

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9276 OF 2013

THE DIVISIONAL CONTROLLER,
MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION, JALGAON DIVISION JALGAON PETITIONER

VERSUS

TRIMBAK S/O GAMBHIR SONAWANE,
AGE-47 YEARS, OCCU-NIL,
R/O DAMBHURNI, TAL.YAWAL,
DIST.JALGAON RESPONDENT

Mr.Manoj Shinde h/f Mr.M.K.Goyanka, Advocate for the petitioner.
Mr.S.S.Manale, Advocate for respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 23/06/2015

ORAL JUDGMENT :

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

2. The extensive submissions of the learned Advocates for the respective sides have revealed a short issue to be decided. In the light of the order that I intend to pass, in view of the ratio laid down in the judgments of the Apex Court, I am not adverting to all the contentions of the litigating sides.

3. It is settled law that in a challenge to the fairness of the

enquiry and the findings of the Enquiry Officer by a litigant, who has suffered an order of punishment pursuant to the enquiry, two issues are required to be cast. The first issue has to be with regard to whether the complainant proves that the enquiry was conducted in violation of the principles of natural justice. The second issue that needs to be cast is whether the complainant proves that the findings of the Enquiry Officer are perverse and unsustainable. It is also settled law that the findings of the Enquiry Officer can be held to be perverse if the conclusions drawn and the reasons assigned are not based on the evidence recorded in the enquiry or cannot be sustained on the basis of the evidence recorded or there being no evidence before the Enquiry Officer.

4. In the instant case, the petitioner, who was dismissed by way of punishment, preferred Complaint (ULP) No.39/2007. Issues were cast by the Labour Court wherein two issues as noted above were also cast. The enquiry was held to be fair and proper and the findings of the Enquiry Officer were held to be perverse in the same judgment, which has allowed the complaint. Declaration of ULP was made against the petitioner, order of dismissal dated 22/10/2007 was set aside and the respondent was granted reinstatement with continuity and 50% back wages. It is not in dispute that the

respondent, who has joined service as a Bus Conductor with the petitioner in 1989, has suffered his third dismissal from service.

5. The Labour Court, while delivering the impugned judgment, should have decided the first two issues as preliminary issues as they constitute its part-I order. The conclusions of the Labour Court on the first two issues are to be arrived at in the light of the ratio laid down by this Court in the case of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(3) Mh.L.J. 339 = 2014(1) CLR 87. This procedure has not been followed by the Labour Court thereby resulting in delivering its Part-I order on the preliminary issues together with all other issues by the impugned judgment dated 25/07/2012. The said judgment is, therefore, unsustainable.

6. The error committed by the Labour Court has been overlooked by the Industrial Court by its judgment dated 21/08/2013 delivered in Revision (ULP) No.9/2013 preferred by the petitioner. Needless to state, for the same reasons, the impugned judgment of the Industrial Court is rendered unsustainable.

7. While deciding cases involving disciplinary proceedings, the

Labour and Industrial Courts need to follow the Law as is laid down by the Apex Court and by this Court in the following cases :-

- (i) *Shambhu Nath Goyal Vs. Bank of Baroda*, AIR 1984 SC 289 ;
- (ii) *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd.*, AIR 1979 SC 1652 ;
- (iii) *Cooper Engineering Ltd., Vs. P.P. Mundhe*, AIR 1975 SC 1900 ;
- (iv) *Divyash Pandit Vs. Management NCCBM*, AIR 2006 SC 92 ;
- (v) *Bharat Forge Company Ltd., Vs. A.B. Zodge and another*, AIR 1996 SC 1556 ;
- (vi) *Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh*, 1972 (1) SCC 595 ;
- (vii) *Karnataka Road Transport Corporation Vs. Lakshmiddevamma*, AIR 2001 SC 2090.

8. This Court has relied upon the above referred judgments while deciding the case of Arjun Shankar Wagh Vs. Maharashtra State Road Transport Corporation, 2014 (5) Bom.C.R. 399.

9. Mr. Manale, learned Advocate, however, indicates that the petitioner has not reserved its right to conduct a *de-novo* enquiry. In the light of the judgment of the Apex Court in the case of KSRTC Vs. Laxmiddevamma (supra), he submits that the petitioner cannot conduct a *de-novo* enquiry before the Labour Court.

10. He relies upon the observations of this Hon'ble Court in paragraph Nos. 23, 24 and 25 of the judgment delivered in Arjun Shankar (supra), which reads thus :-

“23. However, the disturbing feature in this case is that neither the respondent had reserved a right to conduct a de novo enquiry in its Written Statement, nor did it move an application before the said Court seeking permission to lead evidence in an effort to conduct a de novo enquiry.

24. After the evidence was recorded and after the petitioner moved an application dated 21.9.2005, calling upon the Labour Court to disregard the said evidence, that the petitioner woke up from its deep slumber and filed an application for amending the Written Statement and expressing its willingness to lead oral evidence. In fact, the proposed paragraph 3-BB aims at seeking permission to conduct a de novo enquiry, indirectly after the recording of evidence of the Respondent was already over and after he had sought orders to disregard the said evidence.

25. I find that the Labour Court should have rejected the said amendment application in light of the Lakshmiddevamma's case (supra) since it was filed after the recording of evidence. Be that as it may, with the passage of time and the fact that the petitioner has attained the age of superannuation in 2007, this entire litigation cannot now be reopened since the petitioner at the age of 67 would have to undergo rigors of litigation. Equity demands and the ends of justice can be met by issuing such a direction which would compensate the petitioner.”

11. If that be so, the Labour Court can deal with the said aspect in the light of the observations of the Supreme Court (5 judges) in the Laxmidevamma Case (supra). The petitioner may, therefore, suffer the consequences. However, that would not justify the contention of Mr.Manale that the matter need not be remanded back to the Labour Court and the failure on the part of the Labour Court to follow the procedure be overlooked.

12. In the light of the above, the impugned judgment and order dated 25/07/2012 delivered in Complaint (ULP) No.39/2007 is quashed and set aside.

13. The Labour Court shall note that the first issue has already been answered by following the procedure of Law. The order of the Labour Court was questioned by the petitioner before the Industrial Court and the said Revision was dismissed. As such, the Labour Court shall deal with issue No.2 (perversity) as a preliminary issue.

14. The said complaint is remitted back to the Labour Court for a fresh decision on the issue of perversity so as to constitute its Part-I order in the light of the ratio laid down by this Court in the case of Maharashtra State Cotton Growers (supra). The judgment of the

Industrial Court dated 21/08/2013 in Revision (ULP) No.9/2013 is therefore set aside and the Revision (ULP) is disposed of as the same is rendered infructuous.

15. In the event, the findings of the Enquiry Officer, are set aside for any reason whatsoever, the Labour Court shall consider the issue raised by the respondent/employee that the petitioner has not reserved its right to conduct a *de novo* enquiry in the light of the judgment of the Apex Court in the case of Laxmidevamma (supra).

16. Needless to state, the Labour Court shall not be influenced by any observations made by it in its earlier judgment, which is set aside. Since the complaint pertains to the year 2007, the litigating sides shall co-operate with the Labour Court for its expeditious disposal and shall not seek adjournments on frivolous and unreasonable grounds.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)