IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11633 OF 2014

Ratan Shankar Bari,
Age: 55 years, Occ. Labour,
R/o Plot No. 4 Post Mehrun
Shirsoli Road, Jalgaon ...PETITIONER

VERSUS

Raymond Limited Jalgaon,
MIDC Area Ajintha Road
Tal & Dist Jalgaon,
Through its General Manager ...RESPONDENT

Mr P. V. Barde, Advocate for petitioner;
Mr S. R. Patil, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 12th January, 2015

ORAL JUDGMENT

. Heard.

2. Rule. Respective Counsel waive service.

3. With the consent, taken up for final disposal.

4. The instant petition is by the complainant before the Labour Court, Jalgaon, who suffered an order dated 12th April, 2013, passed in Complaint (ULP) No.19 of 2007, whereby the Labour Court declared that

the departmental enquiry conducted against him is fair, proper and legal one, by following the principles of natural justice, however, the findings of Enquiry Officer are perverse.

5. Aggrieved by the aforesaid order, the respondent herein preferred Revision (ULP) No.40 of 2013, which came to be allowed by order dated 24th September, 2014 by the Member, Industrial Court, Jalgaon. The learned Member of the Industrial Court set aside the finding recorded by Labour Court on issue no.4 and directed the Labour Court to decide issue no.4 afresh, along with other issues.

6. In my opinion, the learned Industrial Court, Jalgaon has committed an error apparent on the face of record by ignoring the law laid down by the Apex Court in the matter of **Cooper Engineering Ltd. vs. P.P. Mundhe**, reported in **AIR 1975 SC 1900**. Paragraph 21 of the said judgment is worth referring to, which reads thus :-

> *"Propositions (4), (6) and (7) set out above are well- recognised. It is, however, fair and in accordance with the principles of natural justice for the labour court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the court to give an opportunity to adduce additional evidence at the commencement of the proceedings or, at any rate, in advance of the pronouncement of the order in that behalf ? In our*

considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the labour court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry. a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to ? This is neither going to achieve the paramount object of the Act, namely, industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see S. 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace."

7. This Court, in the matter of M.S.R.T.C. vs. Syed, with the aid of the judgment of the Apex Court and by pronouncement in an unreported judgment delivered in Writ Petition No.815 of 2012, decided on 10th December, 2014, has given a finding that the issue as regards perversity has to be framed as a preliminary issue.

8. In my opinion, the learned Labour Court has rightly proceeded to decide the issue of perversity as a preliminary issue. There was no reason for the Industrial Court to interfere with those findings.

9. In view of above, the judgment delivered by the learned revisional court is not sustainable. Thus, the writ petition deserves to be allowed and it is accordingly allowed. Rule made absolute in terms of prayer clause (A).

10. At this stage, learned Counsel appearing on behalf of the respondent seeks liberty to move an application for leading evidence in support of the issue as regards perversity. If such an application is preferred by the respondent, it be decided on its own merits by the learned Labour Court.

(N.W. SAMBRE, J.)