

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5627 OF 2015

1. Divisional Controller,
MSRTC, Dhule Division Dhule,

2. Depot Manager, MSRTC,
Nandurbar,

3. Assistant Transport Superintendent,
MSRTC, Nandurbar

PETITIONERS

VERSUS

Vijay S/o Dalpat Pimple,
Age-50 years, Occu-Service,
R/o Dhandai Colony, Walwadi,
Tq. and Dist. Dhule

RESPONDENT

Mr.R.N.Jain h/f Mr.D.S.Bagul, Advocate for the petitioners.
Mr.N.L.Choudhari, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/10/2015

ORAL JUDGMENT :

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

2. The petitioners have challenged the judgment and order dated 27/09/2015 delivered by the Labour Court in Complaint (ULP) No.21/2012, by which the complaint filed by the respondent was

partly allowed and he was granted reinstatement with continuity and back wages.

3. The petitioners also challenge the judgment and order dated 18/09/2014 delivered by the Industrial Court in Revision (ULP) No.4/2013, thereby dismissing the revision petition.

4. The petitioners have contended that the Labour Court, after framing seven issues, decided all the issues together as both the parties filed a purshis thereby leaving the decision on the Labour Court to decide all the issues together.

5. It is further submitted that the respondent joined duties on 28/04/1994 and since then has been punished on about 14 occasions. By an order dated 20/07/2010, he was awarded the punishment of dismissal from service. He had preferred Complaint (ULP) No.27/2010, which was allowed and he was reinstated in service.

6. It is submitted that the Labour Court has not followed the procedure laid down in law for deciding the preliminary issues peremptorily so as to constitute the Part I judgment of the Labour

Court. This serious infirmity committed by the Labour Court was not noticed by the Industrial Court and the revision petition was dismissed.

7. Mr.Choudhari, learned Advocate on behalf of the sole respondent has strenuously supported both the impugned judgments. The respondent had remained absent for a short duration as set out in the charge sheet dated 20/10/2011. The absence alleged was for 51 days in between May 2011 till August 2011. As the evidence before the Enquiry Officer was not sufficient, the Labour Court rightly concluded that the findings of the Enquiry Officer are perverse, in paragraph No.12 of the impugned judgment.

8. He further submits that the Labour Court has rightly concluded that a disproportionate punishment was awarded to the respondent and hence the respondent deserves to be reinstated in service. Denial of 50% back wages from the termination dated 03/05/2012 till the judgment of the Labour Court dated 27/09/2012 would be sufficient punishment. He, therefore, states that no perversity can be pointed out in the judgment of the Industrial Court as well as the Labour Court.

9. I have considered the submissions of the learned Advocates as recorded above.

10. The issue of deciding whether the complainant has proved that the enquiry is unfair and vitiated and whether the findings of the Enquiry Officer are perverse, is no longer res-integra as regards the stage at which these two issues are to be adjudicated upon. This Court, in the matter of Maharashtra State Co-operative Cotton Grovers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(1) CLR 878 and Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nijam, 2014(4) Mh.L.J. 687 = 2014 (3) CLR 547, has considered the settled position in law.

11. The Labour Court has agreed to decide all the issues together since a purshis was filed by both the sides. The Labour Court should have disregarded such a purshis and should have strictly followed the procedure laid down in law. The Labour Court has deviated from the procedure laid down and has accorded unwarranted significance to the purshis filed by the parties. The Labour Court ought to have decided the first two issues peremptorily which would have constituted its Part I judgment.

12. The Industrial Court should have considered this fact situation. For the same reasons, the conclusion of the Industrial Court that the Labour Court has rightly set aside the enquiry and directed reinstatement with continuity of service and 50% back wages, is erroneous. So also, both the Lower Courts should have taken into account that there were 23 punishments awarded to the respondent out of which 9 punishments pertained to unauthorized absenteeism.

13. In the light of the above, this petition is partly allowed. The conclusions of the Labour Court in the impugned judgment dated 27/09/2012 as regards issue Nos. 3 to 7 are quashed and set aside. Complaint (ULP) No.21/2012 stands remitted to the Labour Court for adjudication as per the directions set out hereinbelow. Naturally, the impugned judgment of the Industrial Court dated 18/09/2014 is quashed and set aside and Revision (ULP) NO.4/2013 stands disposed of.

14. The Labour Court shall decide the complaint as per the following directions :-

- [a] The litigating sides shall appear before the Labour Court on 16/11/2015.

- [b] In the event, the petitioners are desirous of conducting a denovo enquiry, the Labour Court may consider the same within the framework of the ratio laid down by the Apex Court (5 Judges) in the matter of KSRTC Vs. Laxmidevamma and another, 2001(2) CLR 640.
- [c] In the event, the Labour Court permits the petitioner to conduct a denovo enquiry, it shall take into account the past service record of the respondent while deciding the complaint on its merits.
- [d] Since the respondent has been reinstated in service, the petitioners shall continue his services subject to the decision of the Labour Court in the Complaint.
- [e] Both the parties shall co-operate with the Labour Court and shall ensure that they shall refrain from seeking adjournments on unreasonable and trivial grounds.
- [f] The Labour Court shall decide the complaint in the light of the directions as above, as expeditiously as possible and not later than 31/12/2016.

15. Rule is, accordingly, made partly absolute.

(RAVINDRA V. GHUGE, J.)