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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 3514 OF 1994
WITH
CIVIL APPLICATION NO.8270/2011
IN WP/3514/1994**

**WITH
WRIT PETITION NO.3518 OF 1994**

M/S S.H.KHATOD & SONS,
At & Post Malunja (Bd),
Taluka Shrirampur,
District Ahmednagar.

...PETITIONER IN both petitions.

-VERSUS-

1 ABA TUKARAM GAIKWAD,
At & Post Malunja,
Taluka Shrirampur,
District Ahmednagar.

...Respondent No.1 in WP/3514/94

1 SHAHU TUKARAM GAIKWAD,
At & Post Malunja,
Taluka Shrirampur,
District Ahmednagar.

...Respondent No.1 in WP/3518/94

2 The learned Presiding Officer,
II Labour Court at Ahmednagar.
(Respondent No.2 is a formal
party).

...Respondent No.2 in both petitions.

...

Advocate for Petitioner : Shri N K Kakade.

Advocate for Respondents : Shri A.S.Shelke h/f Shri S.K.Shelke for R/1.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2015

Oral Judgment:

1 The first petition was admitted by this Court on 29.11.1994. An amount of Rs.20,000/- was directed to be deposited by the Petitioner in this Court. By order dated 28.02.2003 passed in Civil Application No.5587/2002, the prayer made by the Respondent/ Applicant was allowed and the Petitioner/ Employer was directed to deposit the arrears of wages and salary from September, 2002 in this Court.

2 Shri Kakade, learned Advocate for the Petitioner/ Employer, makes a statement that the said amount has been deposited and the Respondent/ Employee has withdrawn the said amount.

3 The second petition was similarly admitted on 29.11.1994. Rs.20,000/- were directed to be deposited. Subsequently, by order dated 28.02.2003 passed in Civil Application No.6265/2001, the arrears of wages and salary was directed to be deposited in this Court.

4 Even in this case, Shri Kakade submits that the amount was deposited and the Respondent/ Employee has withdrawn the said amount.

5 Since both the Respondents, who are Employees of the
Petitioner/ Employer in these two petitions, are identically placed, the
Petitioner is the same Employer and a common issue is involved, I have
taken up these two petitions together for final disposal.

6 I have heard Shri N.K.Kakade and Shri A.S.Shelke, learned
Advocates on behalf of the Petitioner and the Respondents, respectively.
Both have taken me through the record as is available before this Court.

7 It is not in dispute that in both these cases, charge sheets
were served upon the Respondents/ Employees, an enquiry was conducted
and both the Respondents were dismissed from service by way of
punishment.

8 By an identical order dated 09.06.1992, the Labour Court
decided only the first issue with regard to whether, the enquiry is legal
and valid. In both the cases, while upholding the enquiry, it has come to
an identical conclusion that *“the enquiry is legal and valid. However, the
second party shall be entitled to show how the order of dismissal is not
correct and the first party shall be entitled to justify it's action.”*

9 By the awards dated 11.02.1994 and 14.02.1994, the Labour Court reopened the entire enquiry and concluded that the charges are not proved against the Respondents. It was, therefore, concluded that since no charge is proved against the Respondents, the dismissal orders are harsh and hence, are unsustainable. By drawing these conclusions, the Labour Court has branded the findings of the Enquiry Officer as being perverse since its conclusions have led to the setting aside of the findings of the Enquiry Officer.

10 It is trite law that the fairness of the enquiry and the fairness of the findings of the Enquiry Officer are to be considered as preliminary issues which have to be decided peremptorily. The judgment on the preliminary issues in this case would constitute the Part-I award. In the event, the enquiry is set aside for any reason whatsoever including setting aside of the conclusions of the Enquiry Officer, the entire enquiry stands watered down and the Employer is at liberty to conduct a de-novo enquiry in the light of the judgment of the Apex Court (five judges) in the case of *KSRTC v/s Lakshmiddevamma* reported in **2001 (2) CLR 640**.

11 It is impermissible in law for the Labour Court or the Industrial Court to decide the issue as regards the fairness of the enquiry alone as a preliminary issue and decide the fairness of the Enquiry

Officer's findings along with all other issues. This Court has considered the law crystallized, in the case of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v/s Vasant Ambadas Deshpande*, **2014(1) CLR 878 : 2014(3) Mh.L.J. 339** and *MSRTC, Beed v/s Syed Saheblal Syed Nijam*, **2014 (III) CLR 547**. The impugned awards in both these cases are, therefore, unsustainable in law.

12 It cannot be overlooked that both these Respondents were reinstated in employment at the time of the filing of these petitions as can be seen from the statement made in the memo of the petitions that the Respondents are already reinstated and are withdrawing their salary during the pendency of these petitions.

13 It is informed by the learned Advocates that both the Respondents have continued in service during the pendency of these petitions and have also attained superannuation. It is also not disputed that both the Respondents have withdrawn the amounts deposited by the Petitioners in this Court.

14 In this back-drop, it would be a futile exercise to remit both these matters to the Labour Court for deciding issue No.2 afresh since the

charge proved against the Respondents in the enquiry dates back to 25.04.1977. After a passage of about 38 years, so also, in the light of the fact that the Petitioner has sold of it's farm and does not continue with the said activity, there would hardly be any evidence available for the litigating sides in the event a de-novo enquiry is ordered. I am, therefore, not inclined to remit these matters to the Labour Court.

15 Therefore, the issue that remains is as regards the full back-wages granted by the Labour Court. In the first case, the Respondent has admitted that he had taken up employment under the Employment Guarantee Scheme for about one and half year. In the second case, there is no evidence brought on record to suggest as to whether, the said Respondent attempted to seek alternate employment and despite his best efforts, he was not able to secure any employment and hence, continued to remain unemployed.

16 In this back drop, it needs to be scrutinized as to whether, the Labour Court has applied it's mind to the aspect of back-wages. In the entire impugned awards, besides drawing a conclusion in a single sentence that the Respondents are entitled for full back-wages, the Labour Court has not dealt with the said aspect of gainful employment. No reasons are adduced for granting full back-wages to the Respondents.

17 In the light of the above, I find that the impugned awards in both these petitions are rendered unsustainable and deserve to be quashed and set aside. However, the fact remains that both the Respondents have withdrawn certain amounts from this Court under the orders passed by this Court. It would, therefore, be harsh to direct recovery of the said amounts from the Respondents.

18 In the light of the above and with due circumspection, I deem it proper to allow the Respondents to retain the amounts that they have withdrawn from this Court considering the developments that have taken place during the pendency of these two petitions, as well as any money received from a settlement, if any.

19 As such, both these petitions are partly allowed. Both the impugned awards dated 11.02.1994 and 14.02.1994 are quashed and set aside and Reference (IDA) Nos.5/1979 and 07/1979 stand answered in the negative.

20 The Respondents shall retain the amounts that they have withdrawn from this Court and received under any settlement, if any. In the event, any amount is not yet withdrawn and is lying in this Court,

both the Respondents are at liberty to withdraw the same with accrued interest.

21 Rule is, accordingly, made partly absolute in the above terms.

22 The pending Civil Application, if any, is also disposed of.

(RAVINDRA V. GHUGE, J.)