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

WRIT PETITION NO. 1457 OF 2012

The Zonal Manager,
The Maharashtra State Cooperative
Cotton Growers Marketing Federation Ltd.,
Tarasing Market, Nanded.

..PETITIONER

-VERSUS-

Ravindra Ramkisan Jaiswal,
Age : 61 years, Occ : Ex-Seasonal Clerk,
C/o P.N.Shinde, Advocate,
Goverdhan Ghat, Nanded.

..RESPONDENT

...

Mr.Shelke Shivaji T., Advocate for the Petitioner.

Mr.Kasliwal Anil H., Advocate for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 24th June, 2015

Oral Judgment:

1 Rule.

2 Rule made returnable forthwith and heard finally by the
consent of the parties.

3 The Petitioner has challenged the judgment and award dated 02.11.2011 delivered by the Labour Court in Reference (IDA) No.2/1983 by which the Respondent was granted reinstatement in service with continuity and full back-wages.

4 The Petitioner submits that the Respondent herein was appointed as a seasonal employee on 15.12.1973. An incident occurred on 17.12.1980, due to which the Respondent was charged with having outraged the modesty of a lady worker. The charge of absenteeism as well as manipulation of record was also levelled upon him. It is not in dispute that a domestic enquiry was conducted against the Respondent though he was a seasonal employee. Finally, on account of the proved misconducts, the Respondent was terminated from employment on 26.05.1981.

5 An industrial dispute was raised by the Respondent with the Deputy Commissioner of Labour, Aurangabad. However, after failure of the conciliation proceedings, the matter was referred to the Labour Court which was registered as Reference (IDA) No.2/1983.

6 The Labour Court framed the following issues in the reference proceedings :-

	<i>“Issues</i>	<i>Findings</i>
1	<i>Whether the 2nd party was a workman?</i>	<i>Yes</i>
2	<i>Whether the inquiry was in consonance with the principles of natural justice?</i>	<i>Yes</i>
3	<i>If yes, whether the findings given are perverse?</i>	<i>: Findings are perverse.</i>
4	<i>If not, whether the order of dismissal is legal, proper and requires indulgence u/s 11-A of the I.D. Act?</i>	<i>: Dismissal is not proper and indulgence u/s 11-A of ID Act is required.</i>
5	<i>Whether the 2nd party is entitled to reinstatement, continuity of service and back wages?</i>	<i>Yes”</i>

7 The issue as regards, whether, the Respondent was a workman and whether, the enquiry itself was fair and proper or otherwise, was decided as preliminary issue. By the Part-I award dated 06.05.1989, it was concluded that the Respondent is a workman and the enquiry conducted was in consonance with the principles of natural justice. It is not in dispute that the fairness of the findings of the Enquiry Officer with regard to which Issue No.3 was framed, was not decided as a preliminary issue. The whole case, therefore, turns upon this aspect of the matter.

8 It is strenuously submitted by Shri Shelke, learned Advocate

for the Petitioner, that the Part-I award was challenged by the Respondent in Writ Petition No.2865/1990. By its judgment dated 17.07.2007, this Court dismissed the said Writ Petition in the light of the law laid down in the matter of the *State Bank of Patiala v/s S.K.Sharma* reported in **AIR 1996 SC 1669**. Shri Shelke, therefore, submits that the said issue has attained the finality.

9 Shri Shelke has further canvassed that the Labour Court, upon considering the evidence recorded in the enquiry, has concluded in the impugned award that the findings of the Enquiry Officer are perverse. He, therefore, submits that the issue of perversity should have been decided by the Labour Court as a preliminary issue and a finding on that aspect should have formed a part of the Part-I award. He, therefore, takes a serious exception to the conclusion arrived at by the Labour Court on Issue No.3 in the same judgment by which the reference has been allowed.

10 Shri Shelke's contention is that the Labour Court should have allowed the Petitioner to conduct a de-novo enquiry since the enquiry stood watered down in the light of the findings of the Enquiry Officer having been held perverse. He further submits that the Labour Court lost sight of the fact that the Respondent was a seasonal employee and he had resorted to serious misconducts as set out in the charge sheet. The

evidence on record before the Enquiry Officer indicates and establishes that the Respondent was guilty of outraging the modesty of a lady worker. Despite sufficient evidence being placed on record, the Labour Court has held the findings of the Enquiry Officer as perverse and further concluded that none of the charges are proved against the Respondent.

11 Shri Shelke further takes exception to the grant of full back-wages. When the crystallized position in law was that an employee has to prove unemployment during the pendency of the proceedings pursuant to his termination and has to establish the efforts made by him for obtaining alternate employment, the Labour Court has lost sight of the aspect that no such contention was put forth by the Respondent and no evidence to that effect was recorded. Shri Shelke is, therefore, aggrieved by the conclusion of the Labour Court that because the Respondent remained unemployed and has reached the age of about 40 years, that he did not get employment. These conclusions, according to Shri Shelke, are based on assumptions. He, therefore, submits that the impugned award deserves to be quashed and set aside only for the reason that Issue No.3 was decided at the stage of delivering the final judgment in the reference and that was impermissible in law.

12 Shri Kasliwal, learned Advocate for the Respondent, contends

that the Labour Court has set aside the findings of the Enquiry Officer since it was convinced that the evidence recorded in the enquiry was not sufficient. He further submits that though the findings were branded as perverse while answering Issue No.3, the Labour Court has rightly allowed the reference since the charge levelled upon the Respondent was not proved.

13 Mr.Kasliwal further submits that the Labour Court has considered the evidence adduced in the enquiry and has found that the charges cannot be proved against the Respondent. The Respondent was being victimized as the Management had developed animosity towards him. A false case was created against the Respondent and by the order of termination dated 26.05.1981, unemployment has been forced upon him. The gratuity amount has also not been paid to him. The Respondent has attained the age of retirement in the year 2008.

14 Mr.Kasliwal has further canvassed that the prayer of the Petitioner does not deserves to be entertained for the reason that remanding the reference to the Labour Court for proper procedure to be followed and for proper adjudication of the matter, would rake up an issue which is 35 years old. The charge of misconduct owing to the purported act dated 17.12.1980 is now 35 years old. The parties may not be able to

produce the evidence which was before the Enquiry Officer in the enquiry. He, therefore, submits that no purpose would be achieved if the matter is remanded back for a re-hearing on Issue No.3 and thereafter, the remaining issues.

15 Mr.Kasliwal further submits that the basic salary and D.A. of similarly situated clerks in 2007-2008 was Rs.7250/- and Rs.8084/- respectively. By adding the sum of bonus, the gross salary of a clerk would have become Rs.14,720/- per month. He further submits that gratuity was not paid to the Respondent.

16 Mr.Kasliwal, therefore, submits that this petition be dismissed and the Petitioner be directed to implement the award delivered by the Labour Court.

17 I have considered the submissions of the learned Advocates and their contentions which have been extensively canvassed.

18 It needs to be kept in mind that the incident alleged against the Respondent dated 17.12.1980 is about 35 years old. The reference is of 1983. The Respondent has attained the age of superannuation in 2008 and he was a seasonal employee working with the Petitioner.

19 It is a trite law that the fairness of the enquiry and the fairness of the findings of the Enquiry Officer are to be considered on the basis of the material that was before the Enquiry Officer. The Labour Court is required to scrutinize the manner in which the enquiry was conducted and the evidence before the Enquiry Officer on the basis of the proceedings of the domestic enquiry.

20 This Court in the matter of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v/s Vasant Ambadas Deshpande* reported in **2014(1) CLR 878 : 2014(3) Mh.L.J. 339**, has taken a view by relying upon the ratio laid down by the Apex Court in the cases of *Bharat Forge Company Ltd. v/s A.B.Zodge* reported in **1996 (73) FLR 1754 : AIR 1996 SC 1556** and *KSRTC v/s Lakshmidevamma* reported in **2001 (2) CLR 640**. The observations of this Court in paragraphs 10 and 17 to 21 read thus:-

“10. *The Law on conducting a de-novo enquiry is settled in light of the Apex Court judgments in case of Bharat Forge Vs. A.B. Zodge reported at 1996(73) FLR 1754 and K.S.R.T.C. Vs. Lakshmidevamma and another, 2001 II CLR 640. As such, there is no doubt that if an employer reserves its right in its written statement to conduct a de-novo enquiry in the event of the domestic enquiry being held as vitiated for any reason whatsoever, the Labour Court, upon concluding that the enquiry is vitiated, has to allow the employer to*

conduct a de-novo enquiry.”

- “17. In the instant case as well, the Labour Court concluded that the findings of the Enquiry Officer are perverse and the entire complaint has been allowed by the same judgment without affording any opportunity to conduct a de-novo enquiry to the petitioners Management. The only distinction is that in the Permanent Magnet’s case (supra), the final order of punishment was passed and in the instant case, the punishment was proposed in the 2nd show cause notice.”
- “18. Nevertheless, the abovesaid procedure is crystallized by Judge made Law in view of catena of judgments. The ratio in cases of Bharat Forge, K.S.R.T.C. and Permanent Magnet’s case (supra) shall equally apply to cases wherein the 2nd show cause notice is challenged on identical footings. Therefore, the right to conduct a de-novo enquiry is equally available to every employer, be it in a case where the order of punishment is issued or in a case where punishment is proposed by a 2nd show cause notice.”
- “19. Unless the enquiry was set aside on any count, there was no scope for conducting a de-novo enquiry which right was reserved by the petitioners herein in its written statement. By-passing this settled procedure, the Labour Court in one stroke has branded the findings of the Enquiry Officer as perverse and by accepting the evidence adduced by the respondent, has delivered its final judgment. The conclusion drawn by the Labour Court of declaring the findings as perverse on the basis of evidence adduced before it and in the backdrop of the respondent employee having neither led evidence through his witnesses nor cross examined the management witnesses, is an unsustainable conclusion. Procedure unknown to Law has been resorted to by the Labour Court.”
- “20. As has been held by the Apex Court in the case of Kumaon Mandal Vikas Nigam Ltd., V/s. G.S. Pant

and others, 2001(I) CLR 12, perversity in the findings of the Enquiry Officer necessarily pre-suppose that the conclusions drawn by the Enquiry Officer and reasons assigned in support of such conclusions are either based on no evidence in the enquiry or are based upon mis-reading of the evidence in the enquiry.”

- “21. *Perversity in the findings of an Enquiry Officer is to be pointed out on the basis of the evidence placed before the Enquiry Officer. It, therefore, necessarily needs the consideration of the evidence before the Enquiry Officer and analyzing the findings of the Enquiry Officer. Material which was not before the Enquiry Officer can not be brought on record before the Labour Court to brand the findings as being perverse. In fact, normally there is no requirement of leading fresh evidence before the Labour Court on such preliminary issues like fairness of an enquiry and the findings of an Enquiry Officer. In both these situations, what has transpired in the domestic enquiry is to be looked into to find out, firstly, whether principles of natural justice were adhered to in conducting the enquiry and secondly, whether there was any evidence on record to support the findings or as to whether the findings are based on no evidence.”*

21 In the light of the above, the Labour Court was required to first draw a conclusion on Issue Nos.2 and 3 and so also Issue No.1 as preliminary issues and thereafter, deliver the Part-I award. Instead of doing so, the Labour Court has decided Issue No.3 pertaining to the perversity in the findings of the Enquiry Officer along with all other issues in the same judgment by which the reference was allowed. This is impermissible in the light of the observations of the Apex Court in the

cases of *Delhi Cloth and General Mills Company Limited v/s Ludh Budh Singh* reported in **1972 (1) SCC 595** and *Shambhu Nath Goyal v/s Bank of Baroda* reported in 1984(4) SCC 491.

22 This Court has considered the settled principles of law on this issue and has delivered a judgment in the case of *MSRTC, Beed v/s Syed Saheblal Syed Nijam* reported in **2014(4) Mh.L.J. 687**.

23 As such, when the Labour Court came to the conclusion that the findings of the Enquiry Officer are perverse, it ought to have kept in mind that the enquiry would stand watered down if Issue No.3 was answered in the affirmative. Thereafter, the issue of conducting a de-novo enquiry would arise. As has been held by this Court in the case of *Permanent Magnets v/s Vinod Vishnu Wani* reported in **2002 (3) Mh.L.J. 413 : 2002 (93) FLR 32**, the right to conduct a de-novo enquiry would be born for the first time after the enquiry conducted by the Employer is set aside/ watered down for any reason whatsoever.

24 Whether, the Employer has retained it's right to conduct a de-novo enquiry in the light of Lakshmiddevamma judgment (supra), would constitute a separate issue. Shri Shelke has rightly canvassed that in 1983

the Employers at the relevant time used to move an application for seeking permission to conduct a de-novo enquiry after the enquiry conducted by the Employer was set aside. It is only in the year 2001 when the Apex Court delivered the judgment in the case of Lakshmiddevamma (supra) concluding that the right to conduct a de-novo enquiry should be reserved in the Written Statement which is the first available opportunity to the Employer and if such a right is not reserved, it would tantamount to the Employer having acquiesced its right to conduct a de-novo enquiry.

25 I am not required to go into this issue in the light of the order that I intend to pass considering the passage of 35 years from the date of termination of the Respondent and the fact that he has attained the age of superannuation in 2008 coupled with the fact that he was a seasonal employee.

26 I am unable to accept the contention of Shri Kasliwal that the Labour Court branding the findings perverse while delivering the final judgment, does not result in violation of the procedural law. The ratio laid down by the Apex Court in the cases of Delhi Cloth and General Mills, Bank of Baroda and Bharat Forge Company (supra), has settled this issue.

27 In the light of the above, the question before this Court is as

to whether, the matter be remanded back for a de-novo enquiry to be conducted.

28 Considering the fact that the misconduct is about 35 years old and the Respondent has attained the age of superannuation about seven years ago, I do not find that any purpose would be served by remitting the reference to the Labour Court for a de-novo trial. Both the parties would have to suffer the rigours of litigation inasmuch as there is a possibility that there may not be any evidence available after passage of 35 years. It is in these circumstances that I am not inclined to remit back the reference to the Labour Court.

29 In my view, the impugned award on account of the failure on the part of the Labour Court in deciding Issue No.3 as a preliminary issue, is rendered unsustainable. The same is required to be quashed and aside. The issue is, therefore, as to how can the Respondent be compensated in the light of the fact that he stands today before this Court with an award in his favour. He was a seasonal employee. Whether, he would have become a permanent seasonal employee and later on, a permanent employee with the Petitioner, is a matter of speculation. As on the date of termination, he was a seasonal employee who was drawing about Rs.500/- per month at the relevant time. He, therefore, cannot be equated

with a permanent employee.

30 I cannot be oblivious of the fact that the Respondent was charged with a serious misconduct which in the light of the present law would tantamount to sexual harassment. It is a trite law that the cases of this nature are to be dealt with, with an iron hand. The charges were proved against the Respondent. The findings of the Enquiry Officer have been set aside under fortuitous circumstances de-hors the procedure laid down by law. It, therefore, should not appear that this Court has rewarded the Respondent in the fact situation as recorded above.

31 As such, I am of the view that the Respondent could be paid compensation only in a symbolic manner so as to compensate him for the rigours of litigation that he has suffered. It is in these circumstances that I am inclined to direct the Petitioner to pay compensation of Rs.1 lac to the Respondent.

32 In the light of the above, this Writ Petition is partly allowed. The judgment and award dated 02.11.2011 delivered by the Labour Court in Reference (IDA) No.2/1983 is modified and the Petitioner is directed to pay an amount of Rs.1 lac to the Respondent within a period of TWELVE WEEKS from today. The Reference (IDA) No.2/1983 shall, therefore, stand

disposed of in the above terms.

33 Rule is made partly absolute as above.

(RAVINDRA V. GHUGE, J.)