

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5762 OF 2015

Maharashtra State Road Transport Corporation, PETITIONER
Dhule Division, District Dhule,

VERSUS

Anil Narayan Sonawane RESPONDENT

Mr.R.N.Jain h/f Mr.D.S.Bagul, Advocate for the petitioner.
Mr.P.S.Paranjape, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/10/2015

PER COURT :

1. The petitioner is aggrieved by the judgment and order dated 12/08/2014 delivered by the Industrial Court in Complaint (ULP) No.85/2012, by which the order of punishment dated 30/08/2011 (wrongly typed as 16/06/2012) is quashed and set aside and the complaint is partly allowed.

2. The respondent is a bus conductor. A charge-sheet dated 27/08/2010 alleging unauthorized absenteeism for a period of 53 days was issued to him. Departmental enquiry was conducted. The Enquiry Officer submitted his report dated 29/06/2011 concluding that the charges levelled upon the respondent have been

proved.

3. The petitioner issued a second show cause notice dated 24/08/2011 proposing the punishment of reduction in basic pay by 2 stages. The respondent replied on 24/08/2011 and the punishment of reduction of basic pay in 2 stages was inflicted upon respondent by order dated 30/08/2011.

4. The respondent preferred complaint (ULP) No.85/2012 contending that the departmental enquiry was conducted hurriedly, principles of natural justice were not followed and the mis-conduct was not proved in the enquiry. It was also contended that the findings recorded by the Enquiry Officer are perverse. The Industrial Court did not frame issues in the light of the said contentions. By the impugned judgment and order, thereby partly allowing the complaint, the Industrial Court has set aside the enquiry by concluding that the conclusions of the Enquiry Officer are 'certainly perverse' and the mis-conduct alleged against the respondent was not proved.

5. In my view, such conclusions result in setting aside of the enquiry. The procedure laid down in Law is not followed by the

Industrial Court in the light of the view taken by this Court by following catena of judgments of the Apex Court in MSRTC, Beed Vs. Syed Saheblal Syed Nizam, reported at 2014(3) CLR 514.”

6. The petitioner contends that in the impugned judgment dated 12/08/2014, the Industrial Court has held that the findings of the Enquiry Officer are perverse and the charges are not proved. He submits that the two issues pertaining to the fairness of that enquiry and the findings of the enquiry officer have not been framed. A final judgment in the manner in which the Industrial Court has delivered, is unacceptable.

7. Mr.Paranjape, learned Advocate appearing on behalf of the sole respondent submits that the respondent has challenged the fairness of the enquiry as well as the findings of the Enquiry Officer. Even a cursory glance at the evidence recorded in the enquiry would be sufficient to hold that the findings of the Enquiry Officer are perverse. He further submits that the perversity in the findings of the Enquiry Officer is to be considered from the evidence recorded in the enquiry and not by taking into account any extraneous circumstances or any evidence additionally recorded before the Trial Court.

8. He further submits that the Industrial Court realized that the findings of the Enquiry Officer are perverse and unsustainable. The petitioner / Corporation did not step into the witness box and led no evidence. He, therefore, submits that the impugned judgment can neither be termed as being perverse nor erroneous. He prays for the dismissal of this petition.

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

10. This Court has already taken a view by relying upon the ratio laid down by the Apex Court right from the case of Delhi Cloth and General Mills Co.Ltd., Vs. Ludh Budh Singh, 1972 (1) SCC 595 and all other judgments delivered thereafter.

11. It would be apposite to reproduce the conclusions drawn by this Court in the matter of MSRTC, Beed Vs. Syed Saheblal Syed Nizam, reported at 2014(3) CLR 514 from paragraph Nos. 16 to paragraph No.42 as under :-

“16. The following issues have, therefore, arisen for my consideration :-

“a] Whether the findings of the EO can be held to be

perverse based on evidence freshly adduced before the Industrial Court.?

b) Whether the issue of perversity in the findings of the EO has to be decided as a preliminary issue, even when punishment of dismissal has not been awarded?

c) Whether the procedure of testing the fairness and validity of the enquiry and the findings of the EO by framing preliminary issues and trying them pre-emptorily before causing any interference, as applicable to the Labour Court in case of dismissal would mutatis mutandis, be applicable to the Industrial Court as well?"

17. So far as the issue set out in paragraph 16 (a) and (b) are concerned, this Court has already taken a view in the case of *Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande*, reported at 2014 MLJ, 339 = 2014 I CLR 878. Paragraph Nos. 10, 17, 18, 19, 20, and 21 read as under :-

*"10. The Law on conducting a de-novo enquiry is settled in light of the Apex Court judgments in case of **Bharat Forge Vs. A.B. Zodge reported at 1996(73) FLR 1754** and **K.S.R.T.C. Vs. Lakshmiddevamma***

and another, 2001 II CLR 640. As such, there is no doubt that if an employer reserves its right in its written statement to conduct a de-novo enquiry in the event of the domestic enquiry being held as vitiated for any reason whatsoever, the Labour Court, upon concluding that the enquiry is vitiated, has to allow the employer to conduct a de-novo enquiry.”

“17. In the instant case as well, the Labour Court concluded that the findings of the Enquiry Officer are perverse and the entire complaint has been allowed by the same judgment without affording any opportunity to conduct a de-novo enquiry to the petitioners Management. The only distinction is that in the **Permanent Magnet’s case** (supra), the final order of punishment was passed and in the instant case, the punishment was proposed in the 2nd show cause notice.”

“18. Nevertheless, the abovesaid procedure is crystallized by Judge made Law in view of catena of judgments. The ratio in cases of **Bharat Forge, K.S.R.T.C.** and **Permanent Magnet’s case** (supra) shall equally apply to cases wherein the 2nd show cause notice is challenged on identical footings. Therefore, the right to conduct a de-novo enquiry is equally available to every employer, be it in a case where the order of punishment is

issued or in a case where punishment is proposed by a 2nd show cause notice.”

“19. Unless the enquiry was set aside on any count, there was no scope for conducting a de-novo enquiry which right was reserved by the petitioners herein in its written statement. By-passing this settled procedure, the Labour Court in one stroke has branded the findings of the Enquiry Officer as perverse and by accepting the evidence adduced by the respondent, has delivered its final judgment. The conclusion drawn by the Labour Court of declaring the findings as perverse on the basis of evidence adduced before it and in the backdrop of the respondent employee having neither led evidence through his witnesses nor cross examined the management witnesses, is an unsustainable conclusion. Procedure unknown to Law has been resorted to by the Labour Court.”

“20. As has been held by the Apex Court in the case of Kumaon Mandal Vikas Nigam Ltd., V/s. G.S. Pant and others, 2001(I) CLR 12, perversity in the findings of the Enquiry Officer necessarily pre-suppose that the conclusions drawn by the Enquiry Officer and reasons assigned in support of such conclusions are either based on no evidence in the enquiry or are based upon mis-reading of the evidence in the enquiry.”

“21. Perversity in the findings of an Enquiry Officer is to be pointed out on the basis of the evidence placed before the Enquiry Officer. It, therefore, necessarily needs the consideration of the evidence before the Enquiry Officer and analyzing the findings of the Enquiry Officer. Material which was not before the Enquiry Officer can not be brought on record before the Labour Court to brand the findings as being perverse. In fact, normally there is no requirement of leading fresh evidence before the Labour Court on such preliminary issues like fairness of an enquiry and the findings of an Enquiry Officer. In both these situations, what has transpired in the domestic enquiry is to be looked into to find out, firstly, whether principles of natural justice were adhered to in conducting the enquiry and secondly, whether there was any evidence on record to support the findings or as to whether the findings are based on no evidence.”

18. In the light of view taken by this Court in the case of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd (supra), the findings of the EO could not have been branded as perverse on the basis of new evidence adduced before the Industrial Court. As has been held in the above referred judgment, the perversity in the findings an EO could only be pointed out on the basis of the evidence placed before him. Upon considering the evidence before the EO, his analysis of the same and his conclusions drawn would have to be carefully scrutinised.

If the findings and conclusions are arrived at despite no evidence or insufficient evidence on record, the findings could be termed as perverse. The Industrial Court in the instant case, erred in placing reliance on evidence recorded in the proceedings as a basis for setting aside the findings of the EO, which I find is impermissible in law.

19. *Shri R.B. Muley, learned Advocate and Shri Ashok Patil, have submitted that in the given case, since the charges are held to be proved against the respondent, it was necessary for the employee first to prove that the findings of the EO are perverse. Both of them concede that if the findings are held to be perverse, the entire enquiry is washed away.*

20. *In the instant case, the Industrial Court held that the charges appeared to be fictitious and since there was insufficient or practically no evidence against the workman before the EO, that the Industrial Court interfered with the said findings and branded the conclusions of the EO to be perverse.*

21. *It was, therefore, canvassed on behalf of the respondent-employee that the employer could have requested the Court to permit it to conduct a de-novo enquiry. Challenge to the findings of the EO was borne out from the complaint itself. The petitioner could, therefore, have prayed for framing of a preliminary issue which it did not.*

22. *Shri R.B. Muley, learned Advocate, therefore, strenuously*

canvassed that the petition cannot be entertained on this count, since the petitioner-employer did not show its eagerness for conducting a de-novo enquiry. The petitioner had cross-examined the respondent as well. It is, therefore, prayed that no grievance can now be entertained about the procedure followed by the Industrial Court in this matter.

23. *Shri D.S. Bagul, learned Advocate for the petitioner has once again pointed out that the right to conduct a de-novo enquiry was reserved by the petitioner and the moment the Industrial Court came to a conclusion that the findings of the EO are perverse, it should have called upon the petitioner to conduct a de-novo enquiry.*

24. *He has relied upon the judgment of this Court in the case of Permanent Magnets Vs. Vinod Vishnu Wani and others, reported at 2002 (93) FLR, 32, and he submits that in the said case also, this Court had held that the right to conduct a de-novo enquiry is born for the first time after the enquiry is set aside. In the Permanent Magnets case (supra), similar situation had arisen when the Labour Court set aside the findings of the EO and in the same judgment had allowed the complaint with consequential reliefs. The issue of perversity in the findings of the EO was taken up by the Labour Court, Jalgaon, along with other issues. By answering in the affirmative, the findings were branded as being perverse. The employer in Permanent Magnets had specifically reserved their right to conduct a de-novo enquiry. Without granting the said opportunity, the Labour Court finally*

decided the entire complaint in one stroke. The Industrial Court did not interfere with the findings of the Labour Court and the revision filed by the petitioner was rejected.

25. This Court, therefore, ruled that the issues as regards fairness of the enquiry and the findings of the EO are to be decided as preliminary issues. It was further held that when a right to conduct a de-novo enquiry was reserved by the employer the Labour Court could not have proceeded to decide all other issues along with issue of perversity in the findings of the EO. Unless the employer declined to conduct a de-novo enquiry, the Labour Court could not have proceeded further.

26. The judgment of the Single Judge in the Permanent Magnets (supra), was upheld by the Division Bench of this Court in Vinod Vishnu Wani and others Vs. Permanent Magnets, reported at 2002 (93) FLR 66.

27. The Hon'ble Supreme Court in the case of Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh; reported in 1972 (1) SCC 595, concluded in paragraph Nos. 19, 20, 21, 22 and 24, which read as under :-

“19. In support of his first contention Mr. Anand urged that the appreciation of the evidence adduced in a domestic enquiry as well as the weight to be given to that evidence are all matters falling primarily within the jurisdiction of the Enquiry Officer over which the Industrial tribunal has no right to sit in appeal. The

counsel further urged that the conclusion arrived at by the Enquiry Officer is a possible view which could be taken on the evidence on record. The Industrial tribunal has no jurisdiction to consider whether the evidence available before the Enquiry Officer was adequate or sufficient or of a satisfactory character. Mr. Anand pointed out that these are matters that an appellate court may be entitled to consider, but not an Industrial tribunal, whose jurisdiction is very limited. He further pointed out that the findings recorded by the Enquiry Officer cannot be considered to be perverse, as characterised by the Industrial Tribunal, in the sense that it is not justified by any legal evidence.”

“20. The counsel further contended that the jurisdiction of the Tribunal, as laid down by this Court in several decisions, was only to satisfy itself whether a prima facie case has been made out by the employer and that the employer has not acted mala fide and that the enquiry has been held in accordance with the principles of natural justice and the procedure indicated in the Standing Orders, if any. If once the tribunal comes to the conclusion that the management has not acted mala fide and that there has been a proper enquiry and that the conclusion arrived at by the Enquiry Officer is a possible one on the evidence led before it, the tribunal cannot substitute its own

judgment for the judgment of the Enquiry Officer, though it may have come to a different conclusion.”

“21. We do agree, as abstract propositions of law, the contentions of the learned counsel regarding the scope of tribunals jurisdiction, in such matters, are correct. But the question for consideration by us is whether the Industrial tribunal, when it declined to grant the permission asked for by the appellant, has in any manner acted contrary to the principles referred to by Mr. Anand and set out above.”

“22. Before we proceed to deal with the contentions of Mr. Anand, it is necessary to state the law regarding the nature of the jurisdiction exercised by a tribunal in dealing with an application under S. 33 of the Act. We had occasion to deal with a similar aspect in Delhi Cloth and General Mills Co. V. Ganesh Dutt and Others it was observed therein :

“ The nature of the jurisdiction exercised by an Industrial tribunal in such circumstances is a very limited one and it has been laid down by several decisions of this Court. The legal position is that where a proper enquiry has been held by the management, the tribunal has to accept the finding arrived at in that enquiry unless it is perverse or unreasonable and should

give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair practice or is acting mala fide. Vide Punjab National Bank Ltd. V. Its Workmen, Bharat Sugar Mills Ltd. V. Jai Singh, Management of Ritz Theatre (P)V. Its Workmen, and Mysore Steel Works V. Jitender Chandra Kar and others.”

“23. In Martin Burn Ltd. V. R. JV. Banerjee, it has been laid down that once an Industrial tribunal is satisfied that the conclusion arrived at by the Enquiry Officer, on the evidence led before it, is a possible one, the tribunal has no jurisdiction to substitute its own judgment for the judgment of the Enquiry Officer, though the tribunal may itself have arrived at a different conclusion on the same materials.”

“24. It has been further laid down in the Lord Krishna Textile Mills V. Its Workmen as follows :-

“ It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as under S. 33(2) (b). It is conceivable that even in

holding an enquiry under S. 33(2) (b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence.”

28. The Hon'ble Supreme Court in the case of *Shambhu Nath Goyal Vs. Bank of Baroda*; reported at 1984 (4) SCC 491, has held as under :-

“2. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour

court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.”

“ Relying on this statement of law in Cooper Engineering Ltd. case, it was contended in Shankar Chakravartis case that it is the obligatory duty of the Labour Court / Industrial tribunal to frame a preliminary issue whether the domestic enquiry is valid or vitiated? After answering the issue, one way or the other, if it is held that the domestic enquiry was vitiated, the employer has to be given an opportunity to lead evidence to substantiate the charge of misconduct. And that is how the extracted passage was interpreted by the Division Bench of the Calcutta High Court in Shankar Chakravartis case (Britannia Biscuit Co. Case?) (1976 Lab IC 1358). It was further contended that it is the obligatory duty of the Labour Court / Industrial Tribunal after deciding the preliminary issue in favour of the workman and against the management to call upon the employer to lead his evidence to substantiate the charge of misconduct. It is in this context that this Court observed that the employer must plead in the statement of defence filed before the Labour Court / Industrial Tribunal that in the event domestic enquiry which led to the termination of service is held to be vitiated or invalid, he must be given opportunity to lead evidence to substantiate the

charge of misconduct. Explaining how the pleading can be raised this Court observed that if such a relief is claimed in the statement of claim, application for approval of its action or written statement of defence, the Labour Court/ Industrial Tribunal must give such an opportunity. The Court further observed that if the request is made before the proceedings are concluded, the Labour Court/ Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. It was further observed that if such a pleading is raised in an opportunity is sought, it is to be given, but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings, there is no duty cast in law or by the rules of justice, reason and fair play that a quasi-judicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights. The statement that if an application is made during the pendency of the proceedings does not mean that some.....”

29. This Court in the case of *A.H. Wadia Charity Trust & others Vs. Neville Jathan & Others*; reported in 2002 (Supp.) Bom.C.R. 773, has held as under:-

“6. The learned members of the Industrial Court by order dated 06-06-2001 in his well written and reasoned order confirmed the order of the Labour

Court. In principle he agreed with the contention of the trust that when enquiry is set aside the employer should be given an opportunity to prove the misconducts and justify the act of dismissal/termination before the Labour Court by adducing fresh evidence/material on record of the Labour Court. The Industrial Court however has approved the course adopted by the Labour Court of not giving any opportunity of adducing any evidence before the Labour Court to prove the misconduct and to justify the action of dismissal on the ground that the charge of late coming was not disputed or denied by the employee but was admitted by him in his replies to the Memos served upon him by the trust. In these circumstances the Industrial Court agreed with the order of the Labour Court to interfere with the punishment of dismissal and granting the employee reinstatement without backwages for a period of about 6 years. The Industrial Court has considered the prayer of remand to the Labour Court made on behalf of the trust. The learned member of the Industrial Court has rightly considered the remand of the complaint absolutely unnecessary as the result would be the same. There could have been no further evidence in respect of the late coming of the employee. The trust had clearly mentioned in its Memos that in the month of September, October and December and April and May how many days the employee was late

in attending the office. In reply to the said Memos and the show cause notice the employee has agreed to the said charge and had admitted that he was late and that his attendance was not exemplary on account of his travel by train which were always late and that it was a daily affair. According to me, even if the petitioners were not to hold any formal enquiry the order of punishment would not have suffered from any infirmity as they were acting on the admissions of guilty or charge by the employee. Merely because a formal enquiry was held in spite of clear admissions and acceptance of the charges levelled against the employee it can be said to be a redundant and unnecessary exercise of enquiry. If such an enquiry is held to be unfair and improper it makes hardly any difference and it would be sheer waste of time requiring the parties to undergo the ordeal of enquiry before the Court as the charges which are required to be proved before the Labour Court were already admitted by the employee and nothing was left to be proved in the given circumstances. What more is required to be proved in a formal domestic enquiry? And even if such a formal enquiry is held by the employer and if such a formal enquiry is quashed and set aside by the Labour Court in such circumstances what employer would prove before the Labour Court? In my opinion both the Labour Court and the Industrial Court have acted properly and have taken a pragmatic

view of the matter and both rightly did not enter into time wasting procedure of proving the so called misconduct before the Labour Court which was already admitted by the delinquent respondent employee.”

“7. There is one more crucial aspect in respect of the grievance made by Shri Singh for the petitioner that the Labour Court ought to have granted the petitioners to lead evidence before the Labour Court to prove the misconduct and to justify its action of dismissal of the employee. He has also made similar grievance against the order of the Industrial Court. Though Shri Singh was vociferous as usual against the lower Courts on this issue. I find absolutely no substance in his submissions even on this issue. Firstly, as I have already held that it was not all necessary to give a so-called opportunity to lead evidence before the Labour Court in view of clear and unambiguous admission of late coming by the employee. Secondly, no such opportunity could be given as the petitioners did not pray for such opportunity at the first earliest point of time to pray for such opportunity which was when they filed their affidavit in reply in July/August, 1994 to the affidavit filed by the employee in support of his application for interim relief application. The petitioners had not filed any written statement or reply to the main complaint filed by the employee. They

appear to have wholly relied on the said affidavit in reply to the interim relief application and their reply is in detail dealing with the merits of the main complaint also. In this reply the petitioners have not prayed for such opportunity to lead evidence before the Labour Court in case the enquiry was held to be not fair and proper. This was the first and the earliest point of time available to the petitioners. By another application dated 25-08-1995 they had prayed for framing of an additional issue about their being not an "industry". Even in this application no permission was sought by the petitioners to prove the misconduct and to justify the dismissal. They have made such an application as late on 26-07-1999, at the fag end of the proceedings as the final order of the Labour Court is dated 29-11-1999. Even in normal circumstances such an application could not have been entertained in view of the latest judgment of the Supreme Court in the case of (Karnataka State Road Transport Corporation Vs. Laxmidevamma & another) 1, 2001 (3) Bom.C.R. (S.C.) 623 : A.I.R. 2001 S.C.W.1981. After considering the entire case law the Supreme Court has observed as under :-

"16. While considering the decision in (Shambhu Nath Goyal V. Bank Boroda) 2, 1985, Bank J. 30 (S.C.) : A.I.R. 1984 S.C. 289 : 1983 Lab. I.C. 1697, we should bear in mind that the

judgment of Vardarajan J., therein does not refer to the case of (Cooper Engineering V. P.P Mundhe)³, A.I.R. 1975 S.C. 1900 : 1975 Lab. I.C. 1441. However, the concurring judgment of D.A. Desai, J., specifically considers this case. By the judgment in Goyals case the management was given the right to adduce evidence to justify its domestic enquiry on if it had reserved its right to do so in the application that the management had to file to the reference made under section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/ Labour Court.”

“18. There is no other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyals case. It it to be noted that this judgment was delivered on 27th of September, 1986. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held in neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine to stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause. “

30. *The Hon'ble Supreme Court in the case of Bharat Forge Company Ltd., Vs. A.B. Zodge and another; reported in AIR 1996 SC, 1556, has held (in paragraph No. 7) as under :-*

“ A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognised. In this connection, reference may be made to the decisions of this Court in Workmen of Motipur Sugar Factory (p) Ltd. V. Motipur Sugar Factor (p) Ltd., (1965) 2 Lab LJ 162 : (AIR 1965 sC 1803), State Bank of India V. R.K. Jain (1971) 2 Lab LJ 599: (AIR 1972 SC 136), Delhi Cloth and General Mill Co. Ltd. V. Ludh Budh Singh (1972) I Lab LJ 180: (AIR 1972 SC 1031) and Firestone Type Co.'s case (AIR 1973 SC 1227) (supra). The stage at which the employer should ask for permission to adduce additional evidence to justify the disciplinary action on merits was indicated by this Court in Delhi Cloth and General Mills (supra). In Shankar Chakrabarty's case (AIR 1979 SC 1652) (supra), the contention that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame preliminary issue and proceed to see the validity or other wise of the enquiry and then serve a fresh notice

on the employer by calling him to adduce further evidence to sustain the charges, if the employer chooses to do so. By relying on the decision of the Court in the case of Cooper Engineering Ltd. (1975) 2 Lab LJ 379: (AIR 1975 SC 1900), has not been accepted. The view expressed in Delhi Cloth Mill's case (supra) that before the proceeding are closed, an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal has been reiterated in Shankar Chakrabarty's case after observing that on the question as to the stage as to when leave to adduce further evidence is to be sought for, the decision of this Court in Cooper Engineering Ltd. has not overruled the decision of this Court in Delhi Cloth Mill's case. There is no dispute in the present case before closure of the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified."

31. *In the light of the observations of the Apex Court and this Court in the above referred cases, it is, therefore, settled that when a workman challenges the domestic enquiry as being unfair and vitiated and attempts to brand the findings of the EO as being perverse, there ought to be pleadings as well as prayers praying for*

such declaration in the memo of the complaint under the ULP Act, 1971 or in the statement of claim under the Industrial Disputes Act, 1947 (here-in-after referred to as "IDA, 1947"). The pleadings are complete with the filing of the written statement by the employer and by reserving the right to conduct a de-novo enquiry. The Hon'ble Apex Court in the case of K.S.R.T.C. Vs. Lakshmiddevamma and another, 2001 (II) CLR 640 has held that when an employer reserve such right to conduct a de-novo enquiry, it does not amount to an admission on his part that the enquiry is bad in law or the findings are perverse.

32. It is therefore crystallised that when the right to conduct a de-novo enquiry is reserved in the written statement, and the Labour Court or Tribunal has framed the two issues referred above, in relation to the enquiry, the said issues are to be decided as preliminary issues, before taking up other issues. It is an anathema to decide the first two issues together with the other issues. Whenever, in proceedings under the MRTU & PULP Act, 1971 or the IDA, 1947, a domestic/departmental enquiry is under challenge with pleadings and substantive prayers seeking the quashing of the domestic enquiry on the ground of either non-observance of the principles of natural justice or findings being perverse, the Court or Tribunal has to frame a preliminary issue and try the same pre-emptorily.

33. If the two issues are answered in the negative, by the Labour Court, the enquiry and the findings of the EO stand upheld. Thereafter, the issue as regards shockingly disproportionate

punishment and other connected issues are to be taken up for adjudication. In the event, either of the first two issues are answered in the affirmative, the domestic enquiry is washed away and the situation is as like that of a case in which no enquiry has been conducted [Bharat Forge judgment (supra)].

34. By and large, the cases that have reached the High Court or the Hon'ble Apex Court have been in relation to cases of dismissal. It probably, therefore, is a common perception that preliminary issues touching the enquiry and the findings are to be framed and tried pre-emptorily only when the punishment of dismissal is inflicted upon the employee by the employer.

35. In the instant case, the respondent-workman had challenged the findings of the EO and an issue to that extent was cast by the Industrial Court. Eventually, the Industrial Court relying upon evidence adduced before it as well as the evidence recorded in the enquiry, came to a conclusion that the findings of the EO are perverse.

36. In fact, the Industrial Court concluded that the charges levelled upon the respondent are fictitious and they are not proved in the enquiry. By doing so, the Industrial Court has ventured into the realm of questioning the quality of evidence recorded in the domestic enquiry and the conclusions drawn by the EO. By doing so, it has branded the findings to be perverse and thus, the enquiry stood watered down.

37. It is also noteworthy that both the litigating parties did not pray or request to the Industrial Court to try the issue as regards perversity of the findings as a preliminary issue. Nevertheless, the written statement of the petitioner evidences that the right to conduct a de-novo enquiry and a prayer to that effect was set out therein.

38. In my view, when the Industrial Court was called upon to brand the findings as perverse, the procedure that is required to be followed by the Labour Court/ Tribunal in dealing with the cases of dismissal post domestic enquiry, applies mutatis mutandis to the Industrial Court/ Tribunal as well. By setting aside the finding of the EO by the Industrial Court, in effect has resulted in the quashing and setting aside of the domestic enquiry. Procedure as laid down in the Judgment of the Hon'ble Apex Court referred here in above, was equally applicable to the Industrial Court in the present case, since its conclusion on the findings of the EO has resulted in the setting aside of the enquiry.

39. In my view, the Industrial Court could not have set aside the enquiry by branding the findings as being perverse without trying the said issue as a preliminary issue and by depriving the employer an opportunity to conduct a de-novo enquiry in the Court. The Industrial Court on the one hand has watered down the enquiry by upholding the contention of perversity in the findings and on the other hand has relied upon the evidence recorded before it to conclude that not a single charge levelled upon the respondent is proved. The petitioner is aggrieved by this procedure followed by

the Industrial Court.

40. In view of my conclusion as an answer to the issue at paragraph 16(c), the procedure followed by the Labour Courts / Tribunals is to be followed by the Industrial Court / Tribunals in cases of domestic enquiries notwithstanding that the punishment of dismissal is not awarded and a lesser punishment is awarded. The Industrial Court/ tribunal is bound to follow the same procedure for deciding the first two issues as preliminary issues and deliver its part-I order/ Award. Issues at paragraph 16 (a, b, and c) are thus answered. Therefore, this petition has to succeed on this count itself.

41. As such, I find it fit and proper to set aside the judgment of the Industrial Court impugned in this petition dated 28-01-2013. I am not required to go into the other issues raised by the petitioner. Suffice it to say, the proceedings in Complaint (ULP) No. 12/2007 are required to be relegated to the Industrial Court for trying issue No. 2, pertaining to the perversity in the findings of the EO as a preliminary issue.

42. As held by this Court in the case of Maharashtra State Cotton Growers Marketing Federation Ltd., (supra), that perversity has to be noticed on the basis of the proceedings in the enquiry, the evidence recorded by the parties and the conclusions of the EO, the Industrial Court can arrive at its conclusion by following the principle. If the findings are upheld, the Industrial Court can go into the proportionality of the punishment. If the findings are

branded as perverse, a de-novo enquiry can be conducted by the petitioner.”

12. It is apparent that the Industrial Court has failed in framing the following two issues : -

[a] Whether the complainant proves that the domestic enquiry is vitiated on account of non observance of the principles of natural justice ?

[b] Whether the complainant proves that the findings of the Enquiry Officer are perverse ?

13. As has been held by this court in the case of Maharashtra State Cotton Growers Federation Vs. Vasant Ambadas Deshpande, 2014 (1) CLR 878, the first two issues are to be decided on the basis of the evidence recorded in the enquiry and not on any additional evidence adduced before the Trial Court. The judgment of the Industrial Court in this case on the first two issues would constitute the Part-I judgment. In the event, the enquiry is set aside for any reason whatsoever and if the petitioner has reserved its right to conduct a *denovo* enquiry in its written statement, in the light of the law laid down by the Apex Court (5 Judges Bench) in the case of KSRTC Vs. Laxmidevamma, 2001(II) CLR 640, the petitioner can conduct a *denovo* enquiry.

14. Since the law has not been followed by the Industrial Court Dhule, the impugned judgment dated 12/08/2014 is quashed and set aside. Complaint (ULP) No.85/2012 is remitted back to the Industrial Court for framing the two issues as noted above. The litigating sides shall appear before the Industrial Court on 06/11/2015. Formal notices need not be issued by the Industrial Court.

15. Considering the fact that several judgments as like the impugned judgment have been brought to the notice of this Court and which have been set aside, the litigating sides shall assist the Industrial Court by citing the judgments referred to in the case of MSRTC case (supra) and Vasant Ambadas Deshpande (supra).

16. Needless to state, this Court has not dealt with the merits of the cause of action in relation to the order of punishment dated 30/08/2011. The Industrial Court shall decide the complaint as expeditiously as possible and on or before 31/12/2016, on its own merits and without being influenced by its earlier judgment dated 12/08/2014, which has been quashed and set aside.

17. This petition is, therefore, allowed.

(RAVINDRA V. GHUGE, J.)