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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9668 OF 2015

- 1 Maharashtra State Cooperative Cotton
Growers Marketing Federation Limited,
through it's Managing Director
(Administration), Cotton Complex,
Ajani Chowk, Wardha Road,
Nagpur.
- 2 Maharashtra State Cooperative Cotton
Growers Marketing Federation Limited,
Zonal Office, Plot No.25-F,
Shreenagar, N-5, CIDCO, Aurangabad.

...PETITIONERS

-VERSUS-

Shankar s/o Buraji Dudhe,
Age : 49 years, Occ : Nil,
R/o Near Maroti Mandir,
Behind Yashwant College, Sillod,
At.Post.Taluka.Sillod,
District Aurangabad.

...RESPONDENT

...

Advocate for Petitioners : Shri Shelke Shivaji T.

Advocate for Respondent : Shri Shahane Parag P.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th September, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 Shri Shelke, learned Advocate for the Petitioners/ Management, has strenuously assailed the order of the Labour Court dated 30.07.2012 delivered in Complaint (ULP) No.45/2004 and the judgment of the Industrial Court dated 30.06.2015 in Revision (ULP) No.54/2012.

3 Shri Shelke submits that the Respondent was served with the charge sheet cum show cause notice. The departmental enquiry was conducted against him. After conclusion of the enquiry, the Enquiry Officer submitted his report dated 16.09.2002. Thereafter, the Petitioner/ Management issued the order of dismissal by way of punishment dated 31.03.2004 w.e.f. 09.04.2004 by which, the Respondent was dismissed from service.

4 The Respondent/ Employee preferred Complaint (ULP) No.45/2004. The Petitioners submitted their Written Statement and Say for opposing the complaint as well as the application for interim relief.

Shri Shelke specifically points out from paragraph 26 of the Written Statement that the Petitioners had reserved their right to conduct a de-novo enquiry in the event the enquiry was set aside for any reason whatsoever, keeping in view the ratio laid down by the Apex Court (five judges) in *KSRTC v/s Lakshmiddevamma*, **2001 (2) CLR 640**.

5 Shri Shelke has assailed the Part-1 judgment of the Labour Court on the two issues with regard to whether, the enquiry was conducted in a fair and proper manner and whether, the findings of the Enquiry Officer are perverse. He submits that both the issues have been answered in the affirmative and consequentially, by the part-1 judgment dated 30.07.2012, the enquiry was vitiated and the Petitioners are permitted to conduct a de-novo enquiry.

6 Shri Shelke has specifically assailed the conclusions of the Labour Court in paragraphs 6, 7, 9, 10, 11 and 12 on the ground that the same indicate the personal view of the Labour Court. He submits that it is not disputed that the Respondent/ Employee did not appoint a defence representative (DR). He also does not dispute that though an application for appointment of a Defence Representative was made, no order was passed on the said application. This ought not to lead to a conclusion that the Respondent was denied an opportunity of appointing a Defence

Representative.

7 Shri Shelke further submits that the Labour Court has imported its ideology that the battle between the Management and the Employee is a fight between two unequals. The Labour Court has further concluded that the signature of the Respondent/ Employee indicates that he is not well educated. The Management has a fleet of advisors. The Respondent did not cross-examine the Management's witnesses and therefore, the enquiry is unsustainable.

8 Shri Shelke has further assailed the conclusions of the Labour Court that the charges are not proved against the Respondent, proper conclusions are not arrived at and the Enquiry Officer has not analyzed the evidence placed on record. He submits that these conclusions are unsustainable.

9 He, therefore, prays that the impugned judgment of the Labour Court dated 30.07.2012 and the judgment of the Industrial Court dated 30.06.2015 by which the revision petition of the Petitioner was dismissed, deserve to be quashed and set aside.

10 Shri Shahane, learned Advocate for the Respondent/

Employee, has supported the impugned judgments. He submits that though an application for appointing a Defence Representative was filed, the Enquiry Officer did not consider the same. Failure to pass any order on the said application, tantamounts to rejecting the application.

11 Being a semi-literate employee, the Respondent could not assess as to whether, he was permitted to engage a Defence Representative. As such, he participated in the enquiry without the assistance of the Defence Representative. This weakened his defence and being a semi-literate person, educated upto 07th standard, he could not cross-examine the Management's witnesses and could not lead evidence.

12 Shri Shahane further submits that a single glance at the Enquiry Officer's report would clearly establish that the report deserves to be branded as perverse. He, therefore, submits that the Petitioner is permitted to conduct a de-novo enquiry before the Labour Court in the light of the ratio laid down by the Apex Court in the case of KSRTC v/s Lakshmiddevamma (supra) and hence, the grievance of the Petitioner does not deserve to be entertained.

13 Having considered the submissions of the learned Advocates as have been recorded herein above, they have taken me through the

Enquiry Officer's report and the impugned orders.

14 Insofar as the conclusion of the Labour Court to the extent that the battle between the Petitioner/ Management and the Respondent/ Employee was a fight between two unequals is concerned, I am unable to appreciate the said conclusion. The basic principle while considering whether, the principles of natural justice in conducting a domestic enquiry have been followed or not, is on the basis of the touchstone of prejudice. Even if an employee is precluded from engaging a Defence Representative, that would not be fatal to the enquiry unless the Employee establishes the prejudice caused to him.

15 The Labour Court, on the one hand, has not dealt with this issue of prejudice and on the other hand, it appears that the Labour Court has utilized its personal knowledge with regard to such enquiries by concluding that the Managements are assisted by well educated team of officers and the Employee is not well educated and therefore, the enquiry is vitiated. What was expected on the part of the Labour Court was that it should have considered the grievance of the Respondent on the touchstone of prejudice.

16 Notwithstanding the above, I am in complete agreement with

the submissions of Shri Shahane that a single glance at the Enquiry Officer's report would convince this Court that it deserves to be branded as perverse. The report is in one and quarter pages. The first page is devoted to the appointment of the Enquiry Officer, appointment of the Management Representative (MR) and adjournments sought by the Respondent/ Employee.

17 Insofar as the analysis of evidence, both oral and documentary, is concerned, I find that the Enquiry Officer has totally failed in applying his mind to the case. I do not find a single sentence of reasoning in the report by which I could be convinced to conclude that the Enquiry Officer has considered the evidence recorded. What was expected was that the Enquiry Officer would consider the oral and documentary evidence recorded before him and after proper analysis, would arrive at conclusions which are supported with reasons. In the most cryptic manner, the Enquiry Officer has held the Respondent guilty of the charges levelled upon him. On this count, the conclusions of the Labour Court are perfectly sustainable.

18 It is trite law that the enquiry is rendered vitiated even after the findings of the Enquiry Officer are held to be perverse. As such, considering the effect of the failure on the part of the Enquiry Officer in

adducing proper reasons in support of his conclusions, the enquiry has been rightly vitiated by the Labour Court in its part-1 judgment. For these reasons, the conclusions of the Industrial Court in dismissing the revision petition, are equally sustainable.

19 Since this petition is devoid of merit, the same is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)