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

WRIT PETITION NO. 9702 OF 2014

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

...PETITIONER

-VERSUS-

Smt.Sunita Suresh Baviskar,
Age : 43 years, Occ : Nil,
R/o Khadka Chauphuli,
Near Renuka Laundri, Bhusawal,
Tq.Bhusawal, Dist.Jalgaon.

...RESPONDENT

.....

Advocate for Petitioner : Mr.Goyanka M.K.
Advocate for Respondents : Mr.Patil Vinod Prakash.

.....

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 The Petitioner/ Corporation challenges the judgment and
award of the Labour Court dated 25.09.2013 thereby, allowing Reference
(IDA) No.10/2011.

3 I have heard the learned Advocates appearing for the respective sides at length. A host of factors have been narrated by both the sides. The Respondent/ Employee was appointed on compassionate basis on 02.04.2007 in place of her husband, who was in the service of the Petitioner/ Corporation and had passed away. She has served for about 14 months as a Bus Conductor at the time of the act of misappropriation having been discovered on 13.09.2008.

4 I find that a joint purshis Exhibit U/C-1 was strangely filed by both the litigating sides stating therein that all the issues may be decided together. The issues cast by the Labour Court are as follows:-

	Issues	Findings
1	Does the second party prove that the departmental enquiry conducted against her was illegal, unfair, improper and in violation of principles of natural justice?	NO
2	Does second party prove that the findings of the enquiry officer are perverse? If yes,	YES
3	Whether the first party proves the misconduct of second party before the Court?	NO
4	Whether the termination of services of second party workman is illegal, violating the statutory provisions of law?	YES
5	Whether second party-workman is entitled for the relief, as sought for?	As per order.
6	What order?	As per final order.

5 This Court, placing reliance upon catena of judgments of the Apex Court, has held 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** that the fairness of the enquiry and fairness of the findings of the Enquiry Officer, are to be looked into only on the basis of the record and proceedings of the enquiry and the conclusions of the Enquiry Officer based upon the evidence adduced in the enquiry. Extraneous evidence recorded before the Labour Court prior to the decision on Issue Nos.1 and 2, cannot be considered for deciding the said issues.

6 This Court, in the case of *MSRTC, Beed v/s Syed Saheblal Syed Nijam* reported in **2014 (III) CLR 547**, has considered the law as laid down by the Apex Court, to conclude that the conclusions on the first two issues are crucial and the enquiry can be set aside if the findings are held to be perverse or if the enquiry is held to be in violation of the principles of natural justice.

7 From the strenuous submissions of the learned Advocates and the petition paper book, it appears that the Labour Court concluded that the findings of the Enquiry Officer are perverse, in the same judgment by

which the Reference was answered partly in the affirmative. The Industrial Court has failed to see this error committed by the Labour Court and concluded that there is no perversity in the findings of the Labour Court.

8 I am unable to accept that all the issues cast by the Labour Court could have been decided together. Whether or not, the litigating sides submit a joint purshis requesting the Labour Court to decide all the issues together, the Labour Court should have disregarded the joint purshis which is against the very scheme of law and the procedure laid down. Having all these issues decided together, in my view, is a failure on the part of the learned Advocates as well as the Labour Court.

9 This Court, dealing with a somewhat similar situation pertaining to the framing of issues and the conclusions of the Labour Court branding the findings of the Enquiry Officer as perverse, has held in paragraphs 12, 13 and 14 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** 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.”

10 This Court has, therefore, held in Permanent Magnets (supra) that whether, the litigating sides assist the Court in framing of proper issues or not, the Court is not absolved of its duty of framing issues which necessarily originate from the pleadings of the parties.

11 In the instant case, issue Nos.1 and 2 have been correctly cast. Whether, the litigating sides have requested the Labour Court to decide all the issues together or not, the Labour Court should have disregarded such a joint purshis and should have decided Issue Nos.1 and 2 touching the fairness of the enquiry and the findings of the Enquiry Officer, as preliminary issues.

12 It is extremely crucial that these conclusions have to be arrived at prior to dealing with other issues since the litigating sides

cannot rely upon the evidence adduced in the enquiry before the Labour Court if the enquiry is set aside for any reason whatsoever, as has been held in Permanent Magnets (supra).

13 In the instant case, the Labour Court has held that the findings are perverse and has set aside the enquiry. When the evidence recorded in the enquiry could not have been relied upon once it has been set aside, it proceeded to hold that the charges are not proved against the employee and partly allowed the Reference by granting reinstatement with continuity of service and 50% back-wages.

14 Shri Patil, learned Advocate appearing on behalf of the Respondent/ Employee, submits that the Petitioner/ Corporation has not reserved its right to conduct a de-novo enquiry. I need not go into this issue since the procedure laid down in law is required to be followed while deciding the case. The Labour Court has abdicated its jurisdiction in not following the said procedure and has relied upon the Joint Purshis Exhibit UC-1 for deciding all the issues together. It could not have done so notwithstanding the consent of the parties.

15 In these peculiar facts, the workman may have submitted the joint purshis out of convenience. However, the Petitioner herein could not

have been a party to the said joint purshis since it was practically suicidal for the Petitioner Corporation to request the Labour Court to decide all the issues together as setting aside of the domestic enquiry by the Labour Court would virtually render the Petitioner defence-less. For this conduct of the Petitioner Corporation, I am convinced that, while partly allowing this petition and remitting the Reference back to the Labour Court for a fresh adjudication on the first two issues, costs deserve to be imposed on the Petitioner.

16 This Court has come across several cases in which the Maharashtra State Road Transport Corporation (MSRTC) either has not reserved a right to conduct a de-novo enquiry in the Written Statement or has agreed for a common decision in the complaint/ reference on all the issues framed. This tendency needs to be curbed since it not only consumes precious time of the Courts in setting right the proceedings, but at the same time, the litigating workman is compelled to suffer the rigours of litigation while being out of employment.

17 In the light of the above, this Writ Petition is partly allowed. The judgment and award of the Labour Court dated 25.09.2013 is quashed and set aside. Reference (IDA) No.10/2011 is remitted back to the Labour Court for deciding Issue Nos.1 and 2 afresh in the light of the

view taken by this Court in the cases of Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. and MSRTC, Beed v/s Syed Saheblal (supra).

18 By way of costs, the Petitioner/Corporation shall deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand) before the Labour Court on or before 24.08.2015. After the costs are deposited, the Respondent/ Employee shall be at liberty to withdraw the said costs unconditionally.

19 Both the litigating sides shall appear before the Labour Court on 24.08.2015. The entire original enquiry proceedings shall be produced by the Petitioner before the Labour Court on or before 16.09.2015. The Labour Court shall hear the litigating sides on Issue Nos.1 and 2 afresh as observed herein above and decide the same in accordance with law.

20 The issue as to whether, the Petitioner has reserved a right to conduct a de-novo enquiry in the event the enquiry is set aside, is left open since I am not required to deal with the said issue at this stage. The Labour Court may deal with the said issue if it so arises after hearing the litigating sides and 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**. The Labour Court may endeavour to decide the Reference as expeditiously as possible looking at the litigation between the parties.

21 The Writ Petition is partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)