

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3773 OF 2002

Maganlal S/o Jagannath Galhate,
Age-45 years, Occu-Nil,
R/o Kaharwada, Paithan, Tq. Paithan,
Dist. Aurangabad

PETITIONER

VERSUS

1. The Maharashtra State Road Transport
Corporation,
Through its Divisional Controller,
S.T.Divisional Officer, Aurangabad,
Tq.Aurangabad, Dist. Aurangabad

2. Divisional Traffic Superintendent,
(D.T.S. Default) (Competent Authority)
M.S.R.T.C., S.T. Divisional Office,
Aurangabad, Tq. And Dist. Aurangabad

RESPONDENTS

WITH
WRIT PETITION NO.3779 OF 2002

Maganlal S/o Jagannath Galhate,
Age-45 years, Occu-Nil,
R/o Kaharwada, Paithan, Tq. Paithan,
Dist. Aurangabad

PETITIONER

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RESPONDENTS

Mr.A.S.Golegaonkar, Advocate for the petitioner.
Mrs.R.D.Reddy, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 06/08/2015

ORAL JUDGMENT :

1. The first petition was Admitted by order dated 28/01/2003.

The second petition was admitted by order dated 29/01/2003.

2. I have heard the learned Advocates for the respective sides for quite some time.

3. However, I am not required to advert to their entire contentions and averments for the reason that the Labour Court, while deciding Complaint (ULP) Nos.84/1996 and 54/1998, has delivered the impugned judgments on 05/06/1998 concluding that the enquiry conducted by the respondent Corporation is vitiated on account of the perversity in the findings of the Enquiry Officer, but failed to follow the due procedure laid down in Law.

4. In Complaint (ULP) No.84/1996, the Labour Court had framed an issue as regards perversity, but did not frame an issue as to whether the enquiry could be said to have been conducted in a fair and proper manner. In Complaint (ULP) No.54/1998, no such issue was cast and yet in paragraph No.8, the Labour Court concluded that the findings are perverse. Both the complaints were allowed.

5. This Court has considered the crystallized position of Law in the matter of Maharashtra State Cooperative Cotton Grovers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, [2014 I CLR 878 = 2014(3) Mh.L.J. 339] and MSRTC Beed Vs.Syed Saheblal Syed Nijam, 2014 (3) CLR 547 = 2014 (4) Mh.L.J.687.

6. It is trite law that when the complainant challenges the fairness of the enquiry and terms the findings of the Enquiry Officer as perverse in his complaint, the Labour Court or the Industrial Court, as the case may be, are required to frame the following two issues :-

1. Whether the complainant proves that the enquiry conducted is unfair and vitiated ?
2. Whether the complainant proves that the findings of the

Enquiry Officer are perverse ?

7. In the Maharashtra State Cotton Grovers case (supra), this Court has considered the law and has held that the first two issues are to be decided peremptorily by permitting the litigating sides to rely on the entire enquiry proceedings and the evidence recorded in the enquiry. Additional evidence before the Labour Court is not required to be adduced. If the enquiry is set aside for any reason whatsoever while answering the above stated two issues, the employer gets the opportunity of conducting a *de-novo* enquiry, in the event such a right is reserved in the written statement in the light of the judgment of the Apex Court (5 judges) in the case of KSRTC Vs. Laxmidevamma and another, 2001(2) CLR 640.

8. Similarly, this Court has concluded in the case of Permanent Magnets Ltd., Mumbai v/s Vinod Vishnu Wani reported in 2002 (3) Mh.L.J. 413 : 2002 (93) FLR 32 that the responsibility to cast issues is with the Labour Court and it cannot be absolved of its duties in framing proper issues based on the pleadings of the parties. The observations of this Court in the Permanent Magnets case (supra) in paragraph No.12 to 14 read as under :-

- “12. The contention sought to be raised by the respondent in this regard is that the prayer to frame issue is restricted to the validity and legality of the Domestic Enquiry and, therefore, right reserved by the petitioner to lead evidence was only in case the enquiry is held to be not in accordance with the principles of natural justice. It cannot be disputed that strict interpretation of the pleadings would disclose a prayer to frame issue in relation to validity and legality of the Domestic Enquiry. The pleadings do not disclose a specific prayer for framing of any other issue. However, it is always to be remembered that framing of issue is primarily the function of the Court and it is not for the party to make prayer in that regard. The issues are to be framed based on the pleadings of the parties. Merely, because the party does not pray for framing of an issue, the Court is not absolved of its duty of framing the issues, which otherwise arise from the pleadings of the parties. This does not mean that the parties are forbidden from rendering necessary assistance to the Court in framing of issues. However, it is primarily the duty of the Court to frame issues, based on the pleadings. Viewed from this angle, mere absence of the prayer to frame issue cannot result in any prejudice to the petitioner. The Apex Court in *Makhan Lal Bangal v. Manas Bhunia and others* reported in 2001 AIR SCW 90, has ruled that an obligation is cast on the Court to read the plaint/ petition and written statement/ counter, if any, and then determine with the assistance of the learned

counsel for the parties the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues.

13. *The pleadings of the petitioner in the written statement quoted above, disclose that the petitioner had specifically stated that in case enquiry is held to be affected by breach of any principle of law either relating to natural justice or otherwise, the petitioner would lead evidence to substantiate charges of misconduct and to justify the final action against the complainants/respondents herein. The petitioner's statement therein is clear to the effect that it craved leave to substantiate the charges of misconduct and justify the final action against the complainants by leading evidence in case the enquiry is held to be in breach of any principles of law either relating to natural justice or otherwise. It cannot be disputed that the pleadings in question do not expressly use the phraseology like "the employer reserve its right to lead evidence in case the Labour Court holds the findings arrived at by the Enquiry Officer to be perverse". But, at the same time, it has stated that in case the enquiry is held to be not in accordance with the law applicable*

thereto, and the same is held to be not in compliance with the principles of natural justice or otherwise, the employer would lead necessary evidence to prove the charges and for justification of punishment imposed. In interpreting the pleadings, as has been held by the Apex Court in *Ram Sarup v. Bishun Narain* reported in AIR 1987 SC 1242 no pedantic approach should be adopted to defeat justice on hair splitting technicalities and it is the duty of the Court to ascertain the substance of the pleadings. At this stage, it is also necessary to consider the contention of the learned Advocate for the petitioner that the question of opportunity of leading the evidence in support of justification of the charges of misconduct and action thereupon by the employer could arise only in case where the findings of the Enquiry Officer are held to be perverse and not otherwise. To put in exact words of the learned Advocate "the right to lead evidence to the employer is borne (read born) only on the finding of the Labour Court that the findings of the Enquiry Officer are perverse." It cannot be disputed that once it is held that the Domestic Enquiry has been conducted in fair and proper manner and in accordance with the principles of natural justice, that by itself would not lead to conclusion that the findings arrived at by the Enquiry Officer were also perverse. Much to the contrary, the finding to that effect would be specifically required by the Labour Court. Once it is stated by the petitioner in the written statement that he craves leave to substantiate the charges of misconduct by leading

proper evidence and to justify the final action, in case enquiry is to be held vitiated for non compliance of principles of natural justice or otherwise and considering the law laid down by the Apex Court regarding the reading and understanding of the pleadings. It is to be held that the petitioner had conveyed its intention to the Labour Court to lead evidence in case the Labour court comes to the conclusion that the inquiry was vitiated either on account of non compliance of the procedure or for violating the principles of natural justice or the findings arrived at by the Enquiry Officer being held to be perverse. On this count, therefore, the contentions of the learned Advocate for the respondent that the pleadings do not disclose reservation of right of the employer to lead evidence, in case of findings of Enquiry Officer being held as perverse, cannot be accepted. (Emphasis supplied)

14. Referring to the decision of the learned Single Judge in Chandrikaprasad's case, it was strenuously argued by the learned Advocate for the respondent that there was not even an attempt on the part of the petitioner in the course of argument to submit that the petitioner would lead evidence in support of the charges of misconduct, in case the Labour Court holds the findings of the Enquiry Officer to be perverse. Indeed, in Chandrikaprasad's case, the learned Single Judge while considering the point of failure on the part of the Labour Court to allow the employer to adduce evidence pursuant to the finding that the domestic

enquiry was not fair and proper and the findings recorded by the Enquiry Officer were perverse. It was observed that in the written statement filed by the employer, no plea was raised in the alternative that in case the enquiry held against the employee is not fair and proper or is held to be perverse, the employer be given an opportunity to prove the charges against the employee and even when issues were framed after the parties had tendered draft issues, the employer had never pressed that the issue regarding fairness of the enquiry or the correctness of the findings recorded by the Enquiry Officer should be tried as preliminary issue. Not only that when during the course of arguments no request was made that if the Court holds that enquiry against the employee was not fair and proper or the findings recorded by the Enquiry Officer were perverse, the employer should be given opportunity to lead evidence. Having sat on the fence and allowed the proceedings to complete, it was not open to the employer, after the proceedings were closed before the Labour Court and judgment was delivered, to raise the contention, during the course of hearing of revision application for the first time even in absence of any ground in memo of revision that Labour Court ought to have asked employer to lead evidence to prove the misconduct on merits before the Labour Court. According to the learned Advocate for the petitioner, the facts of the case in hand are similar to those of Chandrikaprasad's case inasmuch as, there was no request made by the petitioner in the course of

arguments for allowing the petitioner to lead evidence in case the Labour Court holds that the findings of the Enquiry officer to be perverse nor, the issue in that regard was requested to be tried as preliminary issue. It cannot be disputed that the petitioner could have certainly drawn attention of the Labour Court at the time of framing issues that the issue in relation to whether the findings of the Enquiry Officer to be perverse, ought to have been tried as preliminary issue. It is also a matter of record that on completion of the evidence led by the petitioner in answer to the evidence, led by the respondent, the petitioner had filed purshis closing its evidence. The impugned order also does not disclose any request having been made by the petitioner to the Labour Court in the course of arguments for reserving its right to lead evidence in support of the charges of misconduct and punishment imposed, in case the Labour Court holds the findings of the Enquiry Officer to be perverse. However, as rightly submitted by the learned Advocate for the petitioner, in spite of these facts, the point which is required to be considered is whether the employer was afforded or not an opportunity to exercise his right to adduce evidence once the tribunal holds that the findings of the Enquiry Officer are perverse. Undisputedly, the decision of the Labour Court that the findings of the Enquiry Officer in the Domestic Enquiry were perverse was arrived in the judgment and order dated 6th April, 1999 itself and not prior to the delivery of the said judgment and order and, thereafter, there was no

opportunity made available to the petitioner to lead any evidence in support of the charges against the respondent in spite of the fact that the pleadings in that regard disclose the required alternative plea. Undisputedly, in Chandrikaprasad's case, there was no such plea raised in the written statement. Basically, therefore, the employer had not disclosed any willingness on its part to lead evidence in support of the charges and punishment imposed by the management in case the Labour Court comes to the conclusion that the findings arrived at by the Enquiry Officer were perverse. Considering the law laid down by the Apex Court in Bharat Forge Company Limited's case and Karnataka State Road Transport Corporation's case, it being the matter of right of the employer on necessary alternative plea being made in the written statement, it was necessary for the Labour Court to afford an opportunity to the employer to lead evidence in support of the charges and punishment imposed once, the Labour Court has held that the findings arrived at by the Enquiry Officer were perverse. In this connection, it was sought to be contended by the learned Advocate for the respondent that there is no procedure prescribed whereby the parties are entitled to lead evidence in piecemeal on every issue. There can be no quarrel about the proposition canvassed by the learned Advocate for the respondent. However, the fact remains that it was necessary for the Labour Court to frame issue as to whether the findings of the Enquiry Officer being perverse

along with the issue regarding the Domestic Enquiry to be in accordance with the principles of natural justice or not. For the lapse on the part of the Labour Court, the parties cannot be blamed in that regard. No doubt, the parties also could have assisted the Labour Court by bringing the said fact to the notice of the Labour Court at the time of holding of the enquiry in relation to the point as to whether the Domestic Enquiry was in accordance with the principles of natural justice or not. But, having not done so, apparently, the right of the employer to lead evidence in support of the charges and punishment imposed, once the Labour Court comes to the conclusion that the findings of the Enquiry Officer were perverse, cannot be denied to the employer, and more particularly, when denial of such right has resulted in prejudice to the petitioner.”

9. I find in the instant cases that though the issue was cast by the Labour Court in ULP No.84/1996, it was not tried as a preliminary issue. In ULP No.54/1tfg998, without framing such an issue, the findings have been branded as perverse.

10. I, therefore, find a serious legal infirmity in the procedure followed by the Labour Court in deciding the said two complaints. I find that the said legal infirmity is not curable by entertaining the writ petitions on the merits of the matter in this Court. The error

committed by the Labour Court was not noticed by the Industrial Court which has allowed Revision (ULP) Nos.53/1998 and 54/1998 by its judgment dated 17/11/2000 and 22/01/2001. While allowing the revision petitions, the Industrial Court should have remanded both the complaints to the Labour Court for framing of the two issues and for fresh consideration.

11. In the light of the above, in the first petition, the impugned judgments dated 05/06/1998 delivered by the Labour Court and 22/01/2001 delivered by the Industrial Court are quashed and set aside. Complaint (ULP) No.84/1996 is remitted to the Labour Court, Aurangabad for framing of the two issues, as noted above and for deciding the complaint in accordance with Law in the light of the above referred 3 judgments.

12. In the second petition No.3779/2002, the impugned judgments of the Labour Court dated 05/06/1998 and dated 17/11/2000 delivered by the Industrial Court are quashed and set aside. Complaint (ULP) No.54/1995 is remitted back to the Labour Court for framing of the two issues, as noted above and for deciding the complaint afresh in the light of the above referred 3 judgments.

13. Consequentially, Revision (ULP) No.54/1998 and 53/1998 do not survive.

14. Learned Advocates for the respective sides have prayed for a date on which the parties could appear before the Labour Court. In the light of the said request, both the litigating sides shall appear before the Labour Court on 21/08/2015. Formal notices need not be issued by the Labour Court to these parties.

15. Considering that the complaints pertain to the year 1996, the Labour Court shall endeavour to decide the said complaints as expeditiously as possible and preferably on or before 31/12/2015, keeping in view that the petitioner herein is likely to retire by the end of the year.

16. The litigating sides shall, therefore, co-operate with the Labour Court and shall refrain from seeking adjournments on unreasonable and trivial grounds.

17. Rule is made partly absolute in both these petitions in the above terms.

(RAVINDRA V. GHUGE, J.)