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

WRIT PETITION NO. 8031 OF 2005
WITH
CIVIL APPLICATION NO.4638/2007 IN WP/8031/2005
WITH
CIVIL APPLICATION NO.10988/2015 IN WP/8031/2005

The Salvation Army,
Evangeline Booth Hospital,
Opp.G.P.O., Ahmednagar,
through it's Asst. Administrator.

...PETITIONER

-VERSUS-

1 Sadashiv Shankar Shinde,
Age : 55 years, Occ : Service,
R/o Nagardeole, Tathe Mala,
Tq. & Dist.Ahmednagar.

2 Industrial Court,
Ahmednagar.
(Formal Party).

...RESPONDENTS

...
Advocate for Petitioner : Mrs.Deshmukh Charuta Sunil.
Advocate for Respondent No.1/ Employee : Shri P V Barde.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th September, 2015

Oral Judgment:

1 This matter was admitted by order dated 15.10.2007. Though
Rule on interim relief was made returnable on 10.12.2007, no interim

relief has been granted by this Court to the Petitioner.

2 The Petitioner is aggrieved by the judgment and order dated 04.04.2003 delivered by the Labour Court in Complaint (ULP) No.127/1997. The Petitioner is also aggrieved by the impugned judgment and order dated 16.04.2005 delivered by the Industrial Court in Revision (ULP) No.53/2003.

3 Revision (ULP) No.61/2003 filed by the Respondent/ Employee was also dismissed. The Respondent/ Employee has not preferred any challenge before this Court.

4 The contention of the Petitioner is that the Respondent was dismissed by the order dated 31.10.1997 after conducting a full fledged domestic enquiry against him under the Model Standing Orders. He was working as a Ward-Boy since 01.07.1977. He preferred Complaint (ULP) No.127/1997 for challenging his dismissal.

5 The Petitioner filed it's Written Statement and opposed the complaint. The disciplinary action initiated by the Petitioner was strenuously supported through the Written Statement. However, it is admitted that the right to conduct a de-novo enquiry in the event the

enquiry was set aside for any reason whatsoever, was not reserved by the Petitioner in its Written Statement.

6 The Petitioner has raised a grievance that though the enquiry was held to be fair and proper by an order dated 14.12.2001, which has not been challenged and has attained finality, the Labour Court held that the findings of the Enquiry Officer are perverse, in a single judgment by which the complaint was finally partly allowed. The contention is that the fairness of the enquiry and the fairness of the findings of the Enquiry Officer, both constitute vital preliminary issues which the Labour Court is obliged to decide peremptorily as it constitutes a Part-1 judgment.

7 It is submitted that the Labour Court upheld the enquiry as being fair and proper, but did not deal with the findings of the Enquiry Officer while considering the first issue. In the final judgment, the Labour Court concluded that the conclusions of the Enquiry Officer are perverse and there is no evidence on record to prove acts of drunkenness, disorderly behaviour, abusing superiors and exchange of hot words, against the Respondent.

8 It is further submitted that the Industrial Court has lost sight of the serious error committed by the Labour Court in not following the

procedure laid down in law while delivering the Part-1 order. The impugned judgment of the Industrial Court by which the revision petition filed by the Petitioner has been rejected, is assailed in this petition for the same reasons for which the judgment of the Labour Court is criticized.

9 It is, therefore, submitted that this petition deserves to be allowed and the complaint filed by the Respondent deserves to be dismissed. In the alternative, it is prayed that the complaint be remitted back to the Labour Court to enable the Petitioner to conduct a de-novo enquiry.

10 Shri Barde, learned Advocate for the Respondent/ Employee, submits that there is no purpose in remitting the complaint back to the Labour Court for the reason that the Petitioner has not reserved it's right to conduct a de-novo enquiry as is required to be reserved in the Written Statement in the light of the judgment of the Apex Court (five judges) in the matter of *KSRTC v/s Lakshmiddevamma*, **2001 (2) CLR 640**. He submits that unless such a right is reserved, the Petitioner cannot be permitted to conduct a de-novo enquiry.

11 Shri Barde further submits that since there was no right reserved for conducting a de-novo enquiry, the Labour Court proceeded

with the matter as no de-novo enquiry was permissible. As such, the charges are not proved against the Respondent/ Employee since the enquiry conducted is already set aside and the Petitioner/ Employer has not reserved it's right to prove the charges before the Labour Court. He, therefore, submits that the order of reinstatement with continuity in service granted to the Respondent without back-wages, is just and proper. Though the back-wages could not have been denied, the Labour Court has so done only to balance the equities.

12 In the light of the above, Shri Barde submits that no fault can be found with the conclusion of the Industrial Court since it was noted that the possibility of conducting a de-novo enquiry was ruled out. He, therefore, prays for the dismissal of this petition.

13 I have considered the submissions of the learned Advocates as have been recorded herein above. They have taken me through the record available.

14 It is crystallized law that unless the Employer reserves it's right to conduct a de-novo enquiry in the Written Statement, the Employer cannot be permitted to insist on proving the charges before the Labour Court or the Industrial Court, as the case may be, through a de-novo

enquiry in the event the enquiry is set aside for any reason whatsoever. It is also crystallized law that the enquiry can be set aside on the ground of non adherence to the principles of natural justice.

15 The enquiry can be held to be vitiated even on the ground that the findings of the Enquiry Officer are perverse since the conclusions arrived at are either without any evidence or not supported by oral or documentary evidence. In any of these situations, the enquiry is said to be vitiated and is watered down in the light of the conclusions drawn by the Apex Court in *Workmen of M/s Firestone Tyre & Rubber Company of India v/s Management*, **AIR 1973 SC 1227 : 1973 SCR (3) 587**, *Delhi Cloth and General Mills Company Limited v/s Ludh Budh Singh*, **1972 (1) SCC 595** and *Bharat Forge Company Ltd. v/s A.B.Zodge*, **1996 (73) FLR 1754 : AIR 1996 SC 1556**.

16 Though it appears to be unusual that the Labour Court decided the validity of the findings of the Enquiry Officer in the final judgment dated 04.04.2003, no de-novo enquiry was possible since the Employer had not reserved it's right to conduct a de-novo enquiry. Nevertheless, this Court cannot ratify the approach of the Labour Court in deciding the fairness of the enquiry under it's part-1 order dated

14.12.2001 and deciding the issue of fairness of the findings of the Enquiry Officer in the final judgment. Both these issues ought to have been decided at a preliminary stage and the second issue could not have been considered along with the other issues while delivering the final judgment.

17 The Industrial Court has considered the fact situation. It has gone through the record and proceedings threadbare. It did not find any perversity in the findings of the Labour Court and therefore, the revision petition filed by the Petitioner was dismissed.

18 The oral and documentary evidence in the enquiry indicates that there was no evidence to prove the charge of drunkenness, disorderly behaviour, abusing behaviour and exchange of hot words, at the behest of the Respondent/ Employee. The other employee, who was Administrator and who was said to have been abused by the Respondent, had also not deposed in the enquiry so as to support the charges levelled upon the Respondent.

19 In this backdrop and in the light of the Employer having not reserved its right to conduct a de-novo enquiry, that the Industrial Court concluded that no charges were proved against the Respondent.

20 Notwithstanding the above, it cannot be overlooked that the Respondent/ Employee, who worked for 1977 to 1997, has been out of employment since 1997 for the past about 18 years. It is under fortuitous circumstances that the Petitioner/ Employer failed in reserving it's right to conduct a de-novo enquiry, that the charges could not be proved against the Respondent before the Labour Court. Consequentially, the Respondent has been benefited out of an error committed by the Petitioner/ Employer owing to which, despite the chance to conduct a de-novo enquiry, the Petitioner has squandered the said chance.

21 It is stated that the Petitioner is a charitable trust. The Petitioner was established sometime during the second world war and the said hospital is run on charitable basis by the missionaries. A solemn statement has been made by the Petitioner that the hospital is not operated for deriving any profit. It is in operation as a charitable trust to do charity from 1939 onwards. It is further submitted that the recovery of unpaid wages, gratuity and such other monetary issues, claimed by the Respondent to the extent of about Rs.7.5 lac approximately cannot be borne by the Petitioner due to it's weak financial condition.

22 The Respondent/ Employee has already superannuated in the

year 2011. The issue of reinstatement, therefore, does not survive. Considering the fact situation as recorded herein above, the status of the Petitioner and its financial ability, I find it appropriate to quantify compensation so as to ensure that all the pending legal issues like gratuity, criminal complaint under Section 48(1) for disobedience of the judgment of the Labour Court and the Industrial Court, recovery proceedings, leave and wages, interest on the outstanding amount, etc. could be put to rest.

23 In the light of the above, with due circumspection I find it appropriate to grant compensation of Rs.5 lac to the Respondent/ Employee to be paid by the Petitioner/ Employer by way of a lump-sum compensation, within a period of TWELVE WEEKS from today. Consequentially, the impugned judgments of the Labour Court and the Industrial Court would stand satisfied.

24 This order shall also satisfy the recovery certificate issued in Application (IDA) Nos.290/2008 and 10/2011, which have been decided under Section 33-C(2) of the Industrial Disputes Act, 1947.

25 This amount of compensation shall also include the gratuity amount which the Respondent is entitled to receive for having put in 20 years of employment at the rate of Rs.2000/- per month last drawn salary

in 1997.

26 The criminal proceedings, if pending, shall also stand disposed of and the Respondent shall file an application for the said purpose before the appropriate Court for seeking disposal of the criminal proceedings.

27 Insofar as the provident fund accumulations are concerned, the Respondent/ Employee shall fill in a proper application "FORM" and place the same before the Petitioner within a period of TWO WEEKS from today. The Petitioner shall clear the said form by affixing necessary stamp and signature of the competent authority within ONE WEEK from the receipt of such form and handover the same to the Respondent, who shall file the said papers before the appropriate authority under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 for clearance of his Provident Fund accumulations.

28 In the light of this judgment, the orders freezing the bank accounts of the Petitioner shall stand set aside and the bank accounts shall be operable forthwith so as to enable the Petitioner to pay the compensation to the Respondent on priority basis as directed above.

29 This Writ Petition is, therefore, partly allowed and Rule is made partly absolute in the aforesaid terms.

30 The pending Civil Applications do not survive and the same are also disposed of.

(RAVINDRA V. GHUGE, J.)