HIGH COURT OF JUDICATURE AT BOMBAY

Bench: N. J. JAMADAR, J.

Date of Decision: 29 SEPTEMBER 2023

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3768 OF 2023

Palghar Taluka Industrial Federation and Others ...Petitioners

versus

Sadanand Dadu Bhoir ...Respondent

Section, Acts, Rules, and Article:

Section 2(oo), 25F of the Industrial Disputes Act, 1947

Article 226 and 227 of the Constitution of India

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

Subject: Challenge to the termination of an employee based on allegations of misconduct and sexual harassment. Legal validity of the termination is challenged, and the matter is referred to the Labour Court.

Headnotes:

Service Law - Industrial Dispute – Challenge to termination of employee – Termination based on allegations of misconduct and sexual harassment – Inquiry conducted by employer – Legal validity of termination challenged – Matter referred to Labour Court – Labour Court found termination in

violation of section 25F of the Industrial Disputes Act, 1947 – Industrial Court partly upheld the decision but remitted the issue of back wages for further consideration – Employer's right to justify termination before the Tribunal without prior disciplinary inquiry – Court held that even in the absence of a proper inquiry, the employer can adduce evidence to justify termination – Emphasis on evaluating evidence in cases of sexual harassment – Orders quashed and matter remitted to the Labour Court for fresh consideration. [Para 1-29]

Referred Cases:

- Punjab National Bank Ltd. vs. All India Punjab National Bank Employees' Federation and Anr AIR 1960 SC 160.
- Delhi Cloth and General Mills Co. vs. Ludh Budh Singh AIR 1972 SC 1831.
- M/s. Firestone Tyre and Rubber Co. of India Pvt. Ltd. vs. The Management and Ors AIR 1973 SC 1227
- Vajidali T. Kadri vs. M/s. D.D. Shah & Co. 2007(6) Mh.L.J. 650
- Marwari Balika Vidyalaya vs. Asha Srivastava & Ors [2019] 2 S.C.R. 722

Representing Advocates:

Mr. A.K. Jalisatgi a/w. Mr. Triveninath Yadav and Mr. Narendra Dube, for the Petitioners.

Mr. S.D. Paithane, for the Respondent.

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JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally at the stage of admission.

2. This petition under Article 226 and 227 of the Constitution of India calls in question the legality, propriety and correctness of the judgment and order, passed by the learned Member, Industrial Court, Thane in Revision Application (ULP) No. 39 of 2021 dated 29th August, 2022 whereby the learned Member, Industrial Court was persuaded to partly allow the Revision Application and remit the matter back to the Labour Court to decide the issue of back wages after giving an opportunity to the parties to lead evidence.

3. Shorn of unnecessary details, the background facts leading to this petition can be stated as under:-

3.1 Petitioner No. 1 M/s. Palghar Taluka Industrial Federation is a federation of industrial manufactures, traders and establishments situated in Palghar and adjoining areas. Petitioner Nos. 2 and 3 are the office bearers of petitioner No. 1 federation. It had a skeleton staff to man its office. Respondent was employed as a “Peon”. In the year 2013 another lady was in the employment of petitioner No. 1. The said lady employee gave a complaint in writing that respondent abused and sexually harassed her. On 21st November, 2013 the respondent abused her in a filthy and indecent language. She was humiliated.

3.2 On the basis of said complaint, the petitioner No. 1 constituted an Inquiry Committee. Respondent was summoned before the Inquiry Committee on 10th December, 2023. The respondent appeared before the Inquiry Committee. However, respondent refused to cooperate with the Inquiry Committee and dared the petitioners to take whatever action they chose. As the Inquiry Committee found the allegations against the respondent to be of serious nature and unworthy of being tolerated, it decided to terminate the services of the respondent with immediate effect. On 16th

December, 2023 an order of termination followed. The respondent was offered salary for the month of November, 2013 and also compensation @ 15 days salary and notice of one month. Respondent refused to accept the same. Upon termination of the services, the respondent filed a complaint of unfair labour practices under Item 1(a), (b),(c), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade. Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971) being Complaint (ULP) No. 37 of 2014 before the Industrial Court.

3.3 The petitioners resisted the complaint.

Respondent examined himself. The petitioners adduced the evidence of the Secretary of petitioner No. 1 and the lady who had made allegations against the respondent.

3.4 After appraisal of the pleadings, evidence and material on record, the learned Judge, Labour Court was persuaded to declare that the petitioners engaged in unfair labour practices under Item 1(a) (b) and (f) of Schedule IV of the Act, 1971 and directed the petitioners to reinstate the respondent in service with continuity of service with full back wages with effect from 16th December, 2013.

3.5 The learned Judge, Labour Court was of the view that the petitioners had neither issued chargesheet to the respondent nor held an inquiry against the respondent and, therefore, the termination of the services of the respondent without holding inquiry was illegal. Even if the termination was construed to be by way of retrenchment, there was noncompliance of the provisions contained in section 25F of the Act, 1971. It was held that neither the complaint by the lady employee contained specific abuses hurled by the respondent nor the evidence of the said lady was sufficient to establish the allegations of sexual harassment against the respondent.

4. Being aggrieved the petitioners carried the matter in revision before the Industrial Court.

5. By the impugned judgment and order, the learned Member

partly allowed the revision upholding the finding of the Labour Court that the retrenchment of the respondent was in breach of the statutory mandate contained in section 25F of the Act, 1947 and the allegations of sexual harassment were not established and resultantly the termination of the services of the respondent was not legal and proper. The learned Member, Industrial Court was, however, of the view that the trial Court erred in awarding full back wages without properly appreciating the evidence on record. The parties had not led adequate evidence on the point of entitlement of back wages. The learned Member, therefore, considered it appropriate to remit the matter back to the Labour Court to decide the issue of back wages afresh after providing an effective
opportunity to adduce evidence on the said point.

6. Being further aggrieved by the determination by the Industrial Court that the termination was not legal and proper, the petitioners/employers have invoked the writ jurisdiction.

7. I have heard Mr. A.K. Jalisatgi, learned counsel for the petitioners and Mr. Paithane, learned counsel for the respondent at some length. The learned counsel for the parties took the Court through the pleadings, evidence, documents and material on record including the impugned orders.

8. Mr. Jalisatgi, learned counsel for the petitioners, took pains to assail the orders passed by the Court below. First and foremost, according to Mr.

jalisatgi, both the Courts committed a manifest error in law in ignoring the settled legal position that employer was entitled to justify the order of termination of services of an employee even where no disciplinary inquiry was held. This aspect was completely lost sight of by the Labour Court in setting aside the termination on the ground that the employer had not issued charge sheet and conducted disciplinary proceedings against the employee. Secondly, the Courts below have proceeded on an incorrect premise that the termination of the service of the employee on the grave charges of the sexual harassment of co-employee was by way of retrenchment. Where the services of an employee are terminated as and by way of a disciplinary measure, the termination does not fall within the ambit of 'retrenchment' and the Courts below again committed an error in construing the termination in question as one by way of retrenchment. This incorrect perspective vitiated the orders passed by the Courts below. Thirdly, Mr. Jalisatgi would urge the Courts below have taken a very hypertechnical view of the matter. The lady co-employee appeared before the Labour Court and put oath behind the statement of harassment attributed to the respondent. The Courts, thus, could not have discarded her evidence on the ground that she did not state the precise words with sexual overtones uttered by the respondent. It was urged that the evidence of the lady co-employee was sufficient to prove the misconduct of the respondent and furnished a full proof justification for the termination of the services of the respondent.

9. Mr. Paithane, learned counsel for respondent, countered the submissions on behalf of the petitioners/employers. An endeavour was made by Mr. Paithane to support the impugned orders by forcefully canvassing submissions that the allegations against the respondent were as vague as possible. Even in the written complaint, the lady co-employee did not disclose the time and place of alleged harassment nor the specific

utterances were disclosed. In the face of such extremely unsatisfactory allegations and evidence of the lady co-employee, the Courts below committed no error in not placing implicit reliance on her version. Mr. Paithane would submit that the termination being stigmatic, it was incumbent upon the employer to hold a proper disciplinary proceeding. Instead a farce of disciplinary proceeding was made and the services of the respondent were terminated in an extremely high handed manner. The Labour Court was, therefore, justified in holding that the petitioners/employers indulged in unfair labour practices under Item 1(a), (b) and (f) of the Act, 1971.

10. To start with few undisputed facts. The fact that there were skeleton employees in the office of the petitioners is not much in dispute. The employer-employee relationship between the petitioners and respondent and the fact that the lady co-employee was also employed with the petitioners at the relevant point of time are, by and large, admitted. Indisputably, the petitioners professed to terminate the services of the respondent on the basis of the written complaint and the allegations of harassment made by the lady co-employee. The petitioners offered to pay compensation and admittedly the respondent did not accept the same. Indisputably, the services of the respondent were terminated under letter dated 16th December, 2013. The parties are at issue as to whether the services were in fact terminated under the said letter dated 16th December, 2013 and whether the said termination was preceded by the inquiry allegedly evidenced by the minutes of the Inquiry Committee meeting dated 10th December, 2013.

11. In the light of the aforesaid facts, the primary question that wrenches to the fore is the nature of the termination. The applicability of the statutory mandate contained in section 25F of the Industrial Disputes Act, 1947

hinges upon the nature of the termination. To this end, it may be appropriate to extract the purported termination order dated 16th December, 2013, in extenso.

It read as under:-

Sub: Termination of your service.

This is to inform you that, we have received a complaint against you for your arrogant misbehavior and sexual abuse from our staff member.

An inquiry committee was set up and you were called on and present on 10th December, 2013 at PTIF office to justify and clarify the allegations leveled against you.

But you refused to cooperate with the committee saying them that you can go ahead with any action you want to take. Since the allegations leveled against you are of very serious nature and cannot be tolerated. Therefore, the committee has decided to terminate your service with immediate effect. You are requested to settle your account within seven days with prior appointment of the secretary or the same will be sent to you as per our calculations.

You are warned not to visit PTIF office without our permission.

12. Evidently, the petitioners professed to terminate the services of the respondent in the backdrop of the allegations of arrogant misbehavior and the sexual harassment of the co-employee. The termination letter adverts to the constitution of Inquiry Committee, opportunity given to the respondent to explain the allegations and the alleged non-cooperation of the respondent in the said inquiry proceedings.

13. In the backdrop of the aforesaid nature of the termination, itis to be seen whether it falls within the ambit of retrenchment within the meaning of section 2(oo) of the Act, 1947. Section 2(oo) reads as under:-

> Sec.2(oo) :- "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.
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> (bb) termination of the service of the workman as result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
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> (c) termination of the service of a workman on the ground of continued ill-health.

14. On a plain reading, "Retrenchment" means termination by the employer of the service of a workman for any reason whatsoever except in two contingencies. One, termination as a result of punishment inflicted by way of disciplinary action. Two, the termination on account of the eventualities envisaged by subclauses (a), (b), (bb) and (c) of clause (oo). If the termination is either by way of disciplinary action or falls within any of the excluded categories, it would not fall within the ambit of, "retrenchment".

15. Section 25F of the Act, 1947 stipulates the conditions which are required to be followed before the workman in any industry who has been in continuous service for not less than one year under an employer is retrenched. Section 25(F) appears under the Chapter VA of the Act which makes a fasciculous of provisions in respect of Lay-off and Retrenchment. For applicability of the provisions contained in section 25F of the Act, 1947, the termination must first fall within the ambit of, “Retrenchment” as defined under section 2(oo) of the Act, 1947. If it is a case of termination of the service of an employee as a disciplinary measure, section 25F of the Act has no application at all.

16. The Labour Court as well as the Industrial Court seem to have approached the controversy from an incorrect perspective. The issues of justifiability of the termination order as a disciplinary measure and retrenchment without following the mandate of section 25F of the Act, 1947 were unjustifiably intertwined by the Courts below. Since the termination order refers to the alleged misconduct on the part of the respondent, the Courts below ought to have tested the legality and propriety of the termination from the point of view of its justifiability as a disciplinary measure only. Importing the issue of non-compliance of the conditions stipulated in section 25F vitiated the inquiry as it was not the case of the employer at any point of time that termination was by way of retrenchment. The termination was simpliciter for the alleged misconduct which took action of termination out of the purview of “retrenchment”.

17. Secondly, I find substance in the submission of Mr. Jalisatgi that the Labour Court and Industrial Court did not properly appreciate the foundational principle of the labour jurisprudence that even if the termination is not preceded by a disciplinary inquiry, the employer has the right to justify the

termination by adducing evidence before the Labour Court. The learned Judge, Labour Court proceeded to quash and set aside the termination on the ground that it was not preceded by a lawful inquiry. Where the employer exercises the right to adduce evidence in justification of termination, ordinarily, it is not open to the Industrial Adjudicator to non-suit the employer on the ground that the inquiry was defective. In such a case the Industrial Adjudicator would be within his rights in holding that the employer could not justify the termination. However, the termination can not be set aside solely on the ground of no inquiry or defective inquiry where the employer chooses to lead evidence before the Labour Court.

18. The legal position is well settled by a catena of decisions. In the case of Punjab National Bank Ltd. vs. All India Punjab National Bank Employees' Federation and Anr.[1], the Supreme Court

enunciated the law as under:-

> 38] But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be proper order to make. … . . ….

19. In Delhi Cloth and General Mills Co. vs. Ludh Budh Singh[2] the

legal position was reiterated in the following words:-

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1 AIR 1960 SC 160.

2 AIR 1972 SC 1831.

60] …….. "If no domestic enquiry had been held by the management or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled straightaway adduce evidence before the Tribunal and justifying its action The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it."…..

20. The pronouncement of the Supreme Court in the case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India Pvt. Ltd. vs. The Management and Ors.[3] culls out the principles which govern the situation where the employer proposes to lead evidence in justification of the termination order. The proposition 4 and 5 bear upon the controversy at hand. They read as under:-

27] ……

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the, merits

[3] AIR 1973 SC 1227.

of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(emphasis supplied) 21. In the case of The Workmen of M/s. Firestone (supra) the Supreme Court also adverted to the possibility of the employer not having held any disciplinary inquiry at all and enunciated the law as under:-

33] If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly there are no express words to that effect; and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the. employer is entitled to adduce evidence for the first three before the Tribunal even if he had held no, enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will

have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in Delhi and General Mills Co. Ltd. 1972-1 Lab LJ 180= (AIR 1972 SC 1031). No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management, then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the, management to sustain its order by adducing independent evidence, before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has bean given judicial recognition over a long period of years.

(emphasis supplied)

22. Lastly a useful reference can be made to a Division Bench judgment in the case of Vajidali T. Kadri vs. M/s. D.D. Shah & Co.[4] on which reliance was placed by Mr. Jalisatgi. In the case of Vajidali (supra), after adverting to the pronouncement of the Supreme Court including the aforesaid judgments, it was postulated in no uncertain terms that even in a case where no inquiry was held prior to dismissal of the employee, the employer's right to justify the action by leading necessary evidence in

4 2007(6) Mh.L.J. 650.

support of such action for the first time before the Labour Court remains unaffected.

23. This being the position in law, the Labour Court committed an error in setting aside the termination on the ground that it was not preceded by the charge-sheet and formal disciplinary inquiry when the employer chose to adduce evidence in justification of the termination order. The learned Member, Industrial Court had also fallen in error in not correcting the aforesaid mistake, which could
have been legitimately corrected in exercise of revisional

jurisdiction.

24. It is true that the Labour as well as the Industrial Court have found that the evidence of the lady co-employee was not specific on the point of sexual harassment, she was allegedly subjected to. Both the Courts have in terms recorded that the lady co-employee did not specifically state the words uttered by the respondent and,
therefore, the allegations of misconduct cannot be said to have been proved.

25. Mr. Paithane, learned counsel for the respondent, would urge that the aforesaid approach of the Courts below can not be faulted at. It was urged that the termination of the respondent was wholly arbitrary and illegal. On the basis of vague and unsubstantiated allegations the services of the respondent could not have been abruptly terminated. To lend support to this submission, Mr. Paithane placed reliance on the decision of

the Supreme Court in the case of Marwari Balika Vidyalaya vs. Asha Srivastava & Ors[5].

26. I have perused the judgment in the case of Marwari Balika (supra). It does not govern the controversy at hand.

27. The veracity of allegations, in a case of the present nature, is a matter of careful evaluation of evidence. The Court/Tribunal is required to summon all its forensic skills to separate the truth from falsehood.

28. I find substance in the submission of Mr. Jalisatgi that the evidence of a lady co-employee could not have been thrown overboard for the only reason that she did not state the specific words with sexual overtones allegedly uttered by the respondent. Absence of corroboration is also a matter which ought to have been considered in the backdrop of the attendant facts and circumstances. As noted above, there were only two employees at the time of the occurrence. The lady co-employee first gave a complaint in writing. The petitioners took cognizance of the complaint and constituted an Inquiry Panel. The question as to who would speak first in such a situation ought to have been addressed by the Courts below. Was the evidence of lady co-employee tainted with inconsistencies or infirmities which would have rendered it unsafe to place reliance on her testimony was the question the learned Judge, Labour Court, was required to pose unto himself. It

does not appear that the Courts below have appreciated the evidence in a correct perspective and chose to jettison away the testimony of the lady

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5 [2019] 2 S.C.R. 722

co-employee on the ground that she did not specifically state the words allegedly uttered by the respondent, which constituted sexual harassment.

29. The upshot of the aforesaid consideration is that the impugned judgment as well as the judgment of the Labour Court declaring that the petitioners indulged in unfair practices and setting aside the termination of the respondent deserve to be quashed and set aside. The complaint is required to be restored to the file of the Labour Court for afresh decision on the aspects of the inquiry against the respondent being fair and proper and, if not, whether the petitioners/employers succeeded in proving the misconduct of the respondent before the Court and, resultantly, were justified in terminating the services of the respondent, and, if not, to what relief the respondent would be entitled to, including the aspect of back wages. Hence, the petition deserves to be partly allowed.

Thus, the following order.

ORDER

1] The petition stands partly allowed.

2] The impugned judgment and order passed by the Industrial Court in Revision Application (ULP) No. 39 of 2021 as well as the judgment and order passed by the Labour Court in Complaint (ULP) No. 37 of 2014 are quashed and set aside.

3] The Complaint (ULP) No. 37 of 2014 is restored to the file of the Labour Court at Thane.

4] The learned Judge, Labour Court at Thane is requested to decide the complaint afresh after providing an opportunity to the parties to adduce evidence, including on the aspect of back wages, keeping in view the

aforesaid observations as regards the right of the employer to justify the termination before the Court de hors no or defective inquiry.

5] The Labour Court is at liberty to recast the issues if found necessary.

6] By way of abundant caution, it is clarified that the

observations of this Court on the merits of the allegations are

confined to determine the legality and propriety of the impugned orders and they may not be construed as an
expression of opinion on the merits of those allegations and the Labour Court shall decide the same without being

influenced by those observations.

7] Rule made absolute to the aforesaid extent.

8] In the circumstance, there shall be no order as to costs.