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

WRIT PETITION NO. 5761 OF 2015

Maharashtra State Road Transport
Corporation, Dhule Division, District Dhule.
Through the Divisional Controller.

...PETITIONER

-VERSUS-

Yashwant Hilal More,
Age : 48 years, Occ : Service,
R/o Nizampur, Tq.Sakri, District Dhule.

...RESPONDENT

....

Advocate for Petitioner : Mr.Bagul D.S. And Mr.R.N.Jain.
Advocate for Respondent : Mr.Kulkarni Sanket S..

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**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 This is yet another case before this Court wherein the Industrial Court has failed to consider the law laid down by the Apex Court and followed by this Court in the matters 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** and *MSRTC, Beed v/s Syed Saheblal Syed Nijam* reported in **2014 (III) CLR**

547, has not been followed.

3 I have considered the lengthy submissions of the learned Advocates for the respective sides. In the light of the order that I propose to pass, I would not be adverting to their submissions in their entirety.

4 It is crystallized law that when the Complainant challenges the fairness of the enquiry on the grounds of non observance of the principles of natural justice and brands the findings of the Enquiry Officer as perverse, the following issues are required to be cast:-

- (a) Whether, the Complainant proves that the enquiry conducted by the Employer is unfair and vitiated?
- (b) Whether, the Complainant proves that the findings of the Enquiry Officer are perverse?

This has not been done by the Industrial Court in this case.

5 It is not in dispute that the Petitioner/ Employer has reserved it's right to conduct a de-novo enquiry in it's written statement in the light of the challenge posed by the Respondent/ Employee in his Complaint (ULP) No.31/2013 which he has filed for challenging the order of punishment inflicted upon him.

6 This Court in the matter of *Permanent Magnets Ltd., Mumbai v/s Vinod Vishnu Wani* reported in **2002 (3) Mh.L.J. 413 : 2002 (93) FLR 32**, has observed that the Court cannot be absolved of its duty in framing proper issues after considering the rival pleadings of the parties. Relevant observations in paragraph 12 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.”

7 I find from the impugned judgment that the Industrial Court, Dhule has failed in framing proper issues especially the two issues as noted above. The law as is laid down in the Permanent Magnets, Maharashtra State Cooperative Cotton Growers's Federation and MSRTC, Beed (supra) has been disregarded by the Industrial Court.

8 The conclusions in paragraph 11 of the impugned judgment clearly indicates that the Industrial Court has branded the Enquiry Officer's findings as being perverse since it has come to the conclusion that *“there is absolutely no evidence to show that the complainant was negligent while driving the said bus and bus was in the fast speed. In my view it is the case of no evidence but enquiry officer has recorded the findings that the misconduct has been proved.”*

9 In the light of the above, this petition deserves to be partly allowed by setting aside the judgment of the Industrial Court and by

remitting the complaint for framing of proper issues and for deciding the complaint afresh by following the proper procedure as is laid down in law.

10 This Writ Petition is, therefore, partly allowed. The judgment and order dated 18.09.2014 delivered by the Industrial Court in Complaint (ULP) No.31/2013 is quashed and set aside. The complaint is remitted back to the Industrial Court for framing of the two issues as noted above. The Industrial Court shall follow the law as is laid down in three cases, namely, Permanent Magnets, Maharashtra State Cooperative Cotton Growers's Federation and MSRTC, Beed (supra).

11 The learned Advocates pray for a particular date to be posted before the Industrial Court so as to enable the parties to appear before it. As such, the litigating sides shall appear before the Industrial Court on 28.08.2015. Formal notices need not be issued by the Industrial Court.

12 It is expected that the said complaint would be decided as expeditiously as possible with the cooperation of both the litigating sides.

13 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)