

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4620 OF 1994

The Managing Director,
Ambajogai Sahakari Sakhar
Karkhana Ltd., Post Ambasakhar
Tq. Ambajogai, Dist. Beed.

..Petitioner

Versus

Pandurang Marotirao Nakhate
Age major, Occ. Service,
R/o at Post Kaij, Wakilwadi,
Tq. Kaij, District Beed.

..Respondent

...
Advocate for Petitioner : Shri R.T.Nargargoje
Advocate for Respondent : Shri B.N.Patil

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: December 03, 2015
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ORAL JUDGMENT :-

1. This petition was admitted on 21.12.1994. Rule on interim relief was issued.
2. By order dated 12.1.2004 this Court concluded that after issuing Rule nisi, no interim relief was granted in the last nine years and hence Rule on interim relief was discharged.
3. The petitioner was aggrieved by the impugned judgment and order dated 6.6.1989 delivered by the Labour Court, Aurangabad by which Complaint (ULP) No.40 of 1984 filed by the respondent was allowed and the respondent was reinstated in service with continuity from 16.3.1984. The

petitioner is also aggrieved by the impugned judgment of the Industrial Court dated 23.6.1994 by which Revision (ULP) No.56 of 1989, preferred by the petitioner has been dismissed.

4. I have heard the submissions of Shri Nagargoje, on behalf of the petitioner.

5. Shri Patil, learned Advocate for the respondent has strenuously supported both the impugned judgments. He submits that the Labour Court has framed proper issues, considered the entire oral and documentary evidence, has considered the enquiry papers and has rightly come to a conclusion that the Complaint deserves to be allowed. The enquiry was held to be a farce and the respondent was held to be victimized on account of political rivalry.

6. Shri Patil has also supported the impugned judgment of the Industrial Court. He contends that the jurisdiction of the Industrial Court under Section 44 is of revisional nature and is not of an appellate nature. The Industrial Court has rightly not considered the entire evidence threadbare as its revisional jurisdiction is narrow and limited. It was only required to look into whether there was any perversity in the findings of the Labour Court. After proper application of mind, the Industrial Court concluded that no charges were proved against the respondent and the enquiry officer could not have held him guilty. The evidence available was enough to brand the findings of the enquiry officer as perverse.

7. He, therefore, prayed for the dismissal of this petition. He also prayed that this Court may take cognizance of the fact that no interim relief was granted to the petitioner. He, however, frankly states that he has no knowledge whether the respondent was reinstated in service, whether he continued in service and whether he has attained the age of superannuation during the pendency of this Writ Petition.

8. I have considered the rival submissions of the learned Advocates.

9. This Court, in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande [2014 MLJ 339 : 2014 I CLR 878] and in the matter of Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam [2014 III CLR 547 = 2014 (4) Mah.L.J.687], has considered the law as is crystallized by the Supreme Court from 1973 onwards and has concluded that if the fairness of the enquiry is challenged and if the findings of the enquiry officer are assailed by branding them as being perverse, the Labour Court was obliged to frame the following two issues:-

(a) Whether the complainant proves that the enquiry conducted against him is vitiated on account of non-observance of the principles of natural justice?

(b) Whether the complainant proves that the findings of the enquiry officer are perverse?

10. It is trite law that a conclusion of the Labour Court on the above said two issues is a Part I judgment and is not an interlocutory order. The said judgment can be assailed only before a higher court. After the Part I judgment is delivered, unless set aside, the employer will have to conduct a *de novo* enquiry (if the above two issues are answered in the affirmative) if such a right is reserved in the written statement in the light of the judgment of the Apex Court (Five Judges) in the matter of Karnataka State Road Transport Corporation Vs. Laxmidevamma & another [2001 (II) CLR 640]. The Labour Court can then only decide the proportionality of the punishment considering the past service record of an employee and the seriousness and gravity of the mis-conduct proved.

11. It is undisputed that despite a specific challenge to the fairness of the enquiry as well as the findings of the enquiry officer, the Labour Court has not framed the above said two issues. The serious error committed by the Labour Court was not perceived by the Industrial Court. The Industrial Court has observed in paragraph No.2 of the impugned judgment that the respondent had alleged that the enquiry was a show, without following the principles of natural justice, the findings were perverse and the punishment was shockingly disproportionate. In paragraph No.5 of the impugned judgment, the Industrial Court concludes that, *“That mean without proof of the charges, enquiry officer held the complainant guilty. This is enough to brand that the findings were perverse.”*

12. There can be no argument on this issue in the light of the judgment of the Apex Court in the case of Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh [1972 (1) SCC 595] and Bharat Forge Company Ltd., Vs. A.B. Zodge and another[AIR 1996 SC 1556] that an enquiry is set aside in the light of the enquiry being held as vitiated or the findings being perverse.

13. In the light of the above, this petition is allowed.

14. The impugned judgments of the Labour Court, dated 6.6.1989 and the judgment of the Industrial Court dated 23.6.1994 are quashed and set aside. Complaint (ULP) No.40 of 1984 is remitted back to the Labour Court, Aurangabad for framing of the two issues as is observed herein above. The said two issues shall be decided by the Labour Court, purely on the basis of the evidence recorded in the enquiry in the light of the judgment of this Court in the matter of Vasant Ambadas Deshpande (supra).

15. It is however, made clear that since the petitioner has failed before the Labour Court and the Industrial Court and since this Court has not granted any interim relief to the petitioner, in the event the respondent was reinstated in service, was continued in service, was paid wages for the work done and has attained the age of superannuation during the pendency of this petition, the Labour Court is at liberty to dispose off the complaint as being infructuous since it would be unfair to dig open this entire issue after 31 years of the dismissal of the respondent.

16. In the light of such a disposal, the wages paid to the respondent shall not be recovered. However, in the event, the respondent is keen to go ahead with the complaint, he shall be at liberty to prosecute the same.

17. Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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