

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6263 OF 2014

HARI PUNA BHARAMBE
VERSUS
THE DIVISIONAL TRAFFIC OFFICER AND ANOTHER

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Advocate for Petitioner : Shri Patil Vijay Y.
Advocate for Respondents 1 & 2 : Shri Goyanka M.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 10, 2015
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PER COURT :-

1. The petitioner has preferred Complaint (ULP) No.20 of 2012, challenging the show cause notice, dated 15.10.2012, by which, the respondent - employer had called upon the petitioner to explain, as to why the basic salary of the petitioner should not be reduced permanently by three stages and an amount of Rs.1,20,000/-, with interest, should not be recovered from him.

2. By an interim order dated 22.1.2013, the impugned show cause notice, dated 15.10.2012, was stayed by the Industrial Court. Challenge to the same by the respondent in Writ Petition No.147 of 2014 resulted in the dismissal of the petition, by order dated 9.1.2014, passed by this Court.

3. After hearing the learned Advocates for the respective sides, in the light of the grievance of the petitioner that his Complaint has been erroneously dismissed by the impugned judgment, dated 17.7.2014, delivered by the Industrial Court, I noticed that the petitioner has

challenged the fairness of the domestic enquiry as well as the fairness of the findings of the Enquiry Officer in paragraph No.7 of the complaint. No preliminary issue was framed by the Industrial Court while deciding the complaint finally, which is in opposition to the law laid down by the Apex Court and this Court.

4. Recently, a judgment is delivered by this Court on similar set of facts in the matter of Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam (2014 (3) CLR 547), in which, the crystallized position of law has been considered at length. In the face of a specific challenge to the fairness of the enquiry and the findings of the Enquiry Officer, it was incumbent upon the Industrial Court to frame two preliminary issues and decide the same peremptorily.

5. I find from the impugned judgment that the Industrial Court has given a go-bye to the procedure laid down in law. Similarly, it needs mention that the learned counsel representing the parties before the Industrial Court have failed in pointing it out to the Court that the preliminary issues need to be cast and need to be decided peremptorily.

6. In the light of the above, the impugned judgment, by which the Complaint has been dismissed without considering the specific challenge putforth by the petitioner in paragraph No.7 of the Complaint, calls for an interference by this Court.

7. Needless to state, since the respondent / employer has passed a final order dated 18.7.2014, the petitioner will be at liberty to seek an amendment to Complaint (ULP) No. 22 of 2012 for assailing the said order, prior to re-casting of issue by the Industrial Court. The interim protection granted earlier shall therefore, continue to protect the petitioner from the effect of the final order dated 18.7.2013, till the decision in Complaint (ULP) No. 22 of 2012.

8. As such, this petition is partly allowed, the impugned judgment and order dated 17.7.2014 is quashed and set aside. Complaint (ULP) No.22 of 2012 stands relegated to the Industrial Court, specifically to the stage of recasting the issues in the light of the judgment of this Court in the case of MSRTC, Beed (supra). The interim order dated 22.1.2013, passed by the Industrial Court, below Exhibit U/2 which has been sustained by this Court by its order dated 9.1.2014, shall come into force thereby restraining the respondent from acting in furtherance of the final order dated 18.7.2014 passed by the respondent, pursuant to the impugned judgment of the industrial Court.

9. It needs mention that pursuance to the order dated 18.7.2014, there shall be no further precipitation by the respondents till the disposal of the complaint.

(RAVINDRA V. GHUGE, J.)

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