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

WRIT PETITION NO. 10921 OF 2014
WITH
WRIT PETITION NO.420 OF 2015
WITH
WRIT PETITION NO.421 OF 2015
WITH
WRIT PETITION NO.422 OF 2015

Superintending Engineer,
Circle Office,
Maharashtra State Electricity Distribution
Company Limited,
Dhule.

...PETITIONER in all petitions

-VERSUS-

Suresh S/o Vishnu Mali,
Age : 54 years, Occ : Service,
R/o Plot No.22, Vishnu Vihan,
Suyog Nagar, Wadi Bhokar Road,
Deopur, Dhule, Tq. & Dist.Dhule.

...RESPONDENT in all petitions.

.....

Mr.Paithankar Prakash B., Advocate for the Petitioner.
Mr.Patil Shrikant S., Advocate for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th July, 2015

Oral Judgment:

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

2 Since the parties and the contentions are common, these petitions are being decided by this common judgment. Therefore, the facts in Writ Petition No.10921/2014 are referred to.

3 I have heard Shri Paithankar and Shri Patil, learned Advocates appearing for the Petitioner and the Respondent, respectively, for quite sometime. The issue that emerges from these petitions is very short.

4 The Respondent/ Employee herein suffered an order of punishment at the hands of the Petitioner/ Employer, by which two increments have been permanently stopped by way of punishment.

5 It is not in dispute that the Petitioner/ Employer conducted departmental enquiries on the basis of the Rules applicable before passing the impugned order of punishment dated 27.09.2006. The Respondent preferred Complaint (ULP) Nos.9, 10, 12 and 14 of 2009 before the Industrial Court for challenging the impugned punishment under Section 28(1) r/w Item Nos.5, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 and the domestic enquiries and findings of the Enquiry Officers.

6 It is also not in dispute that the Respondent / Employee has

assailed the enquiries on the ground of non observance of the principles of natural justice and has also assailed the findings of the Enquiry Officers, as being perverse.

7 The Industrial Court, after a full fledged trial in the said complaints, has arrived at a specific conclusion in paragraph 12 that “.....it can be said that there is violation of principles of natural justice and punishment imposed on the Complainant is not justified.” Further, the Industrial Court has concluded in paragraph 14 that “Under these circumstances, the enquiry in the present case is vitiated and order of punishment is required to be quashed and set aside.” All the complaints are partly allowed.

8 The Industrial Court has framed the following issues:-

- “1. Whether the complainant is “workman” as defined under the provisions of Industrial Disputes Act, 1947? YES
2. Does the Complainant prove that the Respondent indulged into Unfair Labour Practices under Item (9) and (10) of Schedule IV of the MRTU & PULP Act, 1971? YES.
3. Does the Complainant prove that he is entitled for the reliefs as prayed for? YES
4. What order? AS PER FINAL ORDER”

9 It is not in dispute that the issues as regards (i) whether, the Complainant/ Workman proves that the enquiry is vitiated on account of non observance of the principles of natural justice and (ii) whether, the Complainant/ Workman proves that the findings of the Enquiry Officer are perverse, have not been framed.

10 This Court, in the case of *MSRTC, Beed v/s Syed Saheblal Syed Nijam* reported in **2014 (III) CLR 547**, has concluded that the Labour Court or the Industrial Court cannot interfere with the enquiry and the findings of the Enquiry Officer unless the two issues as noted above are not framed and are not decided peremptorily to constitute it's Part-I order.

11 So also, this Court has concluded in the matter of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v/s Vasant Ambadas Deshpande* reported in **2014(1) CLR 878 : 2014(3) Mh.L.J. 339**, that the said two issues are to be decided not on the basis of any extraneous or additional evidence adduced before the Labour Court or the Industrial Court, but on the basis of the entire enquiry proceedings and the conclusions drawn by the Enquiry Officer on the basis of the oral and documentary evidence recorded in the Enquiry Report.

12 It is apparent, in the instant case, that the Industrial Court has neither framed the said two issues nor has it complied with the said procedure. However, the contentions advanced before the Industrial Court and the reasons adduced by it, would indicate that neither of the parties had assisted the Industrial Court in pointing out the crystallized position of law that the issues as regards the enquiry and the findings of the Enquiry Officer are required to be decided peremptorily.

13 As such, in my view, the impugned judgments and orders dated 12.12.2013, 13.12.2013, 13.12.2013 and 11.12.2013 are unsustainable. The said judgments and orders are, therefore, quashed and set aside. Complaint (ULP) Nos.10/2009, 12/2009, 14/2009 and 09/2009 are remitted back to the Industrial Court, Dhule for framing of the said two issues as noted above and for permitting the litigating sides to address the Industrial Court on the said two issues in the light of the judgments of this Court in the matters of MSRTC, Beed and Maharashtra State Cotton Growers' Federation (supra).

14 Complaint (ULP) Nos.10/2009, 12/2009, 14/2009 and 09/2009 are remitted back to the Industrial Court. Separate notice to the parties need not be issued by the Industrial Court since the litigating sides shall appear before the Industrial Court on 14.08.2015.

15 As the Respondent/ Employee has superannuated on 31.05.2014, the Industrial Court shall decide Complaint (ULP) Nos.10/2009, 12/2009, 14/2009 and 09/2009 as expeditiously as possible and preferably on or before 05th March, 2016. The litigating sides are precluded from seeking adjournments on unreasonable or frivolous grounds.

16 Shri Patil has pointed out that the Employer has not reserved a right to conduct a de-novo enquiry in the Written Statement in the event of the enquiry being set aside. He, therefore, submits that the Employer be precluded from conducting a de-novo enquiry if the enquiry is set aside.

17 Shri Paithankar submits that the Petitioner shall explore the possibility/ legal remedy available in law on this count and in the event, such a remedy is availed of, the Respondent can be at liberty to oppose the same.

18 The Apex Court (five judges Bench) in *KSRTC v/s Lakshmiddevamma* reported in 2001 (2) CLR 640, has considered this aspect. Needless to state, any eventuality if it so occurs before the Labour Court concerning this contentious issue, the Labour Court shall decide the

said controversy in the light of the KSRTC judgment (supra) after hearing the litigating sides.

19 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)