

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11033 OF 2014

THE PRESIDENT, VICHAR VIKAS
SHIKSHAN PRASARAK MANDAL,
AHMEDPUR, DIST.LATUR
AND OTHERS

PETITIONERS

VERSUS

SAMBHAJI HANMANTRAO MUNDHE

RESPONDENT

Mr.V.D.Gunale, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/07/2015

PER COURT :

1. I have heard Mr.Gunale, learned Advocate at length. None appears for the respondent despite being served.

2. The petitioner/Management contends that the respondent/employee had challenged his alleged oral termination, which occurred in 2010 by preferring Appeal SRTMU-1/2011 before the College and University Tribunal. The said appeal was dismissed by the order of the Tribunal dated 15/10/2011.

3. The respondent preferred Complaint (ULP) No.5/2013 before the Industrial Court at Latur claiming regularization, benefits

incidental thereto and for keeping one permanent post vacant till the respondent is absorbed. The complaint is filed on the premises that the respondent continued in employment of the petitioner, which is vehemently denied by Mr.Gunale.

4. Mr.Gunale points out that the Industrial Court granted interim relief to the respondent by allowing application Exh.U-2 vide its order dated 06/02/2013. He, however, frankly states that the said order has not been challenged.

5. He further submits that an application below Exh.C-7 was preferred by the petitioner praying for framing of preliminary issue and deciding the same peremptorily. The respondent preferred an application Exh.U-14 praying for directions to the petitioner to permit him to sign the muster roll and pay him wages as per the scheme.

6. Both these applications suffered an order on 04/02/2014 and 04/04/2014. Mr.Gunale further submits that both the orders are under challenge.

7. He strenuously submits that a jurisdiction issue has been raised by the petitioner and therefore the Industrial Court should

have decided the said issue before touching the other issues. Similarly, when the respondent is not in employment on and from the date of institution of the complaint, the order dated 04/04/2014 below Exh.U-14 could not have been passed. He, therefore, prays that the impugned orders be quashed and set aside and the Industrial Court be directed to decide the issue peremptorily.

8. The respondent has appeared through a Caveat. Yet, none appears.

9. I have considered the submissions of Mr.V.D.Gunale who has challenged the interlocutory orders. Complaint is pending final adjudication.

10. Prima facie, I find that the order below Exh.U-2, by which the Industrial Court has granted interim relief to the respondent u/s 30(2), has not been called in question and as such the relief granted to the respondent will have to continue till the final adjudication of the complaint.

11. The interim order dated 06/02/2013 passed by the Labour Court reads as under :-

- “i] The application Exh.U-2 is granted.*
- ii] The respondents are hereby directed not to terminate the service of complainant and to keep one sanctioned permanent post of Peon vacant if recruitment process is initiated till decision of this complaint.*
- iii] In view of circumstances, parties to bear their own costs.”*

12. In so far as application Exh.C-7 is concerned, since a jurisdiction issue is raised, the Industrial Court will have to frame an issue in order to deal with the specific objections raised by Mr.Gunale.

13. On the aspect of framing of proper issues, this Court, in the case of Permanent Magnets Vs.Vinod Vishnu Wani and others, reported at 2002(93) FLR, 32, has observed in paragraph Nos.12, 13 and 14 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.”

14. It is thus settled that the primary responsibility of framing

appropriate issues lies on the Court. Notwithstanding, whether there is any assistance from the litigating sides by submitting draft issues or not, the Court is not absolved of its responsibility of framing proper issues.

15. The Industrial Court shall, therefore, ensure that an issue, with regard to the jurisdiction raised by the petitioner herein, shall be cast before commencing the recording of oral evidence. In the event, the recording of oral evidence has commenced, the Industrial Court shall decide Exh.C-7 and frame an issue regarding its jurisdiction. Nevertheless, the said issue can be dealt with alongwith the all other issues and in the event the Industrial Court concludes that it has no jurisdiction, it need not proceed to adjudicate upon the merits of the claim.

16. In so far as the order dated 04/04/2014 below Exh.U-14 is concerned, the same is an interlocutory order. No finality is attached. The said order shall be subject to the outcome of the main complaint. No interference is, therefore, called for.

17. The petitioner assures this Court that it shall lead evidence, documentary and oral, expeditiously and shall not seek

adjournments. Considering the same, the respondent will also be under an obligation not to delay the matter merely on account of the passing of the order dated 04/04/2014 below Exh.U-14. The respondent shall also co-operate for the expeditious disposal of the complaint and shall not seek adjournments on frivolous or trivial grounds.

18. The Industrial Court shall note that the order dated 04/04/2014 below Exh.U-14 shall be subject to the result of the complaint and it shall not create any equities in favour of the respondent.

19. In the light of the above, this petition is partly allowed in the above terms.

(RAVINDRA V. GHUGE, J.)