

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.8091 OF 2015

Maharashtra State Road Transport Corporation, PETITIONER  
Dhule Division, District Dhule,  
Through the Divisional Controller,

VERSUS

Anna Dhansingh Rathod, RESPONDENT  
Age-Adult, Occu-Service,  
R/o Jahagirdarwadi, Jay Balaji Chowk,  
Chalisgaon, Tq. Chalisgaon, Dist.Jalgaon

Mr.U.B.Shriram h/f Mr.D.S.Bagul, Advocate for the petitioner.  
Mr.Shrikant S.Patil, Advocate for the respondent

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/11/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the judgment and order dated 16/01/2015 delivered by the Industrial Court, Dhule in Complaint (ULP) No.51/2013.
3. The respondent had challenged his order of punishment dated

22/10/2009 before the Industrial Court as his basic salary had been reduced by one stage for the two mis-conducts proved to have been committed by him.

4. The respondent/employee had challenged the fairness of the enquiry as well as the findings of the Enquiry Officer while assailing the order of punishment. It is not in dispute that the two relevant issues “*Whether the complainant proves that the enquiry is vitiated due to non-observance of the principles of natural justice ?*” and “*whether the complainant proves that the findings of the Enquiry Officer are perverse ?*”, had not been framed.

5. By the impugned judgment dated 16/01/2015, the Industrial Court has concluded that the Enquiry Officer appointed as per rules by the petitioner/Corporation, should not have conducted the enquiry. A different person should have been appointed as the Enquiry Officer. Hence, the enquiry was held to be vitiated. While allowing the complaint, the petitioner is directed to conduct a fresh enquiry.

6. The learned Advocate for the petitioner submits that the Enquiry Officer has been appointed strictly as per the rules applicable. No fault can be found on this count. The enquiry could not have been set aside

without framing the two issues as has been concluded by this Court in Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nijam, 2014(4) Mh.L.J. 687 = 2014(III) CLR 547.

7. Mr.Patil, learned Advocate for the respondent has strenuously supported the impugned judgment. Submission is that an outsider i.e. a person unconnected with the Corporation and unrelated to the respondent should have been appointed as an Enquiry Officer. The enquiry was, therefore, rightly held to be vitiated and the complaint was rightly allowed.

8. I am not in agreement with the submission of Mr.Patil for the reason that the rules of the petitioner/Corporation permit appointment of an Officer of the Corporation as the Enquiry Officer. No fault can be found to that extent.

9. So also, it appears that the judgment of this Court, wherein various judgments delivered by the Apex court have been considered, in the case of MSRTC Beed (supra), was not cited before the Industrial Court by either of the parties. The aspect that the respondent has suffered 73 punishments till today, as is evidenced by the Default Card, would be an issue which the Industrial Court may consider at the stage of deciding the proportionality of the punishment. The complaint could

not have been allowed by the Industrial Court on the ground that the Enquiry Officer appointed by the petitioner/Corporation could not have functioned as an Enquiry Officer.

10. In the light of the above, this petition is allowed. The impugned judgment and order dated 16/01/2015 delivered by the Industrial Court is quashed and set aside. Complaint (ULP) No.51/2013 is remitted to the Industrial Court, Dhule for framing of the two issues as observed above and which shall be decided peremptorily by the Industrial Court to constitute its Part-I judgment in the light of the law laid down by this Court in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(1) CLR 878. The litigating sides shall appear before the Industrial Court on 30/11/2015. Formal notices need not be issued by the Industrial Court.

11. Rule is made absolute in the above terms.

( RAVINDRA V. GHUGE, J.)