

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.799 OF 1995
WITH
CIVIL APPLICATION NO.739 OF 2001
WITH
CIVIL APPLICATION NO.7264 OF 2007

Divisional Controller,
Maharashtra State road
Transport Corporation,
Ahmednagar

PETITIONER

VERSUS

Karbhari Vishnu Satpute,
At-Sukhewadi, Post – Ghulewadi,
Tq.Sangamner, Dist.Ahmednagar

RESPONDENT

Mr.Manoj Shinde h/f Mr.M.K.Goyank, Advocate for the petitioner.
Mr.S.V.Warad, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/10/2015

ORAL JUDGMENT :

1. This petition was admitted on 17/02/1995 and the directions to pay back wages was stayed by this Court. It is stated by the learned Advocates that the respondent was reinstated in employment on 26/09/1995 and he has superannuated on 31/03/2000. Provident Fund accumulations of Rs.4,58,763/- have been paid to the respondent on 08/05/2010.

2. The petitioner has challenged the judgment and award Part II dated 21/09/1994 by which the reference IDA No.12/1998 was allowed, order of dismissal was set aside and reinstatement on the post of Conductor with continuity in service was granted alongwith back wages @500/- per month. Punishment of stoppage of 2 yearly increments was imposed by the Labour Court.

3. Mr.Goyanka, learned Advocate for the petitioner points out that the Labour Court delivered its Part I award dated 19/04/1994 upholding the enquiry for being fair and proper. However, the fairness of the findings of the Enquiry Officer were left untouched and reopened in the Part II award impugned, which is against the settled position of Law as is considered by this Court in the case of Maharashtra State Co-operative 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.

4. He, therefore, submits that the impugned Part II award deserves to be quashed and set aside and the matter deserves to be remanded since the retiral benefits of the respondent depend upon the fate of the case in the light of the charges of misappropriation

having been proved against the respondent (which amounts to moral turpitude). Consequentially, he would not be entitled for retiral benefits.

5. Mr.Warad, learned Advocate for the respondent has strenuously supported the Part II award. He submits that the petitioner should have objected in the year 1994 when the Labour Court decided issue No.1 pertaining to the fairness of the enquiry and did not touch the findings of the Enquiry Officer. Having participated in the proceedings, the petitioner is now precluded from raising such an objection. He further submits that as the respondent has superannuated on 31/03/2000, this issue need not be reopened and the respondent be granted all retiral benefits inclusive of gratuity. Necessary directions be issued to the petitioner to pay the retiral benefits alongwith the gratuity.

6. He also submits that the impugned Part II award is well reasoned and the Labour Court has considered the evidence recorded in the enquiry threadbare. The conclusions are sustainable and call for no interference.

7. I have considered the submissions of the learned Advocates as

recorded hereinabove.

8. In cases of disciplinary proceedings, if the enquiry and the findings of the Enquiry Officer are challenged, the following two issues have to be necessarily framed :-

- [a] Whether the complainant/second party proves that the enquiry is vitiated for non observance of the principles of natural justice.
- [b] Whether the complainant/second party proves that the findings of the Enquiry Officer are perverse ?

9. The above stated two issues are to be tried peremptorily as they constitute the Part I judgment / Part I award of the competent Court. Deviation from this procedure is impermissible as the fate of the case depends upon this conclusion in the light of the judgments of the Apex court referred to in the Vasant Ambadas Deshpande (supra) and MSRTC, Beed (supra).

10. This Court, in the case of Permanent Magnets Ltd., Mumbai v/s Vinod Vishnu Wani reported in 2002 (3) Mh.L.J. 413 : 2002 (93) FLR 32 has concluded that “the right to conduct a *denovo* enquiry by the employer is born for the first time” after the enquiry already

conducted is set aside / vitiated for any reason whatsoever. In such an eventuality, the employer gets the right to conduct a *denovo* enquiry if such a right is reserved in the written statement considering the ratio laid down by the Apex Court in the case of KSRTC Vs. Laxmidevamma and another, 2001(2) CLR 640.

11. It is apparent that the Labour Court has not followed the appropriate procedure. Findings of the Enquiry Officer are interfered with without framing of an issue.

12. In the light of the above, this petition is partly allowed. Part II award dated 21/09/1994 is quashed and set aside. Reference (IDA) No.12/1988 is remitted back to the Labour Court for framing of issues and a decision afresh.

13. Since the respondent has superannuated, the decision in the reference would decide the fate of his retiral benefits inclusive of gratuity.

14. The litigating sides shall appear before the Labour Court on 30/11/2015. Formal notices need not be issued. The Labour Court shall frame the second issue as is noted hereinabove and try the

same peremptorily in the light of the ratio laid down in the matter of Vasant Ambadas Deshpande (supra) and MSRTC , Beed (supra).

15. In the event, the enquiry findings are held perverse, the Labour Court shall consider the ratio laid down by the Apex Court in the case of KSRTC Vs.Laxmidevamma (supra) while deciding whether the petitioner can conduct a *denovo* enquiry.

16. Since the reference proceedings pertain to the year 1988, the Labour Court shall decide the said proceedings as expeditiously as possible and preferably on or before 30/06/2016.

17. Rule is made partly absolute in the above terms. Pending civil applications, do not survive and hence are disposed of.

(RAVINDRA V. GHUGE, J.)