

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2387 OF 1995

Maharashtra State Road
Transport Corporation,
Through Divisional Controller,
Parbhani.

..Petitioner

Versus

Shaikh Hussain Shaikh Karim,
Age major, Occ. Ex-Conductor,
R/o Mankuli, Tq. Kandhar,
District Nanded.

..Respondent

...
None present.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 26, 2015

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ORAL JUDGMENT :-

1. On 16.11.2015, this Court had passed the following order:-

“1. None appears for the litigating sides.

2. The award dated 03/02/1995 delivered by the Labour Court by which Ref.(IDA) NO.3/1987 was answered in the affirmative and the respondent was granted reinstatement with continuity and 40% back wages, is impugned.

3. The issue as to “Whether the domestic enquiry against the second party was fair and proper ?” was decided by the Part I award dated 05/02/1992. However, the issue “Whether the findings recorded by the Domestic Tribunal could be dubbed as perverse ?”

was answered in the affirmative while deciding the reference finally.

4. *Issue of perversity in the findings of the enquiry Officer cannot be decided while delivering a final judgment or award. Prima facie it appears that the law as laid down by the Apex Court and as was considered by this Court in Maharashtra State Cooperative Cotton Grovers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(3) Mh.L.J. 339 = 2014(1) CLR 87 and MSRTC Beed Vs.Syed Saheblal Syed Nijam, 2014 (3) CLR 547 = 2014 (4) Mh.L.J.687, has not been followed.*

5. *Stand over to 19/11/2015 so as to grant an opportunity to the litigating sides to participate in this proceeding, failing which this petition would be decided without their assistance."*

2. None appears for the litigating sides even today.

3. It is apparent that the issue of perversity in relation to the findings of the Enquiry Officer has been decided by the Labour Court, Jalna while delivering the final judgment and award in Reference (IDA) No. 3 of 1987. The procedure followed by the Labour Court is against the law laid down by the Apex Court and which has been considered in the Maharashtra State Cooperative Cotton Grower's case (supra) and MSRTC, Beed (supra).

4. This petition is partly allowed.

5. The impugned judgment and award is, therefore, quashed and set aside. Reference (IDA) No. 3 of 1987 is remitted back to the Labour Court

at Jalna with a direction to the Labour Court to decide issue No.2, *“Whether the findings recorded by the domestic tribunal could be termed as perverse?”* afresh, in the light of the law laid down in the Maharashtra State Cooperative Cotton Grower's case (supra). The Labour Court shall issue notices to the litigating sides. Further decision pursuant to the decision on issue No.2 shall thereafter be arrived at by the Labour Court, in accordance with the procedure laid down in law.

6. Since this Court had stayed the relief of backwages and had not interfered with the relief of reinstatement granted to the respondent, the respondent - second party workman, if reinstated and if not superannuated, shall be continued in employment till the decision in the Reference Case or till his date of superannuation, whichever is earlier. Since the Reference pertains to the year 1987, the Labour Court shall endeavour to decide the same on/or before 31.5.2016.

7. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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