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

WRIT PETITION NO. 5628 OF 2015

Divisional Controller,
MSRTC, Dhule Division,
Dhule.

...PETITIONER

-VERSUS-

Jagannath Avchit Shirsath,
Age : 58 years, Occ : Retired,
R/o 76, Sushil Nagar, Dhule,
Tq. & Dist.Dhule.

...RESPONDENT

....

Mr.D.S.Bagul and Mr.R.N.Jain, Advocates for the Petitioner.
Mr.Shrikant S. Patil, Advocate for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th August, 2015

Oral Judgment:

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

2 While issuing notices to the Respondents on 15.06.015, I had recorded the facts emerging from the record, in the said order, which are as under:-

- “1. *Learned Advocate for the petitioner submits that after serving a charge sheet dated 08/08/2005, a Departmental Enquiry was conducted and the Enquiry Officer submitted his report on 09/08/2010. A second show cause notice dated 25/12/2010 proposing the punishment of stoppage of one increment for one year was served upon the respondent. He submitted his reply dated 25/12/2010 and by order dated 18/02/2011, punishment of stoppage of one increment for 6 months was inflicted. He preferred an appeal and the Appellate Authority reduced the punishment to 3 months.*
2. *It is pointed out by Mr.Bagul that the respondent preferred complaint (ULP) No.25/2013 challenging the enquiry by contending that the charges are not proved against the workman. The petitioner submitted its written statement in which it was emphatically asserted that the enquiry was conducted in a fair and proper manner and the findings of the Enquiry Officer are not perverse as they are based on the evidence adduced.*
3. *It is revealed from the impugned judgment and order of the Industrial Court dated 06/09/2014 that it considered the challenge of the workman and came to the conclusion in paragraph No.15 that the clauses of mis-conduct invoked against the workman were not established as none of the charges levelled upon him are proved. In my view, this tantamounts to setting aside the findings of the Enquiry Officer on the ground of perversity.*
4. *In the light of the crystallized law considered and discussed by this Court in the case of MSRTC, Beed Vs. Syed Saheblal Syed Nizam, reported at 2014(3) CLR 514, ex-facie, the conclusions of the Industrial Court are rendered unsustainable since the said conclusions have been drawn in the impugned judgment, by which the entire complaint was allowed in one stroke. Mr.Bagul submits*

that the respondent/workman has retired on attaining the age of superannuation on 30/06/2012.”

3 Shri Patil, learned Advocate for the Respondent, has made a strenuous effort to support his contention that the Industrial Court has rightly followed the procedure and has rightly come to the conclusions in the impugned judgment and has, therefore, allowed the complaint. He submits that the enquiry was conducted in a slipshod manner. The findings of the Enquiry Officer are unsustainable. For a minor misconduct, a major punishment of stoppage of increment has been imposed.

4 This Court had delivered the judgment in the case of *MSRTC, Beed v/s Syed Saheblal Syed Nijam* reported in **2014 (III) CLR 547 : 2014(4) Mh.L.J. 687** and concluded that the procedure for dealing with the fairness of the enquiry and the findings of the Enquiry Officer as is followed by the Labour Court in the case of punishment of dismissal, has to be followed even by the Industrial Court.

5 Despite the above, the Industrial Court by its judgment dated 06.09.2014 has, in paragraph 15, set aside the enquiry on the ground that none of the charges are proved against the Respondent and there is no necessity to impose punishment upon the Respondent.

6 I find from the impugned judgment of the Industrial Court that the following two issues in the light of the challenge posed to the enquiry and the findings of the Enquiry Officer by the Respondent/Employee, were not framed:-

- (a) Whether, the Complainant proves that the domestic enquiry was conducted in violation of the principles of natural justice?
- (b) Whether, the complainant proves that the findings of the Enquiry Officer are perverse?

7 This issue is no longer res-integra. The judgment of this Court, considering the law laid down by the Apex Court, in the matter of the *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** deals with the procedure for dealing with the first two issues as framed above. The impugned judgment is, therefore, in opposition to the issues laid down in the said case and the judgment of this Court in the case of the MSRTC, Beed (supra).

8 In the light of the above, the impugned judgment is quashed and set aside. Complaint (ULP) No.25/2013 is remitted to the Industrial Court for framing of the two issues as noted above.

9 Needless to state, the first two issues as noted above, will be dealt with by the Industrial Court in the light of the judgment of this Court in the case of the Maharashtra State Cooperative Cotton Growers' Federation (supra).

10 The litigating sides are at liberty to request the Industrial Court for deciding the complaint expeditiously.

11 The Writ Petition is partly allowed. Rule is, therefore, made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)