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

WRIT PETITION NO. 3576 OF 2015

Ashok Suvalal Marothe,
Age : 60 years, Occ : Nil,
R/o Surat Galli, Rahata,
Taluka Rahata, District Ahmednagar.

...PETITIONER

-VERSUS-

Maharashtra State Road Transport
Corporation, Kotla, Sarjepura,
Ahmednagar.
Through it's Divisional Controller.

...RESPONDENT

...

Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondent : Shri Deshmukh Bhausahab S.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 23rd October, 2015**

Oral Judgment:

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

2 I have heard the learned Advocates for quite sometime.

3 There is no dispute in between the parties that the Petitioner
was terminated for proved misconducts on 15.12.2006. Reference (IDA)

No.24/2011 is pending before the Labour Court. By the part-1 judgment dated 19.07.2014, the enquiry is set aside on the ground that it stands vitiated and the findings have also been held to be perverse.

4 It is also undisputed that the Respondent/ Corporation has filed it's Written Statement on 06.12.2012 in which the right to conduct a de-novo enquiry has not been reserved.

5 The grievance of the Petitioner is that the Respondent/ Corporation has not challenged the part-1 judgment dated 19.07.2014 and sought adjournments on 25.08.2014, 22.09.2014, 27.10.2014, 24.11.2014 and 16.12.2014. An application Exhibit C/16 was filed on 07.01.2015 praying for permission of the Labour Court to conduct a de-novo enquiry. The said application has been allowed instantly on 07.01.2015 without calling for the Say of the Petitioner by passing the following order:-

“Considering contention permission granted.”

6 The Petitioner, therefore, preferred an application Exhibit U/15 dated 21.01.2015 by which the Labour Court was requested to recall it's order dated 07.01.2015 and conclude that the Respondent/ Corporation could not conduct a de-novo enquiry as no right was reserved

in the Written Statement.

7 Shri Barde, therefore, submits that the Labour Court should have considered the fact that no Say of the Petitioner was called on Exhibit C/16 and the same was allowed instantly without any argument. Hence, the application Exhibit U/15 should have been dealt with by the Labour Court which has declined to exercise its jurisdiction by passing the following order:-

“Already application Exhibit C/16 has been granted vide order dated 07.01.2015 hence, filed.”

8 Shri Deshmukh, learned Advocate for Respondent/ Corporation, has strenuously defended the impugned order. He submits that as the enquiry was held to be vitiated, the Respondent/ Corporation had a right to conduct a de-novo enquiry. The same was granted by order dated 07.01.2015. He, therefore, prayed for the dismissal of this petition.

9 The Apex Court in the matter of *KSRTC v/s Lakshmiddevamma*, 2001 (2) CLR 640 has considered the law applicable to matters concerning setting aside of a domestic enquiry or an order of dismissal being passed without conducting a domestic enquiry. The five judges Bench of the Apex Court have dealt with such a situation.

10 The Labour Court ought to have considered the said law while dealing with the application Exhibit U/15. The Labour Court has virtually declined to exercise its jurisdiction and the application Exhibit U/15 is, therefore, undecided.

11 In the light of the above, ends of justice would be met by directing the Labour Court to decide application Exhibit U/15 on its own merits and after considering the contentions of the rival sides and taking into account the law laid down by the Apex Court in the case of KSRTC v/s Lakshmiddevamma (supra).

12 This Writ Petition is, therefore, partly allowed. The Labour Court is directed to decide application Exhibit U/15 on its own merits after considering the submissions of the rival sides and the order dated 07.01.2015 is kept in abeyance till then.

13 Rule is, therefore, made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)