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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9323/2015

- 1 The Maharashtra State Cotton Growers
Marketing Federation Ltd. Through
its Managing Director (Administration)
Cotton Complex, Ajani Chowk,
Wardhar Road, Nagpur
At Post, Taluka and District Nagpur.
- 2 Zonal Manager,
Maharashtra State Cotton Growers
Marketing Federation Ltd.
Zonal Office, Plot No.25-F
Shree Nagar, N-5,
CIDCO, Aurangabad. ...Petitioners...

Versus

Taher Khan S/o. Yasin Khan Pathan
Age 55 years, Occ. Nil
R/o. Mulla Galli, Sillod,
At Post Taluka Sillod,
District Aurangabad. ...Respondent...

.....

Shri. S. T. Shelke, Adv. for petitioners.
Shri. P. L. Shahane, Adv. for respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 15.12.2015

ORAL JUDGMENT :

1] On 14.10.2015, I had passed the following order

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after hearing the learned Advocates :-

"1] The petitioners challenge the judgment of the Labour Court dated 26/10/2010 on the first two issues, the judgment of the Labour Court dated 10/01/2012 allowing the complaint and the judgment of the Industrial Court dated 23/04/2015 by which Revision (ULP) No.9/2012 filed by the petitioners has been dismissed.

2] The enquiry was held to be vitiated. De-novo enquiry was not conducted before the Labour Court. It, therefore, resulted in allowing the complaint directing the petitioner to reinstate the respondent in service with continuity but without back wages.

3] Mr. Shahane, learned Advocate for the respondent/employee, submits on instructions from the respondent who is present in the Court that the respondent is prepared to take a voluntary retirement w.e.f. 01/11/2015 subject to the petitioners granting all retired benefits inclusive of gratuity, provident fund, pension, leave encashment etc, and is willing to give up wages from the date of the judgment of the Labour Court till 31/10/2015.

4] Mr. Shelke, learned Advocate submits that he would prefer to take instructions and make a statement on the next date.

5] Stand over to 27/10/2015. Matter shall appear in the supplementary board."

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2] On 27.10.2015, the following order was passed :-
"1] Learned Advocate for the petitioner submits that pursuant to the order dated 14.10.2015, the proposal for an amicable settlement between the parties has been forwarded. He prays for four weeks time so as to process the said proposal.
2] In the light of the above, S.O. to 24.11.2015."

3] Shri Shelke, learned Advocate for the petitioners, submits that there is no voluntary retirement scheme, presently available to the petitioners. However, it could be under the orders of the Court that certain benefits could be made available to the respondent.

4] Shri Shahane submits, on instructions, that the offer put forth by the respondent, as recorded in paragraph no.3 of the order dated 14.10.2015, still stands and the respondent is prepared to be retired from employment, if all retiral benefits, as may be available in law, are made available to him. He would waive the entire back wages from the date of termination, which is 20.3.2004. He states that this improved offer is made on instructions.

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5] It is trite law that after the enquiry is held to be vitiated for any reason whatsoever, as has been held in paragraph no.7 by the Apex Court in its judgment in the matter of *Bharat Forge Company Ltd. v. A.B. Zodge* (AIR 1996 SC 1556), the employer is at liberty to conduct a *de-novo* enquiry, provided such a right is reserved in the written statement in the light of the ratio laid down by the Apex Court (five Judges Bench) in the matter of *KSRTC v. Lakshmiddevamma* (2001 (2) C.L.R., 640). In the instant case, the record reveals that after the enquiry was vitiated, a *de-novo* enquiry was not conducted by the petitioners before the Labour Court. Consequentially, no charges were proved by the employer before the Labour Court.

6] Considering the fact situation and the improved offer put forth by Shri Shahane on instructions, I am inclined to direct the petitioners, in these peculiar facts of the case, to grant retirement to the respondent with effect from 1.1.2016 subject to payment of all retiral benefits inclusive of gratuity, provident fund, leave encashment etc. and pension, if available as per any scheme, by giving notional continuity of service from

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the date of termination till 31.12.2015. The statement of the respondent that he is waiving all back wages from the date of termination till 31.12.2015 is recorded and accepted.

7] In the light of the above, this petition is partly allowed. The impugned judgment of the Industrial Court dated 23.4.2015 delivered in Revision (ULP) No.9/2012 and the judgment of the Labour Court dated 10.1.2012 delivered in Complaint (ULP) No.36/2004, are modified as under:-

[a] The respondent shall be granted notional continuity of service with effect from 20.3.2004 till 31.12.2015.

[b] Waiver of back wages from 20.3.2004 till 31.12.2015 shall disentitle the respondent from any back wages.

[c] He shall be entitled for gratuity and provident fund from the date of his entry in service till 31.12.2015 with leave encashment.

[d] The petitioners shall retire the respondent from 1.1.2016.

[e] Gratuity will be calculated on the basis of

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the wages as would have been payable to the respondent in the last three months i.e. from 1.10.2015 to 31.12.2015, on parity with equally situated employees.

[f] Pension, if is applicable and available in accordance with law, the respondent would be entitled for the same.

[g] The respondent shall be precluded from making any new claim against the petitioners in the light of this order.

[h] Rule is made partly absolute in the above terms with no order as to costs.

(RAVINDRA V. GHUGE, J.)