Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5356 OF 2021

Shri Tanaji Shankar Anuse ...Petitioner

V/s.

Maharashtra Rajya Doodh Sahakari Mahasangh Maahanand Dudh Shala ...Respondent

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Mr. Y. B. Lengare for Petitioner.
Mr. Tanaji Mhatugade for Respondent.

CORAM : G. S. KULKARNI, J.

DATE : 6 JUNE 2022

JUDGMENT:

1. Rule, returnable forthwith. Respondent waives service. By consent of the parties heard finally.

2. This is a petition filed under Article 227 of the Constitution of India wherein the petitioner assails the judgment and order dated 7 November, 2019 passed by the learned Presiding Officer, 10th Labour Court, Mumbai, in Reference (IDA No.38 of 2015) whereby the Labour Court has held that the enquiry conducted by the respondent/employer against the petitioner is legal, fair and proper and that the findings of the enquiry officer are not perverse in deciding a preliminary issue (part-I). The operative order as passed by the learned Labour Court is required to be noted which reads thus:-

"(i) The enquiry conducted against second party is fair and proper.
(ii) The findings of the enquiry officer are not perverse."

3. The relevant facts are: The respondent-employer initially appointed the petitioner temporarily as a 'Junior Clerk' on 2 February, 2000 on a consolidated pay of Rs.5,000/- per month for a period of two years. He was permanently appointed from 14 September, 2004. The case of the petitioner is that he suffered harassment at the hands of one Shivaji Wagh, who was the Team Head (thereafter promoted as Deputy Manager and then General Manager) under whom he was working. The petitioner was posted to work as a Personal Assistant (P.A.) of Shri.Shivaji Wagh in the year 2006. Some of the instances of the harassment as set out by the petitioner are to the effect that the petitioner was transferred within 7 to 8 months to Colaba area and was assigned an impossible target of increasing sale of milk of 2600 litres per day against normal 1300 litres per day. Also such impossible target was not assigned to any other employee and that too a clerk: Such tasks were assigned to him, when the respondent and its concerned officers were well aware that the petitioner was a heart patient and had undergone an Open Heart Surgery in October, 2002. The petitioner has alleged that he was subjected to successive transfers, one on 7 March, 2007 and immediately thereafter on 27 April, 2007. Thereafter on 9 November, 2007, a show cause notice was issued to the petitioner inter-alia alleging that the

petitioner's senior had assigned him work on 2 January, 2007 which was not discharged by him, as also alleging that during the office hours, the petitioner was reading newspapers and therefore, the petitioner was not diligent in the day to day discharge of his duties. It was alleged that the said action of the petitioner amounted to misconduct under Rule 18(1), (XI)(XX) contained in Chapter 3 of Part 4 of the Service Rules attracting punishment. The petitioner was called upon to show cause within 7 days as to why disciplinary action ought not to be initiated against him. The petitioner by his letter dated 16 January, 2007 replied to the show cause notice inter-alia pointing out that in the discharge of his official duties he was in fact assigned personal work. He also pointed out the nature of such work, which he was called upon to undertake. He stated that he was required to work in in three shifts which was physically impossible for him to do such work. He stated that he was also assigned the duty of distributing gifts and to reach them to the offices of the Hon'ble Minister and IAS and IPS officers and that too by climbing stairs at some places which was not part of his duties.

4. After considering the reply of the petitioner, the petitioner was informed by the respondent by its communication dated 18/19 April, 2007 that the explanation offered by the petitioner to the show cause notice was not satisfactory. It was recorded that the petitioner's conduct as set out in

the show cause notice dated 1/11 January, 2007 amounted to misconduct under Chapter IV Part III Rule No. 19(b) of the Conduct of Employees Rules. The petitioner was called upon to show cause as to why a punishment of stoppage of increment of salary for a period of two years be not imposed on him. The petitioner replied to such show cause notice by his letter dated 3 May, 2007 *inter alia* denying its contents. The petitioner stated that the explanation offered by him has not been considered and as such the said show cause notice was issued without application of mind to the detailed facts as set out in his explanatory letter dated 16 January, 2007. The petitioner also set out the personal harassment caused to him at the hands of Shri Shivaji Wagh, who was the General Manager. He also stated that the petitioner was made to work at 4 a.m. in the morning which caused serious harassment to the petitioner. He also stated that the General Manager was habitual in asking the petitioner to accompany him during the odd hours at night to different bars including a ladies bar and the petitioner wondered whether he was appointed to work at the dairy or whether his duty was to attend such places. He has set out the nature of the private jobs of the General Manager which were required to be undertaken by him, which included the General Manager Shri.Shivaji Wagh calling him to vist different bars between 8 p.m. to 1 a.m. The other jobs being to bring meals, breakfast as also carry his tobacco pouch, water bottle etc. which was not

his duty at all. He accordingly demanded an enquiry at the hands of independent persons from amongst the persons whose names were set out in the said reply to such show cause notice. Further, a letter was addressed by him to the Chairman of the respondent that an independent enquiry be undertaken of Shri.Shivaji Wagh, General Manager, Shri. Anil Kawathekar, Deputy General Manager, Shri. R.P. Pandit, Superintendent and Shri. Ashok Jadhav, Deputy Manager for causing harassment and torture to the petitioner before any decision is taken under the show cause notice issued to the petitioner to stop increment for two years.

5. On the above backdrop, a cryptic order dated 23/28 May, 2007 came to be issued by the respondent recording that no explanation was offered by the petitioner to the show cause notice dated 18/19 April, 2007 and hence the charges as set out against the petitioner in the said show cause notice of violation of Rule 19(B) of the Employees Rules read with Employees (Standing Order) Act, 1946 stood proved, hence, the punishment of stoppage of increment for a period of two years was ordered against the petitioner.

6. The petitioner thereafter on 31 August, 2007 addressed a letter to the Managing Director stating that the punching card recording the 'In and Out' entries of the petitioner to the work place was stopped by the

respondent without any notice to the petitioner. The petitioner again complained of the harassment as made to him on 13 August, 2006 and the fact of the show cause notice being issued to him as also that his explanation was kept hidden and deliberately not considered when such letters/explanations of the petitioner were in fact received and acknowledged by the respondent. It was hence requested that the punching card in regard to the 'In and Out' entries of the petitioner be restored.

7. The respondent on such backdrop informed the petitioner by its letter dated 7 September, 2007 that the punching card used for the 'In and Out' entries was suspended because of the transfer of the petitioner. The petitioner thereafter again made a representation on 31 October, 2007 that the petitioner was required to work in three shifts outside the dairy with effect from 1 October, 2007 which was by virtue of transfer order dated 21 August, 2007 issued to him. He also described the various harassments to which he was subjected by his superiors. The petitioner thereafter made another representation dated 18 January, 2008 requesting that the petitioner was not permitted the in and out punching.

8. The petitioner on 18 January, 2008 also addressed a separate representation to the Chairman that he had undergone an open heart surgery and it was not possible for him to undertake stressful work as

foisted on him and hence as per the ongoing scheme for voluntary retirement, the petitioner be granted voluntary retirement. As the said request of the petitioner was not considered, the petitioner addressed a representation to Hon'ble Minister, who was also the Director of the respondent stating that the petitioner was being harassed including on his caste. The petitioner again set out the nature of the harassment as meted out to him and requested that such injustice and illegality being made to be suffered by him, be directed to be stopped and his request for voluntary retirement be accepted. He also pointed out that since last six months his salary was also illegally stopped. Another representation to this effect was submitted by the petitioner to the Director of the respondent in July, 2008.

9. On the above backdrop, another show cause notice dated 16/17 May, 2008 came to be issued by the respondent to the petitioner. This time the allegations as contained in the show cause notice which was quite cryptic, was to the effect that the petitioner for a continuous period of 229 days, i.e. from 1 October, 2007 upto 16 May, 2008 had remained absent without permission. It was alleged that during this period, the petitioner had not contacted the Management at all and hence such conduct was contrary to Chapter IV Part III Rule No. 18(v) warranting a disciplinary action. The petitioner was called upon to show cause, failing which it was to be

presumed that the petitioner had nothing to be stated and accordingly an action would be taken against the petitioner. Notably there was no time limit as set out for the reply to the said show cause notice. A similar show cause notice came to be issued to the petitioner on 28 February, 2008. The petitioner has contended that the show cause notice dated 16/17 May, 2008 was never received by him and the second show cause notice dated 28 February, 2008 was received by him on 8 August, 2008. The petitioner by his letter dated 12 August, 2008 responded to the said show cause notice dated 28 February, 2008 wherein the petitioner denied all allegations made against him in the show cause notice and recorded the circumstances in which he was in fact called upon by the Senior Officers not to report for duties. The said reply was received by the respondent no.1 on 12 August, 2008.

10. The respondent considering the petitioner's letter dated 12 August, 2008 addressed another letter to the petitioner dated 28 November, 2008 disputing its contents and called upon the petitioner to submit relevant documents within a period of 7 days in regard to his absence and his justification. The petitioner by his letter dated 16 December, 2008 replied to the said letter of the respondent, setting out his justification and as to what circumstances he was asked not to report for duties.

11. The respondent thereafter by its letter dated 16 December, 2008 informed the petitioner that the petitioner unauthorizedly had remained absent for the period as set out in the earlier show cause notice as also he had made allegations against the senior officers of the respondent and all these issues were required to be inquired into, hence a one man Inquiry Committee of Shri S.M. Patil was being appointed, who would convene a meeting on 23 December, 2008 at 11 a.m. It was informed that if the petitioner does not remain present at the venue which was at the respondent's office at Mumbai, it would be presumed that the petitioner has nothing to be informed. The said letter dated 16 December, 2008 of the respondent was received by the petitioner on 25 December, 2008 which was a Christmas Holiday and hence the petitioner remained present at the venue of the enquiry on the next day, i.e., 26 December, 2008 which was informed by the petitioner to the respondent by his letter dated 26 December, 2008. Which was acknowledged by the respondent. The petitioner also set out his phone number and informed the respondent that he was available in Mumbai for the purposes of the inquiry.

12. The petitioner has contended that the Inquiry Officer conducted the enquiry on 31 December, 2008 and 1 January, 2009 at the respondent's

premises namely at the dairy plant at Goregaon, Mumbai. Before the Inquiry Committee, only the petitioner, the Inquiry Officer and one lady stenographer were present and none of the officers of the respondent were present and/or examined and hence there was no question of any cross-examination. The petitioner has contended that the petitioner was deprived of an opportunity of a fair inquiry, as no procedure was followed by the Inquiry Officer.

13. On 12 January, 2009 the Inquiry Officer Shri S.M. Patil phoned the petitioner from his mobile phone, and called upon the petitioner to file his explanation on 17 January, 2009. The petitioner filed his 10 pages explanation/representation which was received by the respondent.

14. It is the petitioner's case that thereafter an inquiry report dated 15/17 April, 2009 was supplied to the petitioner alongwith a final show cause notice dated 4/6 June, 2009 as received by the petitioner on 13 June, 2009. The petitioner has contended that the Inquiry Report at internal page 6 has set out the statements of 10 representatives of the management being referred by the Inquiry officer, the details of their submissions and contents of the said statements were discussed by the Enquiry Officer at internal page 7 to Page 15. The petitioner was called upon to show cause as to why

the petitioner should not be removed from service.

15. The petitioner having received the final show cause notice, contacted one advocate Shri.Dilip Pandurang Gaikwad at Post Kadlas, Taluka Sangola, District Solapur so as to seek legal help to reply the show cause notice. The petitioner also paid an amount of Rs.10,000/- to the said advocate. The said advocate further contacted advocate Shri.Varkse at Mumbai to prepare reply to the said final show cause notice. However, both the advocates did nothing for a period of almost 11 months. The petitioner in fact lodged a complaint with the Sangola Police Station, District Solapur against Advocate Dilip Gaikwad for cheating the petitioner. In these circumstances, the petitioner has contended that he could not file a reply to the show cause notice.

16. The respondent-management however proceeded in the absence of the petitioner's reply to the final show cause notice and passed an order dated 20 July, 2009 recording that as no reply to the final show cause notice was received from the petitioner, hence it appeared that the petitioner had nothing to say in regard on the inquiry report. As no explanation was being offered by the petitioner in response to the show cause notice, the respondent passed an order to the effect that the misconduct against the

petitioner thus stood proved, and from the date of the said order, the petitioner shall stand removed from the service of the respondent, on the ground that the misconduct against the petitioner under Rule No. 18(1)(7)(11)(20)(26) of the respondent's Conduct, Discipline and Appeal Rules stood proved.

17. The petitioner has contended that the petitioner submitted a representation dated 19 May, 2020 to the Hon'ble Minister, Hon'ble Deputy Chief Minister; to the Hon'ble Minister for Dairy Development, as also a representation dated 26 April, 2011 to the Chief Secretary, being aggrieved by such action on the part of the respondent. He has contended that the Joint Registrar, Office of the Commissioner of Dairy Development vide his letter dated December, 2010 informed the petitioner to approach the appropriate Deputy Labour Commissioner, Mumbai, if the petitioner intended any relief of reinstatement in service.

18. Accordingly, the petitioner made an application for a reference under the provisions of Section 10 before the Deputy Commissioner, Labour, Mumbai. The Deputy Commissioner, Labour passed an order dated 16 March, 2015 recording that the conciliation between the petitioner and respondent having failed, the matter in regard to the reinstatement of the

petitioner in service with full back wages be referred for adjudication before the Labour Court at Mumbai. The petitioner accordingly filed a statement of claim dated 20 June, 2015 before the Labour Court. The respondent filed its written statement on 5 December, 2015.

19. In the course of adjudication, the Labour Court framed issues which came to be later on recasted. The learned Presiding officer of the Labour Court on 7 May, 2019 passed an order recasting issues and observed that an issue regarding fairness of enquiry and perversity of findings are being framed as Issue no. 1a and 1b to be tried as preliminary issues. The following are the recasted issues:

> "1a. Whether enquiry conducted against second party is legal, fair and proper?
>
> 1b. Whether findings of enquiry officer are perverse?

The other issues were as under:

> 1. Whether second party prays that his services were illegally terminated by first party on 17.07.2009?
>
> 2. Whether second party is entitled for reinstatement with continuity of services and full back wages w.e.f. 01.10.2007 along with other consequential benefits?
>
> 3. What Award."

20. By the impugned order dated 7 November, 2019, the learned Presiding officer of the Labour Court has answered the preliminary issues

(supra) holding that the enquiry conducted against the petitioner was legal, fair and proper. In regard to issue no.1b it was held that the findings of enquiry officer are not perverse. It is this order as passed by the learned Presiding Officer of the Labour Court which is challenged in the present petition.

21. This petition was heard by this Court on 8 September, 2021 when the Court after hearing the parties in its order observed that the impugned order passed by the learned Labour Judge prima facie was legally perverse inasmuch as the learned Labour Judge had completely lost sight of his own observations that the chargesheet itself was defective and an enquiry conducted against the petitioner on the foundation of a defective chargesheet and accordingly, could not have held the enquiry to be legal, fair and proper. The Court accordingly suggested that, if that be the case, the respondent may consider settling the disputes amicably. The said order reads thus:

> "1. After hearing the learned counsel for the petitioner, *prima facie* it appears that the impugned order passed by the learned Labour Judge is legally perverse inasmuch as the learned Labour Judge has completely lost sight of the fact and his own observation that the chargesheet itself was defective. The enquiry thus conducted against the petitioner on the foundation of a defective chargesheet could not have been held to be legal, fair and proper as observed by the learned Labour Judge.
>
> 2. Mr. Mhatugade, learned counsel for the respondent, however, in all fairness, agrees to take instructions on such aspect of the matter, and considering the fact that the petitioner was working as a clerk, put an end to

> the dispute instead of prolonging the proceedings which would not be in the interest of either of the parties.
>
> 3. Learned counsel for the petitioner has also submitted that the petitioner is ready and willing to opt for a voluntary retirement.
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> 4. Considering the fact that the petitioner was working as a clerk with the respondent-management, it in the fitness of things, that the respondent adopts a considerate approach so as to resolve the disputes amicably. Accordingly, stand over to **September 15, 2021 (H.O.B.).”**

22. However, despite the proceedings being adjourned from time to time, a settlement could not be brought about. Accordingly, on 20 October, 2021 the proceedings were extensively heard, when the Court passed the operative order that the Writ Petition is allowed with cost quantified at Rs.50,000/- to be paid by the respondent to the petitioner within four weeks. However, on the next day, 21 October 2021, when the Court was dictating the reasons, it was noticed that in the enquiry report the enquiry officer had recorded that he had examined witnesses on behalf of the management which was also noted by the Labour Court in paragraph 12 of the impugned order. However, as the depositions of the said witnesses were not placed on record by either of the parties, the Court thought it appropriate that the same are place on record. On 21 October 2021 the Court accordingly passed the following order:-

> “1. Not on board. Taken on board.
> 2. Although the petition was closed for orders after hearing the parties finally, the matter is listed today for certain clarifications namely as to whether the enquiry officer has examined any of the witnesses as observed by the Tribunal in paragraph 12 of the impugned order.

> 3. Mr. Mhatugade shall place on record by 10.00 a.m. tomorrow the depositions of any witnesses if examined on behalf of respondent before the enquiry officer along with proof of receipt of such notes of evidence by the petitioner.
> 4. If it is the case of the petitioner that no evidence was recorded of any of the witnesses on behalf of the management and no notes of evidence were served on the petitioner to enable him to cross-examine such witnesses, and if there is no oral evidence recorded, Mr. Mhatugade shall take instructions and inform the correct position to the Court tomorrow at 10.30 a.m. 5 Stand over to 22nd October 2021."

23. On 22 October, 2021, when the proceedings were listed in the above context, learned counsel for the respondent submitted before the Court that statements of 10 witnesses came to be recorded by the enquiry officer after the enquiry was closed. As this was something which would shock the conscience of the Court, the Court passed the following order while reserving the judgment:

> "1. Yesterday (21 October 2021) this Court had passed the following order:-
>
> > "1. Not on board. Taken on board.
> > 2. Although the petition was closed for orders after hearing the parties finally, the matter is listed today for certain clarifications namely as to whether the enquiry officer has examined any of the witnesses as observed by the Tribunal in paragraph 12 of the impugned order.
> > 3 Mr. Mhatugade shall place on record by 10.00 a.m. tomorrow the depositions of any witnesses if examined on behalf of respondent before the enquiry officer along with proof of receipt of such notes of evidence by the petitioner.
> > 4 If it is the case of the petitioner that no evidence was recorded of any of the witnesses on behalf of the management and no notes of evidence were served on the petitioner to enable him to cross-examine such witnesses, and if there is no oral evidence recorded, Mr.Mhatugade shall take instructions and inform the correct position to the Court tomorrow at 10.30 a.m.
> > 5 Stand over to 22nd October 2021."
>
> 2. Mr.Mhatugade has accordingly submitted before this Court the statements of the alleged witnesses examined in the enquiry proceedings which reveals a state of affairs, which would shock the conscience of the Court namely that the enquiry officer who held the inquiry proceedings on 30

December 2008, subsequent to the conclusion of the enquiry, recorded the statements of so called ten witnesses. Such statements were recorded between 6 January 2009 to 14 January 2009 which are also very deceptively referred in the enquiry report. The date of statements and name of the witnesses are as follows:-

Witness	Name	Date of evidence
1	Mr.Dipak Dayanand Abhang, Jr. Clerk	06/01/2009
2	Mr.S.D.Darekar, Assistant	06/01/2009
3	Mr.R.P.Pandit, Superintendent	06/01/2009
4	Mr.H.W.Nagdive, Deputy Manager	07/01/2009
5	Mr.A.S.Badekar, Manager	06/01/2009
6	Mr.M.S.Bhosale, Deputy Manager	06/01/2009
7	Mr.A.R.Kawathekar, Deputy Manager	06/01/2009
8	Mr.Vikas Agnihotri, General Manager	13/01/2009
9	Mr.S.D.Wagh, Deputy Manager (Estate)	14/01/2009
10	Mr.Tanaji Shankar Anuse, Jr.Clerk	07/01/2009

3. Mr.Mhatugade also states that there is nothing on record of the enquiry proceedings that any notice prior to recording of this statement was issued to the petitioner as also there is nothing on record to show that any opportunity was made available to the petitioner to cross examine these witnesses.

4. Having received such factual clarification, the Court would now proceed to deliver its judgment in the petition.

5. Judgment reserved."

24. On the above backdrop, having heard learned counsel for the parties and having perused the record, it appears to be quite clear that the petitioner was a permanent employee of the respondent working in the capacity of a Junior Clerk. It also appears from the voluminous correspondence as placed on record on behalf of the petitioner that he had a serious grievance in regard to the duties assigned to him by the then Managing Director. In fact his assertions and allegations against such high

officers were extremely serious. This for the reason that the petitioner from time to time had alleged that he was assigned personal work by the then General Manager and that too to accompany him during the night hours when the General Manager visited different liquor bars as pointed out by him in the letter dated 3 May, 2007. In the present context, the grievance of the petitioner as echoed by him and as contained in the said letter dated 3 May, 2007 is required to be noted, which reads thus:

(Translation of a Copy of an Application typewritten in Marathi.)

Date : 03.05.2007

To,

The Managing Director,

Mahanand Dairy,

Goregaon -East,

Mumbai-400065.

Subject :- Mahanand 1, Personnel/2007-08/298.

Through :- General Manager (Marketing/Distribution)

Explanation about the Show-Cause Notice dt. 18/27-4-2007 - You have not properly considered my explanation and you have taken ex-parte decision which is not agreeable to me. Therefore, thorough enquiry of the belowmentioned Officers may be made.

It is my humble request that thorough enquiry of Shri. Shivaji Wagh- Deputy Manager, Shri. Anil Kavatekar- Deputy Manager, Shri. R.P. Pandit- Superintendent, Shri. Ashok Jadhav - Deputy Manager and Deepak D.D.- Abhang J.C., may be made. Moreover, Shri. Shivaji Wagh has mentally tortured me tremendously during his tenure on the post of General Manager.

1. He has hurled casteist abuses.

2. He has hurled abuses over mother and sister.

3. Horrible serious allegations have been levelled against me.

4. I have been constantly shown the fear of route in the Distribution Department.

5. You can not do anything wrong to me.

6. Chairman is in my favour.

7. MD is in my favour.

8. I have saved many persons.

To hold discussion on other issues.

I used to receive phone call at 4.00 a.m. early in the morning and what used to be discussed was only about Mahanand Dairy and this has caused my mental condition to constantly deteriorate. He used to call four four times during night. Why all these things were going on? What was the reason? I could not understand as to whether my job was in Mahanand Dairy or in Ladies Bar. There are many such instances. I am in a condition that I cannot tolerate and even not able to tell about it. Shri Shivaji Wagh has used me only for Bar purposes and not for the work of Mahanand Dairy. I was required to sit in the Bar from 8.00 p.m. to 1.00 a.m. I was required to visit four-four bars during one night itself. All these things were going on for his pleasure. I was required to sit in the said Bar against my wish and what works I used to do in the office were to bring breakfast, lunch, to pick up tobacco packet in hands, to bring water bottles, to pick up bag while going out. Office works were never ever assigned to me and such nonsense works were used to be assigned to me. Am I supposed to do these works? On top of that, he used to say that I do not do any work at all. He used to praise me on my face and used to speak ill of me behind my back and used to tell people that I do not at all work. Shri Wagh thus speaks from both the sides. Similarly, Shri Dipak D.D., Abhang, J.C., also have harassed me continuously. Hence, enquiry may be made with them as well. I apprehend danger to my life from Shri Shivaji Wagh – Deputy Manager, Shri Anil Kavatekar – Deputy Manager, Shri R.P. Pandit – Superintendent, Shri Ashok Jadhav – Deputy Manager as well as Shri Dipak D.D. and Abhang, J.C. Therefore, thorough enquiry may be made with them. Moreover, they have been continuously harassing me collusively in chained manner and are defaming me frequently.

Further, I am ready to face any enquiry. Hence, thorough enquiry may be made in the matter, this is the earnest request.

May this be known.

[Shri Tanaji Shankar Anuse]
03.05.2007."

25. It further appears that although a show cause notice dated 1/11 January, 2007 and thereafter a subsequent show cause notice dated 18/19 April, 2007 were issued to the petitioner alleging that he was not

discharging the duties which were assigned to him by his senior as also for the reason that during the working hours, he was reading newspapers, which amounted to a misconduct under Rules 18(1) of the said Rules, a punishment came to be imposed on such show cause notices and orders dated 23/28 May, 2007 came to be passed of stoppage of increment of the petitioner for a period of two years. In imposing such punishment, it is seen that there was no enquiry which was conducted. Thereafter as pointed out by the petitioner, he was subjected to harassment, as he was made to work in three shifts which is completely beyond the stipulated working hours. He also pointed out that his 'In and Out' punching card was also suspended. It is on this backdrop purportedly a show cause notice was issued to the petitioner dated 16/17 May, 2008 alleging unauthorized absence between the period from 1 October, 2007 to 16 May, 2008 and thereafter on the same ground another show cause notice dated 28 July, 2008 came to be issued. The petitioner has stated that the show cause notice dated 16/17 May. 2008 was not received by the petitioner, as categorically stated by him in his reply. The petitioner replied to the show cause notice dated 28 February, 2008 *inter alia* pointing out all his grievances and stating that he could not remain present for duties in pursuance of the directions of his senior. It appears from the record that the petitioner's reply to show cause notice was not accepted. The respondent had accordingly appointed an

enquiry officer Shri S.M. Patil to conduct an enquiry against the petitioner on the charges as set out in the show cause notice. No separate charge sheet appears to have been issued to the petitioner on the basis of which an enquiry could have been lawfully conducted. The petitioner was called upon to remain present at the office of respondent no. 2 at Mumbai on 23 December, 2008 at 11 a.m. as informed to the petitioner by the letter of the Enquiry Officer dated 16 December, 2008. The petitioner by his letter dated 26 December, 2008 informed the enquiry officer that the letter dated 16 December, 2008 calling upon the petitioner to attend the enquiry on 23 December, 2008 was received by him on 24 December, 2008, which was one day after the petitioner was called upon to remain present. He stated that next day was 25 December, which was a Christmas day and accordingly, he would be remaining present before the enquiry officer on 26 December, 2008 which was immediately the next day after the Christmas day. He also informed his mobile number stating that he would be stationed at Mumbai.

26. It appears that the enquiry officer conducted the enquiry on 30 December, 2008, when the petitioner was called upon to appear. The petitioner submitted his written say on 1 January, 2009 recording that the case of the respondent-management against him was false and malafide and amounted to victimization and for which he has made several

representations. He also made a grievance of his exploitation by the General Manager Shri Shivaji Wagh and other officers as set out in his letters addressed from time to time.

27. The record would indicate something which is extremely disturbing, namely, that the enquiry officer had recorded the statements of 10 employees of the respondent after the enquiry was closed, namely, of Mr. Dipak Dayanand Abhang, Jr. Clerk, Mr. S.D.Darekar, Assistant, Mr. R.P. Pandit, Superintendent, Mr. H.W. Nagdive, Deputy Manager, Mr. A.S. Badekar, Manager, Mr. M.S. Bhosale, Deputy Manager, Mr. A.R. Kawathekar, Deputy Manager, Mr. Vikas Agnihotri, General Manager, Mr. S.D. Wagh, Deputy Manager (Estate), Mr. Tanaji Shankar Anuse, Jr.Clerk.

28. The enquiry officer conducted the enquiry against the petitioner in blatant disregard and in breach of the principles of natural justice, having recorded the statements of such witnesses/employees of respondent, behind the back of the petitioner and after the enquiry proceedings were closed. On the basis of such statements of the respondent/management witnesses, an enquiry report dated 15/17 April, 2009 was prepared by the Enquiry Officer recommending that the conduct of the petitioner of unauthorized absence was proved and forwarded the same to the Managing Director of the respondent that too, without considering the case of the petitioner. It is

clear that except for what was stated in the show cause notice, there was no separate charge sheet issued, on the basis of which the enquiry officer could proceed.

29. Thus, the record would reveal two fundamental illegalities in the conduct of enquiry proceedings. Firstly, the record does not indicate a charge-sheet being issued and secondly, something which will vitiate the entire enquiry proceedings namely, that the Enquiry officer made about 10 witnesses to give statements in the absence of the petitioner and without an opportunity to the petitioner to cross-examine such witnesses considered these statements so as to form a basis of his enquiry report. It is on such enquiry report a final show cause notice dated 4 June, 2009 came to be issued by the respondent to the petitioner. The petitioner could not respond to the same, as he had sought help of an advocate as also had paid money. However, for such reasons as noted above, a reply could not be submitted by him to the show cause notice. It is on this backdrop, the respondent issued an order dated 20 July, 2009 imposing a punishment of removal from service on the alleged violation by the petitioner of Rule 18(1), (7), (11), (20) and (26).

30. On the above conspectus, when the petitioner had approached the

Labour Court praying for the reliefs that the termination itself was bad and illegal, in the course of such adjudication, by an order dated 7 May 2019 passed on the application of the respondent, the learned Labour Court accepted the said application to re-cast the issues by following the law laid down by the Supreme Court in **Cooper Engineering Ltd. Vs. Shri. P. P. Mundhe, (1975 AIR 1900)**, whereby the learned Presiding Officer of the Labour Court passed an order to decide the Issue Nos.1a and 1b regarding fairness of enquiry and perversity of findings, as preliminary issues. By the impugned order, the learned Presiding Officer, Labour Court, has held that the enquiry conducted against the second party is fair and proper. On the backdrop of the facts as noted above, some of the findings which are recorded by the learned Presiding Officer of the Labour Court in passing the impugned order, are quite intriguing. The observations on the basis of which the learned Presiding Officer has reached a conclusion that the enquiry was conducted by the Enquiry officer in a fair manner, are required to be noted. These observations are contained in paragraphs 9 to 13 which read thus:

> "9. The record or documents does not show that a clear charge-sheet under Model Standing Orders or Certified Standing Orders of first party, if any has been issued. It is on record that a notice on 17/05/2008 was issued calling explanation of second party regarding his absentee. Earlier also on 28/02/2008 he was issued with a show cause notice regarding his absenteeism to which he did not reply. Thereafter management decided to initiate enquiry against workman and accordingly appointed enquiry officer. Record also shows that on 16/12/2008 enquiry officer issued him a letter and called to attend

the enquiry to be conducted against him with regard to the charge of absenteeism. Though a specific charge-sheet referring charges was not issued, but the letters issued to him contains the allegation and Rules under which the charge of absenteeism has been levelled.

10. On perusal of the documents filed by second party it can be seen that he filed on record his explanation to a show-cause notice issued on 28/02/2008. The said explanation very specifically shows admission by second party in respect of absenteeism. In the said explanation he clearly mentions that on and from 01/10/2007 he is absent as per directions of his superior officer and the management would be responsible for that. The record also shows that when he was intimated about the proposed enquiry he issued a letter to the management; copy of the same is filed on record. It has been mentioned in the said letter that he has mentioned the reason for his absenteeism in the explanation filed by him on 12/08/2008. Therefore, it seems that second party is firm on his explanation given by him on 12/08/2008 in which absenteeism is admitted.

11. It is argued that during enquiry no specific evidence has been brought on record against workman and he was not allowed to cross-examine the witness. But as mentioned earlier by the charge-sheet cum enquiry letter the workman was clearly intimated about the charge of absenteeism. He was asked to remain present in the enquiry that means he was intimated to participate in the enquiry. The workman avoided to appear in the enquiry which shows that he has not availed that opportunity. In such circumstances, the technical objections may not take its place. Advocate for first party relied on following case laws;

(a) ***Sur Enamel and Stamping Works Ltd.*** vs. ***Workmen*** [AIR 1963 SC 1914];
(b) ***Narang Latex and Dispersions Ltd.*** vs. ***S. V. Suvarna & Anr.*** [AIR 1995 I LLJ 113] [Hon'ble Bom. H.C.];

I have gone through the above case laws and found that those are helpful for the case of first party. It is expected while conducting an enquiry that concerned employee should be made aware about misconduct and he may be allowed to participate in the enquiry and there should be sufficient evidence to prove the charges. At the cost of repetition it is to be mentioned that correspondence by second party reveals that he was aware of the charge of absenteeism and denied to participate in the enquiry.

12. **In present matter it appears that basic principles regarding charge-sheet and enquiry have been complied with. I have gone through the findings of enquiry officer, which reveals that he has discussed the oral evidence as well as explanation submitted by second party.** It is expected from enquiry officer that his findings

should be based upon clear evidence and it should not be mere surmises and conjunctures. Therefore, so far as the perversity of findings are concerned the second party could not bring on record sufficient material to show that findings of enquiry officer are based without there being any evidence. In fact, the record shows that second party has admitted his absenteeism, but tried to charge its reasons on his superior officers.

13. In such circumstances I am of the opinion that, enquiry officer has conducted the enquiry in fair manner and findings are also not perverse. Accordingly, I answer Issues no.1a in 'affirmative' and Issue no.1b in 'negative' and in answer to Issue no.2 following order is passed;

ORDER

(i) The enquiry conducted against second party is fair and proper.

(ii) The findings of enquiry officer are not perverse."

(emphasis supplied)

31. It is thus clear from the observations of the learned Presiding Officer as made in these paragraphs as noted above, that the learned Presiding Officer has categorically recorded that the record did not show that a clear chargesheet under Model Standing Orders was issued to the petitioner. It is also quite clear that despite the respondent not issuing a specific chargesheet referring to the charges, the learned Presiding Officer considering the respondent's letters issued to the petitioner to be in the nature of a chargesheet has come to a conclusion that there was nothing wrong for the respondent not to issue any chargesheet, merely on the ground that such letters of the respondent has referred to certain rules

under which the charge of absenteeism has been levelled against the petitioner. Further, as seen from paragraph 11 of the impugned order, the learned Presiding Officer has recorded the contention as urged by the petitioner that during the euqniry no specific evidence has been brought on record against the workman and he was not allowed to cross-examine the witness. It is on this premise, the learned Presiding Officer has observed that what was expected while conducting any enquiry, is merely that the concerned employee should be made aware about the misconduct and he may be allowed to participate in the enquiry and this shall be sufficient to prove the charges. He also observed that the correspondence between the parties was sufficient for the petitioner to be aware of the charge of absenteeism. It is thus observed by the learned Presiding Officer that the basic requirements of issuance of a chargesheet and a fair enquiry have been complied by the respondent. Learned Presiding Officer has also recorded that he has gone through the findings of the enquiry officer, he has gone through the evidence as well as the explanation submitted by the petitioner and therefore, there is no perversity in the findings of the enquiry officer as they were based on evidence.

32. In my opinion, the observations of the learned Presiding Officer and as specifically discussed and noted above, are something which would shock

judicial conscience. They are against all the well settled principles and norms on labour and service jurisprudence, which echo as a basic requirement of utmost fairness and strict adherence to the principles of natural justice by an employer in the conduct of disciplinary proceedings against an employee, who is in a prejudicial position against an employer. It is disheartening to note that such basic and elementary principles in regard to the fairness of the procedure to be followed in the enquiry proceedings, namely the legal requirement of a delinquent employee to be issued a clear and unambiguous chargesheet and further, a fair opportunity to be given to the delinquent employee (petitioner herein) of an opportunity of cross examining the management witnesses, by due adherence to the principles of natural justice was completely overlooked by the learned Presiding Officer, in passing the impugned order. The perversity in the findings as recorded by the learned Presiding Officer apart from being writ large are incomprehensible.

33. This apart, in the present case there is no application of mind whatsoever to the basic essentials which would go to the root of the adjudication of the issue being decided by the learned Presiding Officer of the Labour Court by the impugned order. This more particularly, considering the observations in paragraph (12) as made by the learned Presiding

Officer, when he observes that the basic principles regarding chargesheet and enquiry have been complied with and that he had gone through the findings of the inquiry officer which revealed that he had discussed the oral evidence as well as the explanations submitted by the second party. It is axiomatic that the discussion on the oral evidence in the enquiry report would be of no consequence, if the oral evidence itself was recorded behind the back of the petitioner. As noted above, about 10 management witnesses have made statements before the enquiry officer behind the back of the petitioner. The petitioner was not given any opportunity to cross examine these witnesses whose statements have been recorded or as made before the enquiry officer.

34. The enquiry officer's report which takes into consideration such evidence recorded behind the back of the petitioner, would be no enquiry report in the eyes of the law and same could not have been acted upon by the Disciplinary Authority in imposing any punishment whatsoever. This was abundantly clear from the record itself, however, the enquiry officer unfortunately closed his eyes on the basic tenets causing serious prejudice to the petitioner apart from the Presiding Officer of the Labour Court himself acting contrary to all reasonable judicial norms.

35. It cannot be countenanced that the Presiding Officer of the Labour Court is not aware of the basic jurisprudential principles of fairness in the enquiry proceedings and the rules of strict adherence to the principles of natural justice. The law in regard to adherence to the principles of natural justice is well settled in several decisions of the Supreme Court. In **Kashinath Dikshita Vs. Union of India & Ors., (1986)3 SCC 229**, the Supreme Court was considering the issue whether the principles of natural justice were followed by the respondent therein by refusing to supply to the appellant, copies of the statements at the stage of preliminary enquiry proceedings and copies of the documents that have been relied upon. In such context, the Court observed that a Government Servant facing disciplinary proceedings, is entitled to be offered a reasonable opportunity to meet the charges against him in an effective manner and that as the employee facing departmental inquiry cannot be expected to effectively meet the charges, unless the copies of the relevant statements and documents to be used against him, are made available to him. It was observed that in the absence of such material being furnished, it would not be possible to prepare defence and point out the inconsistencies with a view to show that the allegations are incredible. In the said case, the disciplinary authority assumed an intransigent posture and refused to furnish copies notwithstanding a specific request made by the appellant. As the appellant

therein was denied the statement of witnesses and the documents, the Supreme Court held that the appellant was denied reasonable opportunity to exonerate himself. The observations of the Court in paragraphs 11, 12, 13 and 14 are relevant, which read thus:-

> 11. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant.
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> 12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made avail to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citations, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend upon the facts pertaining to this matter.
>
> 13. The appellant relied on *Tirlok Nath* v. *Union of India* in support of the proposition that if a public servant facing an inquiry is not

supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in the case :

> Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.

Reliance has also been placed on *State of Punjab* v. *Bhagat Ram* and *State of U.P.* v. *Mohd. Sharif* in support of the proposition that copies of statements of witnesses must be supplied to the government servant facing a departmental inquiry. It has been emphatically stated in *State of Punjab* v. *Bhagat Ram* by this Court as under : [SCC p. 156, SCC (L&S) p. 19, paras 6,7 and 8]

The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.

> 14. In view of the pronouncements of this Court it is impossible to take any other view. As discussed earlier the facts and circumstances of this case also impel us to the conclusion that the appellant has been denied reasonable opportunity to defend himself. In the result, we are of the opinion that the impugned order of dismissal rendered by the disciplinary authority is violative of Article 311(2) of the Constitution of India inasmuch as the appellant has been denied reasonable opportunity of defending himself and is on that account null and void. We accordingly allow the appeal. The judgment of the High Court is set aside. The impugned order of dismissal dated November 10, 1967 passed against the appellant is quashed and set aside. We further declare that the impugned order of dismissal is a nullity and non-existent in the eye of law and the appellant must be treated as having continued in service till the date of his superannuation on January 31, 1983. Taking into account the facts and circumstances of this case and the time which has lapsed we are of the opinion that the State Government should not be permitted to hold a fresh inquiry against the appellant on the charges in question. We therefore direct the State Government not to do so."

36. A useful reference also can be made to the decision of the Supreme Court in **S.C.Girotra Vs. United Commercial Bank (UCO Bank) & Ors.**, **1995 Supp (3) SCC 212**, wherein the Supreme Court has interalia held that a refusal of permission to the delinquent employee to cross examine the management witness was denial of reasonable opportunity of defence to the appellant therein, and accordingly, set aside the inquiry proceedings.

37. In the present case not only an opportunity to cross examine ten management witnesses was denied to the petitioner but also the statements of ten witnesses which came to be taken on record by the enquiry officer itself were not furnished to the petitioner. There cannot be a higher perversity and breach of the principles of natural justice at the hands of the

enquiry officer and the disciplinary authority.

38. It needs to be observed that such conduct on the part of the respondent and its enquiry officer has caused serious prejudice to the petitioner, as a consequence of such conduct of the respondent, the petitioner lost his job as also the very means of his livelihood and that too the respondent throwing to the winds all norms of fairness and reasonableness. In this context a reference needs to be made to the decision of the Supreme Court in **Sawai Singh Vs. State of Rajasthan, (1986)3 SCC 454.** Justice Mukharji speaking for the Bench, emphasizing the importance of an opportunity to be made available to cross examine the witness, observed that as the departmental inquiry proceedings entail consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action. It was observed that in respect of an order involving adverse or penal consequences against an employee, there must be investigations of the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation. The Court highlighted the importance of fairness in making of decisions which affect people in their daily lives and livelihood. In the facts of the case, in the absence of opportunity for cross-examination being granted to the appellant, it was

observed that the enquiry report ought not to have been acted upon. The Court in paragraphs 16 to 18 has observed thus:-

> 16. It has been observed by this Court in *Surath Chandra Chakrabarty* v. *State of W.B.* that charges involving consequences of termination of service must be specific. Though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of *State of A.P.* v. *S. Sree Rama Rao* and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But in a departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation.
>
> 17. The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject-matter of the case. It is not possible to lay down any rigid rule as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case. The nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular *lis* between the parties. (See *K.L. Tripathi* v. *State Bank of India*). Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the *sine qua non*.
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> 18. Having regard to the consequences of the offences with which the delinquent officer was charged and having regard to the nature of charge and the evidence of handwriting expert and the absence of opportunity for cross-examination and the conflicting nature of evidence of Chaturbhuj and nature of evidence given by Jiwan Dass, we are of the opinion that the report of the enquiry officer finding the appellant guilty should not have been sustained and the government should not have acted upon it. The High Court in our opinion, with great respect, was in error in not bearing in mind these aspects which have been indicated hereinbefore."

39. As a result of the above discussion, looked from any angle, the impugned order cannot be sustained and would be required to be set aside. The petition accordingly, needs to succeed. The impugned order dated 7 November 2019 passed by the learned Presiding Officer, 10th Labour Court, Mumbai, is quashed and set aside. Rule is made absolute in these terms.

40. In the peculiar facts of the case and having noted the serious prejudice caused to the petitioner, the Court would be failing in its duty if the petition is allowed simplicitor. It is accordingly, allowed with cost of Rs.50,000/- to be paid by the respondent to the petitioner within two weeks from today.

41. Before parting it needs to be stated that due to the extreme pressure of matters under the extant assignment, there is delay in pronouncement of the judgment, to which the learned Counsel for the parties also fairly acknowledge.

(G. S. KULKARNI, J.)