

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.7199 OF 2012**Ram Raghunath Suryawanshi Vs. The Executive Director and another.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.N.B.Khandare, advocate for the Petitioner.
 Mr.U.S.Malte, advocate for Respondent Nos.1 and 2.

**CORAM : S.V.GANGAPURWALA &
V.K.JADHAV, JJ.**

Date : 29.06.2015.

PER COURT :

1. Heard.
2. The undisputed facts can be culled out as under :

On or about 26.12.2008 the petitioner was placed under suspension. On 31.3.2009 Charge-sheet was served upon the petitioner for an inquiry under Regulation 90 of the MSEDCL Regulation. On 3.6.2009, show cause notice was issued to the petitioner with regard to the said summary inquiry. On 20.6.2009, the petitioner was dismissed from service based upon the inquiry under Regulation 90. On 29.6.2009, the petitioner filed Complaint (ULP) before the Labour Court, challenging the termination before

the Industrial Court. Criminal case was filed by the employer against the employee on 19.12.2008. The same was pending. On or about 4.5.2012, the petitioner was acquitted in the said Criminal case by the Sessions Court. On 16.8.2012, the present Writ Petition is filed, thereby assailing the termination order seeking reinstatement with continuity and back wages. On or about 12.4.2014 Complaint (ULP) is withdrawn by the petitioner. In the said case filed before the Labour Court, it is stated that petitioner has filed Writ Petition bearing No.7199/2012 before this Court in respect of termination of service and, therefore, the complainant wants to withdraw the case. On the same date, the order was passed by the Labour Judge that this Complaint is disposed of as withdrawn.

3. Mr.Khandare, learned counsel for petitioner states that the petitioner is acquitted in the Criminal case. On the same charges Summary Inquiry under Regulation 90 of the MSEDCL was conducted. Regulation 90 has been held ultra vires and illegal by this Court. As such the inquiry itself stands vitiated. This Court in number of matters has quashed the orders passed by the Respondent MSEDCL based on the inquiry under Regulation 90. According to the learned counsel, the order of termination deserves to be set aside and the petitioner be reinstated in service with continuity and back wages.

4. Mr.Malte, learned counsel for the Respondent employer submits that the withdrawal of the Complaint (ULP) amounts to dismissal U/o XXIII of the C.P.C. as no liberty is granted to the petitioner to prosecute any other petition. In light of that, the present Writ Petition is not maintainable. The learned counsel further submits that against the acquittal granted by the Sessions Court, the State has filed appeal before this Court and the same is pending. The petitioner can get the appeal decided expeditiously and till that time the same position deserves to be continued. The learned counsel further submits that in proceedings before the Labour Court if it is found that the Departmental Inquiry was not proper then the employer has an opportunity to adduce evidence to prove charges. The Respondent would not get that opportunity in this Court. The petitioner could have amended the Complaint. Entertaining the present Writ Petition would be prejudicial to the interest of the Respondents as the Respondents would lose opportunity to prove the charges in the Court. According to the learned counsel, the acquittal in the Criminal case was on technical ground, the entrustment of amount was proved, this Court would not exercise jurisdiction in favour of such a litigant. The learned counsel relies on the judgment of the Apex Court in a case of **“Chairman, Life Insurance Corporation of India and others”** reported in **(2013) 6 SCC 530**, to contend that the scope of judicial

review in quashing of charges in Departmental proceedings is very limited.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. Regulation 90 deals with Summary Inquiry. The said Regulation 90 has been struck down by the Division Bench of this Court in a case of **“Praveen Prabhakar Rao Jawale Vs. Maharashtra State Electricity Distribution Co. Ltd.”** (W.P.No.3126/2011 vide Judgment dated 22.8.2013).

7. The Complaint was filed immediately upon termination. The Purshis specifically states that the petitioner has filed Writ Petition against the order of termination after acquittal in the Criminal case, so also agitating that the Inquiry under Regulation 90 was not at all applicable and in view of filing of the Writ Petition, filed Purshis withdrawing the said Complaint (ULP). The Complaint (ULP) was disposed of as withdrawn. No separate liberty was granted to file any proceedings, however, at the time when the withdrawal purshis was filed, the present Writ Petition was already filed and pending of which cognizance was taken by the Court and notices were issued. As such the arguments of the learned counsel for Respondents that in view of the withdrawal of the Complaint (ULP), the present Writ Petition would not be tenable is not sustainable.

8. Regulation 90 itself is struck down by this Court. As such Inquiry initiated under Regulation 90 itself would stand totally vitiated. The same is a Summary Inquiry.

9. Today the petitioner is also acquitted in the Criminal case. As the termination is on account of an inquiry under Regulation 90 and Regulation 90 itself is struck down by the Court, the order of termination issued pursuant to the said inquiry can not be sustained.

10. However, it would be open for the Respondent-employer to conduct Departmental Inquiry as laid down under Regulation 88 of the Maharashtra State Electricity Board. In that event, the petitioner shall be deemed to be under suspension from the date of termination till the completion of the Inquiry, however, shall be paid subsistence allowance as per rules. The Inquiry be conducted expeditiously. The order of termination stands set aside. As the merits of the contentions with regard to Criminal case is not the subject matter of the present petition, the same is not considered.

11. The Writ Petition is accordingly disposed of. No costs.

(V . K . JADHAV , J .)

(S . V . GANGAPURWALA , J .)

Dt.29.06.2015.

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