages.

14. In light of the rival submissions of the parties, I have perused the record and the impugned judgments and orders.

15. In the matter at hand, the charges levelled against the respondent No.1 was of indulging in the pilferage of furnace oil. On perusal of the charge-sheet, it reveals that the alleged incident was occurred on 04.03.2000, on which day the respondent No.1 was on leave. Furthermore, in absence of any evidence about

involvement of the respondent No.1 in the alleged pilferage of furnace oil, the Enquiry Officer held in favour of the respondent No.1 and recorded the findings that due to lack of evidence, charges are not proved.

16. Admittedly, the driver, on whose statement the said charges were levelled against the respondent No.1, was not examined, but the statement of driver Ajam Khan was referred by Mr. Bist during enquiry proceeding, as such statement of Ajam Khan was recorded in his presence.

17. Accordingly, the learned counsel for the petitioner submits that the evidence of Shri Bist recorded by the Enquiry Officer, wherein he has referred to the statement of the driver is sufficient to hold the respondent No.1 as guilty. However, I do not find favour with the said submission as there is no other evidence produced in support and corroboration of the statement of Ajam Khan, except a reference made of it by Mr. Bist.

18. I am of the opinion that even if the case of the petitioner is accepted that there is no need to examine the driver, particularly

when Mr. Bist was present while recording driver's statement, the petitioner ought to have produced other supporting evidence.

19. In absence of such evidence and as the whole case is based on driver's statement and even punishment imposed is based on the said statement, opportunity to cross-examination to driver is must in this case.

20. Thus, in absence of any cogent and sufficient evidence to establish any of the charges levelled against the respondent No.1, the impugned judgments and orders passed by the learned Labour Court and learned Industrial Court, are just and proper.

21. Having held so, the judgments cited by the learned counsel for the petitioner in the cases of *State of Haryana* (supra), *Divisional Controller, KSRTC (NWKRTC)* (supra) and *Suryabhan Maruti Avhad* (supra) are of no assistance to the petitioner in the present matter, they are distinguishable on facts and law.

22. Moving to the another point, the Hon'ble Supreme Court of India, in the case of *Panjab National Bank* (supra), the Hon'ble

Supreme Court of India has held that, although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Enquiry Officer along with the evidence on record. Further it is held that when the inquiry report is in favour of the delinquent but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent must give him an opportunity of being heard for otherwise he would be condemned unheard.

23. As I have already held that the evidence produced by the petitioner before the Enquiry Officer is not sufficient to hold that the guilt is proved against the respondent No.1, the finding recorded by the Disciplinary Authority, disagreeing with the finding of the Enquiry Officer, is without any evidence and hence, not sustainable in the eyes of law.

24. In the circumstances, whether the second show cause notice was issued or not to the respondent No.1 before dismissal would not change the fate of the present case.

25. In the circumstances, I do not find any error committed by the both the Courts below in directing the petitioner to reinstate the respondent No.1 in service.

26. As far as the challenge raised in the Writ Petition No.159 of 2022 to the judgment and order of the Industrial Court to the extent of modification of the order of back-wages, is concerned, the learned Industrial Court while modifying the order of back-wages has recorded the following observations:

“23. This order of learned Labour Court is certainly by ignoring evidence of complainant himself. Complainant in his evidence on affidavit, Exh.49, in paragraph No.6 has made statement that since the date of termination he is unemployed. He searched for employment but he could not get. Therefore, he is doing whatever work he gets but the same is not available for whole month. From this statement it clearly shows that complainant is doing some work as and when available but he has not given details of it. If the complainant admits that he is doing some work and earning. the Court ought to have considered this evidence while deciding quantum of back wages. Therefore, the order of granting full back wages is perverse due to non-considering evidence of complainant. The Court has also not considered facts and circumstances of the

case that the dismissal of complainant is dated 20-04-2007. Complaint came to be decided on 07-08-2017 that means after 10 years period. Complainant is out of employment during said period. This Court is, therefore, of the view that learned Labour Court ought to have granted 50% back wages instead of 100%. Accordingly, I come to the conclusion that impugned judgment and order of learned Labour Court does not suffer from perversity to the extent of quashing and setting aside dismissal order, direction to reinstate complainant with continuity in service. But it suffers from perversity by directing to pay full back wages. Modification in impugned order to that extent is necessary. I accordingly partly answered Point No.1 in affirmative.”

27. Considering the findings recorded by the learned Industrial Court, I do not find any error committed by the learned Industrial Court. Accordingly, I pass the following order:

- (i) The Writ Petition No.159 of 2022 is **dismissed**.
- (ii) The Writ Petition No.7849 of 2019 is **dismissed**.

Rule is discharged. No costs.

[ANIL S. KILOR, J.]