

**BEFORE MANGAL DEEPAK KASHYAP, JUDGE,
SECOND LABOUR COURT, PUNE**

COMPLAINT(ULP)NO.158 OF 2018
(CNRNO.MHLC120001702018)

Mr. Manik Khandu Mandekar.

Age :- 43 years. Occ.Nil.

R/o. E-Building, Plot NO.1,

Near Civil Court, Rajgurunagar,

Khed, Dist. Pune – 410 505.

... **COMPLAINANT.**

V E R S U S

Mahindra CIE Automotive Ltd.

Add : Gat No.856-860,

Chakan-Ambethan Road,

Tal. Khed. Dist. Pune – 410 501.

& Another.

.... **RESPONDENTS**

C O R A M : MANGAL DEEPAK KASHYAP, JUDGE.

Appearance: Shri. P.P. Kshirsagar, Advocate for Complainant.

Smt. D.S. Sawant, Advocate for Respondents.

ORDER ON PRELIMINARY ISSUES
(PASSED ON 02/03/2024)

1. The present complaint is filed by complainant u/s.28 r/w. Item, 1 (a)(b)(d) & (f) of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act,1971 (hereinafter referred to as 'M.R.T.U. & P.U.L.P.Act) as the respondents have engaged in unfair labour practice by dismissing complainant w. e. f. 28/06/2016 illegally.

The brief facts of the case are as under :-

2. It is submitted that the respondent no. 1 is a company incorporated under the Companies Act. It is engaged in the business of multi-technology automotive components supplier listed the stock exchanges in Mumbai. The complainant was working as an Operator of Lift Machine in Tool Room Division of the respondent company. His last drawn salary was Rs.27,000/- p.m. He has rendered 20 years service with the respondent company.
3. The charge sheet cum notice of enquiry dated 19.11.2016 was issued to him. It was alleged that when the complainant was working in the second shift on 10.09.2015, at about 04.15 p.m. he abused and threatened one of his co-worker Shri. Kailas Londhe and also assaulted him. When Shri. Jalindar Erande tried to stop the complainant, the complainant also tried to assault him. Thereby, Shri. Jalindar Erande sustained injuries to right hand finger.
4. It was also alleged that the complainant abused Shri. Santosh Shahane, Senior Manger and slapped on his face. At that time, other staff members, tried to clam down the complainant, but he did not listen anybody.

He also assaulted and abused other officers. He acted in violent and wild manner. Therefore some people took the complainant to Chakan Police Station. He was also sent to Rural Hospital for medical check up. For the said acts, charge sheet under Clauses 24(k) & (l) of The Industrial Employment(Standing Orders) Act, 1948 was issued to him.

5. It is submitted that the complainant was in delirious state of mind and has no memory of the alleged incident. He was also not aware whether he was present in the company or not. On 11.09.2015 he was taken to Dr. Sandip Jagtap, Psychiatric. The said doctor prescribed him medicines alongwith certificate that the complainant was in need of bed rest for one week.
6. He was issued suspension order dated 10.09.2015. Thereafter he was issued charge sheet dated 19.10.2015. The respondent no.2 i.e. enquiry officer was appointed to inquire the charges levelled against the complainant. In the enquiry in all 13 witnesses were examined. But the respondent company failed to produce CCTV footage or any photos of the alleged incident. The enquiry officer held guilty the complainant only on the basis of testimonies of the witnesses.

7. It is also submitted that the enquiry officer failed to examine the prime witness Shri. Kailas Londhe, who was the witness of entire incident. The enquiry officer has not properly assessed the evidence adduced before him. The enquiry officer has acted in bias manner. Thus, the enquiry conducted against the complainant is not fair and proper and the findings of the enquiry officer are perverse. The respondent company has not taken into consideration his past service record while inflicting the punishment of dismissal.
8. The respondent no.1 company appeared in the matter and filed written statement at Exh.C-2 and denied the allegations levelled against them. It is submitted that the complainant was working as a Turner in Tool Room Department of the respondent company since 28.07.1996. It is further submitted that on 10.09.2015 the complainant had indulged in grave and serious misconducts such as assault, riotous behaviour and hurling vulgar abuses to the senior officials most of the company without any reason and provocation. Therefore he was suspended pending enquiry.
9. Thereafter, he was issued charge sheet dated 06.10.2015. He replied to the said charge sheet and

apologized for his behaviour as he had lost his mental balance and he was undergoing psychiatric treatment for the same. He also gave assurance that such incidence will not occur in future. During the enquiry he participated through Advocate of his choice as his defence representative.

10.It is further submitted that the during the course of enquiry, the complainant was given full opportunity of defence. The respondent management has examined 13 witnesses and they were duly cross examined by the defence representative. The complainant did not adduce any oral evidence, but filed his defence statement. The findings of the enquiry officer are based on evidence adduced before him. The copy of report and findings of the enquiry officer was also sent to the complainant on 25.05.2016 for explanation. He has submitted his explanation on 13.06.2016.

11.It is submitted that the misconducts of the complainant duly proved in the enquiry. While inflicting the punishment of dismissal, his past service record was also considered. Therefore prayed to dismiss the complaint.

12.The issues are framed by my Ld. Predecessor at Exh.O-3 on 09/02/2023. The Issue No.1 and 2 (i) are regarding

fairness of enquiry and perversity of findings of enquiry officer. These issues are treated as preliminary issues, for that the findings alongwith reasons thereon as under :-

Sr. No.	<u>ISSUES</u>	<u>FINDINGS</u>
1	Whether complainant proves that domestic enquiry conducted against him is unfair, improper and in utter disregard to the principles of natural justice ?	Negative.
4	Whether complainant proves that findings of the enquiry officer are perverse ?	Negative.

REASONS

13. AS TO ISSUE NO. 1 AND 2(i) :- As these issues are interlinked to each other I have recorded my findings to those issues together. The respondent has filed enquiry papers alongwith list at Exh.C-5. The charge sheet was issued to the complainant by the respondents on 19/10/2015. The complainant replied the said charge sheet vide Exh.8. In the said reply, he has apologized for the misconduct committed by him and also assured that he will not commit such misconduct in future. As per the said charge sheet, following charges were levelled against the complainant.

- i) drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment.
- ii) commission of any act subversive of discipline or good behaviour on the premises of the establishment.

14. Thereafter the enquiry is conducted. Advocate Nitin Kolhatkar was appointed as an Enquiry Officer. The enquiry officer explained the procedure of the enquiry to the complainant. The complainant participated in the enquiry through Shri. Ajit Patwardhan, as his defence representative.

15. The management witnesses deposed as per their statements and they were duly cross examined by the defence representative of the complainant. The documents produced in the enquiry were supplied to him. The enquiry proceedings bear signatures of the complainant and his defence representative. Thereafter the complainant submitted his defence statement on 10.05.2016. Thereafter, the enquiry was closed. The complainant also submitted his explanation on the findings of the enquiry officer on 13.06.2016. During the course of enquiry, the complainant has not raised any objection in regard to the procedure of the enquiry.

16. Thus from the enquiry papers, it is clear that fair and proper opportunity was given to the complainant in the

enquiry. The principles of natural justice were followed by the enquiry officer while conducting the enquiry.

17. Now the question remain as to the findings of the enquiry officer. During the course of the arguments, the Ld. Advocate for the complainant submitted that the enquiry officer has only reproduced the deposition of the witnesses examined by the respondent management. Therefore the findings of the enquiry officer are not well reasoned. Now let us peruse the report and findings of the enquiry officer.

18. The enquiry officer has recorded that all the charges levelled against the complainant are proved in the enquiry. He has submitted his report on 23.05.2016. As per the said report, it is seen that the enquiry officer has duly taken into consideration oral and documentary evidence led before him. He has considered the statements of the witnesses and cross examinations of those witnesses. He has also considered the defence statement of the complainant. He has also taken into consideration the documents produced in the enquiry while recording his findings. Therefore the enquiry officer recorded his findings that the charges levelled against the complainant are proved in the enquiry. After

perusing the enquiry papers and report of the enquiry officer, this Court is of the opinion that the enquiry officer has given his report on the basis of material before him. He has duly considered the oral and documentary evidence produced before him. There is no any perversity found in the report of the enquiry officer. Thus the findings of the enquiry officer are legal and proper and not perverse. Hence, Issue No.1 and 2(i) are answered in the negative. Hence the following order.

ORDER

1. It is hereby declared that the domestic enquiry conducted against the complainant is fair, proper and in accordance with the principles of natural justice.
2. It is also held that the findings of the enquiry officer are not perverse.

Sd/

Place : Nashik.

Date : 02/03/2024

**(Mangal Deepak Kashyap)
Judge,
Second Labour Court, Pune.**