

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2258 OF 2015

THE MUNICIPAL CORPORATION, JALGAON,
THROUGH ITS COMMISSIONER,
JALGAON

PETITIONER

VERSUS

MADHUKAR RAJARAM GADHE,
AGE-MAJOR, OCCU-SERVICE,
R/O.AT POST HARI VITTHAL NAGAR ROAD,
RAJIV GANDHI NAGAR, JALGAON

RESPONDENT

Mr.Shrikant S.Patil, Advocate for the petitioner.
Mr.V.Y.Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/06/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner has challenged the Award dated 16/08/2014 delivered by the Labour Court, by which Ref.(IDA) No.18/2012 has been answered in the affirmative.
3. The petitioner has straight way pointed out from paragraph No.3 of the statement of claim filed by the respondent herein that the manner in which the domestic enquiry was conducted, has been criticized. It is

alleged to be in violation of the principles of natural justice. Similarly, the findings of the Enquiry Officer are questioned on the ground that the respondent/workman had not admitted the charges levelled upon him either in his reply to the charge sheet or in the presence of the Enquiry Officer. It was alleged in the statement of claim that the Enquiry Officer has unfairly concluded that the charges are admitted and are therefore proved.

4. Mr.Patil has further pointed out from paragraph No.7 of the statement of claim that the basic challenge of the respondent was that the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 are not applicable to the respondent. The charge sheet and the consequent domestic enquiry conducted thereunder is rendered a nullity. The Model Standing orders framed under the Industrial Employment (Standing Orders) Act, 1946 are applicable to the respondent.

5. Mr.Patil, therefore, draws my attention to the issues cast by the Labour Court and submits that 3 vital issues, that have not been cast, are as under :-

- (i) Whether the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 are applicable to the Municipal Corporation, Jalgaon and its employees or whether the Industrial Employment (Standing Orders) Act, 1946 is applicable ?

- (ii) Whether the complainant proves that the enquiry was conducted in violation of the principles of natural justice ?
- (iii) Whether the complainant proves that the findings of the Enquiry Officer are perverse ?

6. Mr.Patil relies upon the judgment of this Court in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(1) CLR 878, Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nijam, 2014(4) Mh.L.J. 687 and the oral judgment dated 10/06/2015 delivered by this Court in the case of MSRTC, Jalgaon Vs. Anant Dhondur Kolte. He, therefore, submits that the impugned award deserves to be quashed and set aside and the reference needs to be remanded for framing of the above mentioned 3 issues which are to be tried peremptorily as the enquiry has been vitiated in the same judgment by which the reference is allowed.

7. Mr.V.Y.Patil, learned Advocate for the respondent has opposed the petition on the ground that the petitioner did not raise any objection about framing of the issues by the Labour Court and has participated in the proceedings. Evidence was led and final arguments were also advanced by the petitioner. Only because the reference has been answered in the affirmative that the petitioner is now raising several grounds. He, therefore, submits that the petitioner should not be

allowed to raise such grounds which it could have raised before the Labour Court.

8. He further submits that the petitioner could have suggested draft issues to the Labour Court at the right time. The petitioner allowed the Labour Court to proceed and after the judgment was delivered against the petitioner, it is now sought to be canvassed that the issues have not been properly framed. He, therefore, prays for imposing costs on the petitioner and prays for the dismissal of this petition.

9. In the alternative, he further submits that in the event this Court remands the matter to the Labour Court, the fact that the petitioner has not reserved its right for conducting a *de-novo* enquiry should be taken into account and the respondent should either be reinstated in service or should be paid last drawn wages till the decision in the reference proceedings.

10. Considering the controversy raised in this petition and the submissions of the learned Advocates, I find no reason to enlarge this judgment by reiterating the law which has already been considered and followed by this Court in the Maharashtra State Co-operative Cotton Growers case, MSRTC, Beed case and MSRTC, Jalgaon case (supra).

11. The grievances put forth by the petitioner and the objections raised by the respondent find an answer in these 3 judgments.

12. In so far as the contention of the respondent that the petitioner has not reserved its right to conduct a *de-novo* enquiry in the event the enquiry is set aside for any reason whatsoever, the answer lies in the judgment of the Apex Court (5 Judges) in the case of KSRTC Vs. Laxmidevamma and another, 2001(2) CLR 640. In the event the domestic enquiry is set aside by the Labour Court, this issue can be raised by the respondent and the Labour Court shall consider the same strictly in accordance with the ratio laid down in the KSRTC judgment (*supra*).

13. Mr.Patil has made a strenuous effort to seek reinstatement of the respondent or payment of subsistence allowance during the pendency of the reference proceedings, if remanded. This Court has already dealt with the said issue in paragraph Nos. 23, 24 and 25 of the Mumbai Cricket Association Vs.Pramod G.Shinde, 2011 (1) CLR 745, which read as under :-

“ 23. I am unable to appreciate as to how this provision can be of any assistance to the respondent-employee in the present case. A departmental/domestic enquiry was already held against him by the petitioner employer at which it was concluded that the charges

are proved. The Enquiry Officer, after such a conclusion was recorded by him in his report, forwarded it to the employer and the employer acting on the same has dismissed the respondent from service with effect from 25th November 2002. The employee sought a reference from the Appropriate Government and that is how the matter of his dismissal is referred to the Labour Court and that is how the Court is seized of the matter. The Court cannot be equated with an employer as it is only performing a judicial function of giving an opportunity to the petitioner to adduce evidence to prove charges of misconduct before it, and that is because the law postulates such an opportunity. The law does not equate this situation with suspension by the employer pending domestic enquiry or investigation into any complaints. The Supreme Court decision cannot be extended by analogy to such a situation as that would produce startling consequences. In all such matters merely because the Court grants the employer an opportunity to adduce evidence to prove the charges of misconduct, it will be obliged to direct the employer to pay subsistence allowance to the employee. That would mean that the order of dismissal already passed against the employee is set aside and substituted by his suspension. That would be creating a situation wherein the order of the Court permitting de novo enquiry means an order of suspension of the employee enabling him to claim subsistence allowance. If the charges of misconduct are grave and serious and the employee is already dismissed, then, paying him any subsistence allowance or sustenance allowance which may in a given case be 75% or more of his last drawn wages, would mean that he is allowed to resume work although the employer has already dismissed him. Ultimately, if the dismissal is justified by the employer, then, an order will have

to be made directing the employee to bring back the monies already paid. Apart therefrom, allowing him to resume work or in lieu thereof pay him 75% of wages would be putting a premium on his misconduct and in a given case, fraud. That will be in contravention of the object and purpose sought to be achieved by industrial adjudication.

24. In 1963 DGLS (soft) 146 : A.I.R. 1964 Supreme Court 737 (M/s. J.K. Cotton Spinning and Weaving Mills Co Ltd Vs. The Labour Appellate Tribunal of India & anr)¹⁹, as far as industrial adjudication is concerned, the Supreme Court holds thus:

19. Then Mr. Pathak was driven to contend that the ground of social justice given by the Labour Appellate Tribunal in support of its award is really not sound in law, and he referred us to the observations made by this Court on some occasions that the considerations of social justice were not only irrelevant but untenable vide (J.K. Iron and Steel Co. Ltd., Kanpur Vs. Iron and Steel Mazdoor Union, Kanpur)²⁰, 1963 DGLS (soft) 146 : 1955(2) S.C.R. 1315 : A.I.R. 1956 S.C. 231 and (Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur) ²¹, 1954 DGLS (soft) 159 : 1955(1) S.C.R. 991 : A.I.R. 1955 S.C. 170. In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this Court in dealing with industrial matters have emphasised the relevance, validity and significance of the doctrine of social justice :

*vide (Messrs. Crown Aluminium Works Vs. Their Workmen)*²², 1957 DGLS (soft) 101 : 1958 S.C.R. 651: A.I.R. 1958 S.C. 30 and *(State of Mysore Vs. Workers of Gold Mines)*²³, 1958 DGLS (soft) 85 : 1959 S.C.R. 895 : A.I.R. 1958 S.C. 923. Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one-sided, or pedantic and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair-play and justice. That is the reason why on several occasions, industrial adjudication has thought it fit to make reasonable

provision for leave in respect of the workmen who may not strictly fall within the purview of the Factories Act or the Shops and Commercial Establishments Act. We are, therefore, satisfied that there is no substance in the grievance made by Mr. Pathak that the labour Appellate Tribunal should not have granted the demand of the respondents for leave on grounds of fair play and social justice.

25. *Therefore, on spacious grounds of equity and justice, the Labour Court cannot be empowered to grant any subsistence allowance or financial assistance of the nature claimed by the respondent in this case. The request made by the respondent could not have been granted and the order of the Labour Court in that behalf is totally unsustainable in law."*

14. In the light of the same, I am unable to accept the submissions of the respondent on this count. Nevertheless, the "*relation back doctrine*" shall govern the situation. Eventually, if the respondent succeeds in the reference, he would stand to gain all the consequential benefits, as are permissible in Law.

15. In the light of the above, this petition is partly allowed. The impugned judgment and order dated 16/08/2014 challenged by the petitioner is quashed and set aside. Reference (IDA) No.18/2012 is remitted to the Labour Court, Jalgaon for framing of proper issues, as

observed in this judgment and for trying the said 3 issues preemptorily so as to constitute the Part I award.

16. While framing the said issues, the litigating sides are at liberty to submit draft issues for the assistance of the Court. The litigating parties have assured co-operation to the Labour Court in the expeditious disposal of the reference and as such shall refrain from seeking adjournments on frivolous and vexatious grounds.

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

(RAVINDRA V. GHUGE, J.)