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

WRIT PETITION NO. 4046 OF 2014

MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION, JALGAON DIVISION, JALGAON.
THROUGH IT'S DIVISIONAL CONTROLLER.

...PETITIONER

-VERSUS-

DATTATRAYA MAHARU PATIL,
AGE : 48 YEARS, OCC : NIL,
R/O 9/3, SURBHI COLONY,
AMALNER, TQ.AMALNER, DIST.JALGAON.

...RESPONDENT

...

Advocate for Petitioner : Shri Bagul D.S. and Shri Rakesh Jain.

Advocate for Respondent : Shri Manale Satish S.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th August, 2015

Oral Judgment:

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

2 The Petitioner/ MSRTC is aggrieved by the impugned judgment and order delivered by the Labour Court dated 19.05.2012 in Complaint (ULP) No.31/2009 and the judgment and order of the Industrial Court dated 20.12.2013 by which Revision (ULP) No.72/2012

filed by the Petitioner/ MSRTC has been dismissed.

3 The Petitioner submits that the Respondent was appointed as a Conductor in 1986. On 17.07.2008 when the Bus was travelling on Amalner-Kapadne route, it was checked by the checking squad at village Vavde. It was noticed that the Respondent had re-issued used tickets to the passengers and had thus, misappropriated the fare amount.

4 The charge sheet dated 24.07.2008 was served upon the Respondent. Considering his past record and the report of the Enquiry Officer, he was issued with the show cause notice seeking explanation as to why the punishment of dismissal should not be imposed upon him. Considering his reply dated 21.10.2009, the Respondent was dismissed from service on 26.10.2009.

5 The Respondent preferred Complaint (ULP) No.31/2009 before the Labour Court. Issue No.1 with regard to the fairness of the enquiry was decided by the order dated 02.05.2011. However, Issue No.2 with regard to whether, the findings of the Enquiry Officer are perverse, was decided in the impugned judgment itself.

6 The grievance of the Petitioner is that the said issue was

answered in the affirmative and the findings of the Enquiry Officer were branded as perverse in the final judgment dated 19.05.2012.

7 The revision petition preferred by the Petitioner was dismissed by the Industrial Court vide the impugned judgment dated 20.12.2013.

8 The Petitioner points out that the Industrial Court concluded that there is absolutely no evidence on record to show that the Respondent has misappropriated the fare amount and caused damage or loss to the Petitioner/ MSRTC. It is further pointed out that the Industrial Court has lost sight of the law that the first two issues are to be decided peremptorily and therefore, the decision on the second issue regarding the findings of the Enquiry Officer could not be a part of the final judgment of the Labour Court.

9 The Petitioner relies upon the judgment of this Court in the matter of *MSRTC, Beed v/s Syed Saheblal Syed Nijam* reported in **2014 (III) CLR 547 : 2014(4) Mh.L.J. 687** and the judgment delivered in the case of *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**.

10 Shri Manale, learned Advocate appearing on behalf of the sole Respondent/ Employee, submits that no objection was raised by the Petitioner/ MSRTC when the Labour Court dealt with the first issue peremptorily. The Petitioner could have pointed out the law and could have brought it to the notice of the Labour Court that Issue No.2 also deserves to be decided peremptorily. Shri Manale, therefore, submits that the Petitioner's prayer for setting aside the impugned judgments and consequentially, for a remand, should not be at the costs of increasing the Respondent's hardship and rigours of litigation faced by him in the last few years.

11 Shri Manale points out that the Respondent has already been reinstated on 31.12.2012 and therefore, even if the matter is to be remanded, the order of reinstatement issued by the Petitioner should not be disturbed. He submits that it would be equitable to permit the Respondent to discharge his duties till the Labour Court decides the complaint on remand.

12 I have considered the submissions of the litigating sides and have gone through the petition paper book. It is apparent that Issue No.1 regarding the fairness of the enquiry was decided peremptorily on

02.05.2011. Issue No.2 should also have been decided along with the first issue. This Court has followed the ratio laid down by the Apex Court while dealing with a similar situation in the case of MSRTC, Beed v/s Syed Saheblal (supra).

13 The error committed by the Labour Court could have been rectified by the Industrial Court vide the impugned judgment. However, the Industrial Court dismissed the revision petition on the ground that there is no evidence before the Enquiry Officer to hold that the charges are proved against the Respondent. The Industrial Court concluded that there is no perversity in the findings of the Labour Court.

14 Considering the law laid down by the Apex Court and which has been followed by this Court in the matters of MSRTC, Beed (supra), Maharashtra State Cooperative Cotton Growers Federation (supra) and *Permanent Magnets Ltd., Mumbai v/s Vinod Vishnu Wani* reported in **2002 (3) Mh.L.J. 413 : 2002 (93) FLR 32**, the impugned judgments are unsustainable.

15 Shri Manale points out that the Petitioner has not reserved it's right to conduct a de-novo enquiry in the event the enquiry is set aside.

16 In the light of the above, I do not wish to go into this issue at this stage since I am remanding the complaint to the Labour Court for a decision on Issue No.2 in the light of the Maharashtra State Cooperative Cotton Growers Federation (supra). In the event the enquiry is set aside, the Labour Court may deal with the situation as regards whether to permit the Petitioner to conduct a de-novo enquiry in the light of the judgment of the Apex Court (five judges) in the matter of *KSRTC v/s Lakshmiddevamma* reported in **2001 (2) CLR 640**.

17 As such, this Writ Petition is partly allowed. The impugned judgment and order dated 19.05.2012 delivered by the Labour Court in Complaint (ULP) No.31/2009 as well as the judgment dated 20.12.2013 delivered by the Industrial Court in Revision (ULP) No.72/2012 are quashed and set aside. The revision petition would, therefore, not survive since Complaint (ULP) No.31/2009 is remitted back to the Labour Court for deciding Issue No.2 afresh.

18 Needless to state, in the peculiar facts as recorded above, the reinstatement of the Respondent herein shall not be disturbed till the Labour Court decides Complaint (ULP) No.31/2009.

19 Both the litigating sides shall, therefore, appear before the

Labour Court on 11.09.2015 and the said complaint shall be decided by the Labour Court as expeditiously as possible and preferably on or before 15.09.2016 after deciding Issue No.2 as directed above.

20 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)