

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

WRIT PETITION NO. 680 OF 2015

The Maharashtra State Electricity
Distribution Company Ltd.,
Through its Executive Engineer,
Rural Division, Deopur, Dhule.

... Petitioner

VERSUS

Arun s/o Sahadu Badgujar,
Age : 52 years, Occu.: Retired,
R/o : plot No. 28, Lal Bahadur Shastri Nagar,
Dhule, Tq. & Dist. Dhule

... Respondent

.....
Mr. A.S. Shelke , Advocate for petitioner
Mr. S.S. Patil , Advocate for respondent

.....
WITH

WRIT PETITION NO. 879 OF 2015

Maharashtra State Electricity
Dist. Co. Ltd., Circle Office,
8 Sahyadri Anand Nagar,
Deopur, Dhule, through its Superintending
Engineer, Dhule.

... Petitioner

VERSUS

Shri Yuvraj Trymbak Bhamare
Age : 58 years, Occu.: Service
R/o : Tryambak Nagar, Plot No. 6
Deopur, Dhule,

... Respondent

.....
Mr. Dhananjay P. Deshapande , Advocate for petitioner
Mr. S.S. Patil , Advocate for respondent

.....
WITH

WRIT PETITION NO. 840 OF 2015

The Maharashtra State Electricity
Distribution Company Ltd.,
Through its Executive Engineer,
Rural Division, Deopur, Dhule.

... Petitioner

VERSUS

Ishwarlal S/o Parshram Lohar,
Age : 52 years, Occu.: Service
R/o : plot No. 16, Lal Bahadur Shastri Nagar,
Dhule, Tq. & Dist. Dhule

... Respondent

.....
Mr. A.S. Shelke , Advocate for petitioner
Mr. S.S. Patil , Advocate for respondent

.....
WITH

WRIT PETITION NO. 842 OF 2015

The Maharashtra State Electricity
Distribution Company Ltd.,
Through its Executive Engineer,
Rural Division, Deopur, Dhule.

... Petitioner

VERSUS

Pralhad s/o Naryan Bhamare
(Expired) through his legal heirs

1. Smt. Latabai w/o Pralhad Bhamare,
Age : - 53, Occu :- Household,
2. Shri Atul s/o Pralhad Bhamre
Age 34, Occu:- not known
3. Shri Rahul s/o Pralhad Bhamare,
Age 32, Occu:- Not known
4. Sau Kranti w/o Rajiv Wagh,
Age 34, Occu :- Household,

All R/O :- Plot No. 59, Vidhyutprabha Colony,
Deopur, Dhule, Tq. & Dist. Dhule

... Respondents

.....

Mr. A.S. Shelke , Advocate for petitioner
Mr. S.S. Patil , Advocate for respondent

.....

WITH

WRIT PETITION NO. 849 OF 2015

The Maharashtra State Electricity
Distribution Company Ltd.,
Through its Executive Engineer,
Rural Division, Deopur, Dhule.

... Petitioner

VERSUS

Vishwas S/o Waman Wani,
Age : 55 years, Occu.: Service
R/o : plot No. 18-B, Balaji Nagar,
Nakane Road, Dhule,
Tq. & Dist. Dhule

... Respondent

.....

Mr. A.S. Shelke , Advocate for petitioner
Mr. S.S. Patil , Advocate for respondent

.....

CORAM : RAVINDRA V. GHUGE, J.

DATE : 26th FEBRUARY, 2015

ORAL JUDGMENT :

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

2. I have heard the learned Advocates at length. After considering their submissions, I find that the entire issue turns upon the fact that the respondent/ employees, while challenging

the disciplinary action and order of punishment imposed upon them before the Industrial Court in their respective complaints filed under Section 28 (1) of the MRTU and PULP Act, 1971, have questioned the fairness of the enquiry and the findings of the Enquiry Officer (EO). In short, all of them have contended that the principles of natural justice have been violated in conducting the enquiries against them. Similarly, all of them have canvassed that the charges levelled upon them are not proved and the findings of the EO are rendered perverse since the evidence adduced does not establish the charges against the respondents.

3. It is an admitted position that the Industrial Court has framed the following issues :-

<u>Issues</u>	<u>Findings</u>
[1] Does the complainant prove that, Respondents committed unfair labour practices under Schedule IV Item (9) and (10) of the MRTU & PULP Act, 1971?	YES.
[2] Does the Complainant prove that he is entitled for the reliefs as prayed for?	Partly yes.
[3] What Order?	As per final order.

4. As such, it is evident that the issues as regards the fairness of the enquiry and the findings of the EO have not been framed. It is also admitted that while deciding all the complaints, the

Industrial Court has categorically recorded findings which appear in different portions of the impugned judgments as follow :-

a] It is rightly submitted on behalf of the complainant that the material witnesses are not examined and an opportunity of cross-examination is not given to the complainant.

b] The burden was on the employer to prove the misconduct by leading cogent evidence. It was necessary to give an opportunity to the complainant to cross-examine the witnesses. It is rightly submitted that there is violation of principles of natural justice.

c] In my view, the findings of the EO are certainly perverse as those are against the evidence on record.

5. With the above conclusions, the enquiries conducted by the petitioners against the respondent/ employees stood set aside. Needless to state, in the light of the crystallised law, the Enquiry Officer's findings having been branded as perverse, renders the enquiry a nullity.

6. In the *Maharashtra State Co-operative Cotton Growers Federation Limited and another Vs. Vasant Ambadas Deshpande*; reported at 2014 (3) Mh.L.J. 339, this Court has concluded in paragraph Nos. 17 and 18 as under :-

"17. In the instant case as well, the Labour Court concluded that the findings of the Enquiry Officer are perverse and the entire complaint has been allowed by the same judgment without affording any opportunity to

*conduct a de-novo enquiry to the petitioners Management. The only distinction is that in the **Permanent Magnet's case** (supra), the final order of punishment was passed and in the instant case, the punishment was proposed in the 2nd show cause notice."*

*"18. Nevertheless, the abovesaid procedure is crystallized by Judge made Law in view of catena of judgments. The ratio in cases of **Bharat Forge, K.S.R.T.C. and Permanent Magnet's case** (supra) shall equally apply to cases wherein the 2nd show cause notice is challenged on identical footings. Therefore, the right to conduct a de-novo enquiry is equally available to every employer, be it in a case where the order of punishment is issued or in a case where punishment is proposed by a 2nd show cause notice."*

7. As such, neither of the parties before the Industrial Court were legally entitled to lead evidence on the merits of the charges levelled since the enquiries conducted by the petitioner against the respondents were not set aside by a conclusion of the Industrial Court.

8. Until the enquiries were set aside, the Industrial Court could not have permitted the litigating sides to lead oral and documentary evidence on the charges levelled, as has been concluded by the Single Judge of this Court in the case of *Permanent Magnets Vs. Vinod Vishnu Wani and others*, reported at 2002 (3) Mh.L.J. 413. The Division Bench of this Court has upheld the judgment of the learned Single Judge in the case of *Vinod Vishnu Wani and others Vs. Permanent Magnets*, reported at 2002 (93) FLR 66. As such, it is settled law that the right to

conduct a de-novo enquiry or lead fresh evidence akin to conducting a denovo enquiry is born for the first time after the domestic enquiry is set aside.

9. In the instant case, the Industrial Court, without framing any issue, has set aside the enquiry by discarding the conclusions of the EO without following the procedure laid down in law.

10. A similar situation arose before this Court while dealing with a case on similar facts in the matter of *Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nijam*, reported at 2014 (4) Mh.L.J. 687. This Court had framed three issues in paragraph No. 16 in the said case which are as under :-

“The following issues have, therefore, arisen for my consideration :-

“a] *Whether the findings of the EO can be held to be perverse based on evidence freshly adduced before the Industrial Court.?*

b] *Whether the issue of perversity in the findings of the EO has to be decided as a preliminary issue, even when punishment of dismissal has not been awarded?*

c] *Whether the procedure of testing the fairness and validity of the enquiry and the findings of the EO by framing preliminary issues and trying them pre-*

emptorily before causing any interference, as applicable to the Labour Court in case of dismissal would mutatis mutandis, be applicable to the Industrial Court as well?”

11. As such, the issue that fell for the consideration of this Court was as regards whether the procedure applicable to the Labour Court in considering the validity of the enquiry and the fairness of the EO would *mutatis mutandis* apply even to the Industrial Court. This Court while deciding the three issues reproduced above, has considered the following judicial pronouncements :-

- i) Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh, reported at 1972 (1) SCC 595.
- ii) Shambhu Nath Goyal Vs. Bank of Baroda, reported at 1984 (4) SCC 491.
- iii) Bharat Forge Company Ltd. Vs. A.B. Zodge and another, reported at AIR 1996 SC 1556.
- iv) K.S.R.T.C. Vs. Lakshmiddevamma and another, reported at 2001 (II) CLR 640.
- v) A.H. Wadia Charity Trust and others Vs. Neville Jathan and others, reported at 2002 (2) Mh.L.J. 723.
- vi) Permanent Magnets Vs. Vinod Vishnu Wani and others, reported at 2002(3) Mh.L.J. 413.
- vii) Vind Vishnu Wani and others Vs. Permanent Magnets, reported at 2002 (93) FLR 66.
- viii) Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, reported at 2014 (3) Mh.L.J. 339.

12. In *Delhi Cloth and General Mills Company Limited* judgment (supra), the Apex Court has held in paragraph Nos. 19, 20, 21, 22 and 24 are as under :-

“ 19. In support of his first contention Mr. Anand urged that the appreciation of the evidence adduced in a domestic enquiry as well as the weight to be given to that evidence are all matters falling primarily within the jurisdiction of the Enquiry Officer over which the Industrial tribunal has no right to sit in appeal. The counsel further urged that the conclusion arrived at by the Enquiry Officer is a possible view which could be taken on the evidence on record. The Industrial tribunal has no jurisdiction to consider whether the evidence available before the Enquiry Officer was adequate or sufficient or of a satisfactory character. Mr. Anand pointed out that these are matters that an appellate court may be entitled to consider, but not an Industrial tribunal, whose jurisdiction is very limited. He further pointed out that the findings recorded by the Enquiry Officer cannot be considered to be perverse, as characterised by the Industrial Tribunal, in the sense that it is not justified by any legal evidence.”

“20. The counsel further contended that the jurisdiction of the Tribunal, as laid down by this Court in several decisions, was only to satisfy itself whether a prima facie case has been made out by the employer and that the employer has not acted mala fide and that the enquiry has been held in accordance with the principles of natural justice and the procedure indicated in the Standing Orders, if any. If once the tribunal comes to the conclusion that the management has not acted mala fide and that there has been a proper enquiry and that the conclusion arrived at by the Enquiry Officer is a possible one on the evidence led before it, the tribunal cannot substitute its own judgment for the judgment of the Enquiry Officer, though it may have come to a different conclusion.”

“21. We do agree, as abstract propositions of law, the contentions of the learned counsel regarding the scope of tribunals jurisdiction, in such matters, are correct. But the question for consideration by us is whether the Industrial tribunal, when it declined to grant the permission asked for by the appellant, has in any manner acted contrary to the principles referred to by Mr. Anand and set out above.”

“22. Before we proceed to deal with the contentions of Mr. Anand, it is necessary to state the law regarding the nature of the jurisdiction exercised by a tribunal in dealing with an application under S. 33 of the Act. We had occasion to deal with a similar aspect in Delhi Cloth and General Mills Co. V. Ganesh Dutt and Others it was observed therein :

“ The nature of the jurisdiction exercised by an Industrial tribunal in such circumstances is a very limited one and it has been laid down by several decisions of this Court. The legal position is that where a proper enquiry has been held by the management, the tribunal has to accept the finding arrived at in that enquiry unless it is perverse or unreasonable and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair practice or is acting mala fide. Vide Punjab National Bank Ltd. V. Its Workmen, Bharat Sugar Mills Ltd. V. Jai Singh, Management of Ritz Theatre (P)V. Its Workmen, and Mysore Steel Works V. Jitender Chandra Kar and others.”

“23. In Martin Burn Ltd. V. R. JV. Banerjee, it has been laid down that once an Industrial tribunal is satisfied that the conclusion arrived at by the Enquiry Officer, on the evidence led before it, is a possible one, the tribunal has no jurisdiction to substitute its own judgment for the judgment of the Enquiry Officer, though the tribunal may itself have arrived at a different conclusion on the same materials.”

“24. It has been further laid down in the Lord Krishna Textile Mills V. Its Workmen as follows :-

“ It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as under S. 33(2) (b). It is conceivable that even in holding an enquiry under S. 33(2) (b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence.”

13. In a similar situation that arose in the *Shambhu Nath Goyal* 's case (supra), the Apex Court concluded in paragraph No. 2 as under :-

“2. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to

decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.”

“ Relying on this statement of law in Cooper Engineering Ltd. case, it was contended in Shankar Chakravartis case that it is the obligatory duty of the Labour Court / Industrial tribunal to frame a preliminary issue whether the domestic enquiry is valid or vitiated? After answering the issue, one way or the other, if it is held that the domestic enquiry was vitiated, the employer has to be given an opportunity to lead evidence to substantiate the charge of misconduct. And that is how the extracted passage was interpreted by the Division Bench of the Calcutta High Court in Shankar Chakravartis case (Britannia Biscuit Co. Case?) (1976 Lab IC 1358). It was further contended that it is the obligatory duty of the Labour Court / Industrial Tribunal after deciding the preliminary issue in favour of the workman and against the management to call upon the employer to lead his evidence to substantiate the charge of misconduct. It is in this context that this Court observed that the employer must plead in the statement of defence filed before the Labour Court / Industrial Tribunal that in the event domestic enquiry which led to the termination of service is held to be vitiated or invalid, he must be given opportunity to lead evidence to substantiate the charge of misconduct. Explaining how the pleading can be raised this Court observed that if such a relief is claimed in the statement of claim, application for approval of its action or written statement of defence, the Labour Court/ Industrial Tribunal must give such an opportunity. The Court further observed that if the request is made before the proceedings are concluded, the Labour Court/ Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. It was further observed that if such a pleading is raised in an opportunity is sought, it is to be given, but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings, there is no duty cast in law or by the rules of justice, reason and fair play that a quasi-judicial Tribunal like

the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights. The statement that if an application is made during the pendency of the proceedings does not mean that some.....”

14. This Court, placing reliance upon the earlier judicial pronouncements, has dealt with a similar situation in the judgment of *A.H. Wadia Charity Trust and others* (supra), concluding in paragraph Nos. 6 & 7 as under :-

“6. The learned members of the Industrial Court by order dated 06-06-2001 in his well written and reasoned order confirmed the order of the Labour Court. In principle he agreed with the contention of the trust that when enquiry is set aside the employer should be given an opportunity to prove the misconducts and justify the act of dismissal/termination before the Labour Court by adducing fresh evidence/material on record of the Labour Court. The Industrial Court however has approved the course adopted by the Labour Court of not giving any opportunity of adducing any evidence before the Labour Court to prove the misconduct and to justify the action of dismissal on the ground that the charge of late coming was not disputed or denied by the employee but was admitted by him in his replies to the Memos served upon him by the trust. In these circumstances the Industrial Court agreed with the order of the Labour Court to interfere with the punishment of dismissal and granting the employee reinstatement without backwages for a period of about 6 years. The Industrial Court has considered the prayer of remand to the Labour Court made on behalf of the trust. The learned member of the Industrial Court has rightly considered the remand of the complaint absolutely unnecessary as the result would be the same. There could have been no further evidence in respect of the late coming of the employee. The trust had clearly mentioned in its Memos that in the month of September, October and December and April and May how many days the

employee was late in attending the office. In reply to the said Memos and the show cause notice the employee has agreed to the said charge and had admitted that he was late and that his attendance was not exemplary on account of his travel by train which were always late and that it was a daily affair. According to me, even if the petitioners were not to hold any formal enquiry the order of punishment would not have suffered from any infirmity as they were acting on the admissions of guilty or charge by the employee. Merely because a formal enquiry was held in spite of clear admissions and acceptance of the charges levelled against the employee it can be said to be a redundant and unnecessary exercise of enquiry. If such an enquiry is held to be unfair and improper it makes hardly any difference and it would be sheer waste of time requiring the parties to undergo the ordeal of enquiry before the Court as the charges which are required to be proved before the Labour Court were already admitted by the employee and nothing was left to be proved in the given circumstances. What more is required to be proved in a formal domestic enquiry? And even if such a formal enquiry is held by the employer and if such a formal enquiry is quashed and set aside by the Labour Court in such circumstances what employer would prove before the Labour Court? In my opinion both the Labour Court and the Industrial Court have acted properly and have taken a pragmatic view of the matter and both rightly did not enter into time wasting procedure of proving the so called misconduct before the Labour Court which was already admitted by the delinquent respondent employee.”

“7. There is one more crucial aspect in respect of the grievance made by Shri Singh for the petitioner that the Labour Court ought to have granted the petitioners to lead evidence before the Labour Court to prove the misconduct and to justify its action of dismissal of the employee. He has also made similar grievance against the order of the Industrial Court. Though Shri Singh was vociferous as usual against the lower Courts on this issue. I find absolutely no substance in his submissions even on this issue.

Firstly, as I have already held that it was not all necessary to give a so-called opportunity to lead evidence before the Labour Court in view of clear and unambiguous admission of late coming by the employee. Secondly, no such opportunity could be given as the petitioners did not pray for such opportunity at the first earliest point of time to pray for such opportunity which was when they filed their affidavit in reply in July/August, 1994 to the affidavit filed by the employee in support of his application for interim relief application. The petitioners had not filed any written statement or reply to the main complaint filed by the employee. They appear to have wholly relied on the said affidavit in reply to the interim relief application and their reply is in detail dealing with the merits of the main complaint also. In this reply the petitioners have not prayed for such opportunity to lead evidence before the Labour Court in case the enquiry was held to be not fair and proper. This was the first and the earliest point of time available to the petitioners. By another application dated 25-08-1995 they had prayed for framing of an additional issue about their being not an "industry". Even in this application no permission was sought by the petitioners to prove the misconduct and to justify the dismissal. They have made such an application as late on 26-07-1999, at the fag end of the proceedings as the final order of the Labour Court is dated 29-11-1999. Even in normal circumstances such an application could not have been entertained in view of the latest judgment of the Supreme Court in the case of (Karnataka State Road Transport Corporation Vs. Laxmidevamma & another) 1, 2001 (3) Bom.C.R. (S.C.) 623 : A.I.R. 2001 S.C.W.1981. After considering the entire case law the Supreme Court has observed as under :-

"16. While considering the decision in (Shambhu Nath Goyal V. Bank Boroda) 2, 1985, Bank J. 30 (S.C.) : A.I.R. 1984 S.C. 289 : 1983 Lab. I.C. 1697, we should bear in mind that the judgment of Vardarajan J., therein does not refer to the case of (Cooper Engineering V. P.P Mundhe)3, A.I.R. 1975 S.C. 1900 : 1975 Lab. I.C. 1441. However, the

concurring judgment of D.A. Desai, J., specifically considers this case. By the judgment in Goyals case the management was given the right to adduce evidence to justify its domestic enquiry on if it had reserved its right to do so in the application that the management had to file to the reference made under section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/ Labour Court.”

“18. There is no other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyals case. It is to be noted that this judgment was delivered on 27th of September, 1986. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held in neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause. “

15. It needs mention that the Hon'ble Supreme Court in the case of *Bharat Forge Company Ltd.*, (supra) has practically considered the entire law applicable right from the Motipur Sugar Factory's case decided in 1965 and held in paragraph No. 7 is as under :-

“ A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing

than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognised. In this connection, reference may be made to the decisions of this Court in *Workmen of Motipur Sugar Factory (p) Ltd. V. Motipur Sugar Factor (p) Ltd.*, (1965) 2 Lab LJ 162 : (AIR 1965 sC 1803), *State Bank of India V. R.K. Jain* (1971) 2 Lab LJ 599: (AIR 1972 SC 136), *Delhi Cloth and General Mill Co. Ltd. V. Ludh Budh Singh* (1972) 1 Lab LJ 180: (AIR 1972 SC 1031) and *Firestone Type Co.'s case* (AIR 1973 SC 1227) (supra). The stage at which the employer should ask for permission to adduce additional evidence to justify the disciplinary action on merits was indicated by this Court in *Delhi Cloth and General Mills* (supra). In *Shankar Chakrabarty's case* (AIR 1979 SC 1652) (supra), the contention that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame preliminary issue and proceed to see the validity or other wise of the enquiry and then serve a fresh notice on the employer by calling him to adduce further evidence to sustain the charges, if the employer chooses to do so. By relying on the decision of the Court in the case of *Cooper Engineering Ltd.* (1975) 2 Lab LJ 379: (AIR 1975 SC 1900), has not been accepted. The view expressed in *Delhi Cloth Mill's case* (supra) that before the proceeding are closed, an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal has been reiterated in *Shankar Chakrabarty's case* after observing that on the question as to the stage as to when leave to adduce further evidence is to be sought for, the decision of this Court in *Cooper Engineering Ltd.* has not overruled the decision of this Court in *Delhi Cloth Mill's case*. There is no dispute in the present case before closure of the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified."

16. This Court, taking into account the above judgments, therefore, concluded in *Maharashtra State Road Transport Corporation, Beed* case (supra) that the Industrial Court or the Labour Court while dealing with a case of disciplinary action, in the event the validity of the enquiry and the fairness of the findings of the EO are under challenge, will have to frame issues dealing with the said challenge and decide the same as preliminary issues.

17. These conclusions are found in paragraph Nos. 31 to 41 of the *Maharashtra State Road Transport Corporation, Beed* judgment (supra) which read as follows :-

“31. In the light of the observations of the Apex Court and this Court in the above referred cases, it is, therefore, settled that when a workman challenges the domestic enquiry as being unfair and vitiated and attempts to brand the findings of the EO as being perverse, there ought to be pleadings as well as prayers praying for such declaration in the memo of the complaint under the ULP Act, 1971 or in the statement of claim under the Industrial Disputes Act, 1947 (here-in-after referred to as “IDA, 1947”). The pleadings are complete with the filing of the written statement by the employer and by reserving the right to conduct a de-novo enquiry. The Hon’ble Apex Court in the case of *K.S.R.T.C. Vs. Lakshmiddevamma and another, 2001 (II) CLR 640* has held that when an employer reserve such right to conduct a de-novo enquiry, it does not amount to an admission on his part that the enquiry is bad in law or the findings are perverse.

32. It is therefore crystallised that when the right to conduct a de-novo enquiry is reserved in the written statement, and the Labour Court or Tribunal has framed the two issues referred above, in relation to the enquiry,

the said issues are to be decided as preliminary issues, before taking up other issues. It is an anathema to decide the first two issues together with the other issues. Whenever, in proceedings under the MRTU & PULP Act, 1971 or the IDA, 1947, a domestic/departmental enquiry is under challenge with pleadings and substantive prayers seeking the quashing of the domestic enquiry on the ground of either non-observance of the principles of natural justice or findings being perverse, the Court or Tribunal has to frame a preliminary issue and try the same pre-emptorily.

33. If the two issues are answered in the negative, by the Labour Court, the enquiry and the findings of the EO stand upheld. Thereafter, the issue as regards shockingly disproportionate punishment and other connected issues are to be taken up for adjudication. In the event, either of the first two issues are answered in the affirmative, the domestic enquiry is washed away and the situation is as like that of a case in which no enquiry has been conducted [*Bharat Forge judgment (supra)*].

34. By and large, the cases that have reached the High Court or the Hon'ble Apex Court have been in relation to cases of dismissal. It probably, therefore, is a common perception that preliminary issues touching the enquiry and the findings are to be framed and tried pre-emptorily only when the punishment of dismissal is inflicted upon the employee by the employer.

35. In the instant case, the respondent-workman had challenged the findings of the EO and an issue to that extent was cast by the Industrial Court. Eventually, the Industrial Court relying upon evidence adduced before it as well as the evidence recorded in the enquiry, came to a conclusion that the findings of the EO are perverse.

36. In fact, the Industrial Court concluded that the charges levelled upon the respondent are fictitious and they are not proved in the enquiry. By doing so, the Industrial Court has ventured into the realm of questioning the quality of evidence recorded in the domestic enquiry and the conclusions drawn by the EO. By doing so, it has branded the findings to be perverse and thus, the enquiry stood watered down.

37. It is also noteworthy that both the litigating parties did not pray or request to the Industrial Court to try the issue as regards perversity of the findings as a preliminary issue. Nevertheless, the written statement

of the petitioner evidences that the right to conduct a de-novo enquiry and a prayer to that effect was set out therein.

38. In my view, when the Industrial Court was called upon to brand the findings as perverse, the procedure that is required to be followed by the Labour Court/ Tribunal in dealing with the cases of dismissal post domestic enquiry, applies *mutatis mutandis* to the Industrial Court/ Tribunal as well. By setting aside the finding of the EO by the Industrial Court, in effect has resulted in the quashing and setting aside of the domestic enquiry. Procedure as laid down in the Judgment of the Hon'ble Apex Court referred here in above, was equally applicable to the Industrial Court in the present case, since its conclusion on the findings of the EO has resulted in the setting aside of the enquiry.

39. In my view, the Industrial Court could not have set aside the enquiry by branding the findings as being perverse without trying the said issue as a preliminary issue and by depriving the employer an opportunity to conduct a de-novo enquiry in the Court. The Industrial Court on the one hand has watered down the enquiry by upholding the contention of perversity in the findings and on the other hand has relied upon the evidence recorded before it to conclude that not a single charge levelled upon the respondent is proved. The petitioner is aggrieved by this procedure followed by the Industrial Court.

40. In view of my conclusion as an answer to the issue at paragraph 16(c), the procedure followed by the Labour Courts / Tribunals is to be followed by the Industrial Court / Tribunals in cases of domestic enquiries notwithstanding that the punishment of dismissal is not awarded and a lesser punishment is awarded. The Industrial Court/ tribunal is bound to follow the same procedure for deciding the first two issues as preliminary issues and deliver its part-I order/ Award. Issues at paragraph 16 (a, b, and c) are thus answered. Therefore, this petition has to succeed on this count itself.

41. As such, I find it fit and proper to set aside the judgment of the Industrial Court impugned in this petition dated 28-01-2013. I am not required to go into the other issues raised by the petitioner. Suffice it to say, the proceedings in Complaint (ULP) No. 12/2007 are required to be relegated to the Industrial Court for trying

issue No. 2, pertaining to the perversity in the findings of the EO as a preliminary issue.”

18. Neither of the parties before this Court are in a position to point out that the Industrial Court dealt with the validity of the enquiry and the findings of the EO as a preliminary issue and passed any order before proceeding to decide the said complaints.

19. The record indicates that in one stroke, the Industrial Court has set aside the enquiry and has proceeded to allow the complaints holding that the charges levelled upon the respondent / employees are not proved. The order of punishment has been set aside. The declaration of ULP against the petitioner / employer has been made and the petitioner has been directed to refund the amount recovered from the respondents / employees and pay interest on the said amount. In my view, such conclusions are not sustainable.

20. Shri Patil has placed reliance upon the oral judgment of this Court dated 29-09-2010 in Writ Petition No. 6297 of 2010 in the matter of *Ashok Pitamber Khare Vs. Dhule District Central Cooperative Bank Ltd., Dhule*. Shri Patil contends that the Industrial Court could be directed to decide only the quantum of

punishment rather than framing the two issues regarding the enquiry and the findings of the EO. These submissions are misconceived in the light of settled law.

21. Shri Patil further placed reliance upon the judgment of this Court dated 21-12-2011 in Writ Petition No. 9576 of 2010, in the case of *Shri Bapu s/o Pundlik Gite Vs. Dhule District Central Co-operative Bank Ltd., Dhule*, wherein this Court directed the Industrial Court to decide the revision instead of merely observing that the preliminary issue was not framed.

22. Both the above judgments in the cases of *Ashok Pitamber Khare* (supra) and *Shri Bapu s/o Pundlik Gite* (supra) would be of no assistance, since this Court was dealing with the issue of the Industrial Court abdicating its powers. Instead of deciding the revision petitions on their merits, it had directed the Labour Court to re-hear the matter.

23. In the instant case, the basic scheme of law as is laid down has not been followed by the Industrial Court which is the Trial Court with reference to the complaints filed by the respondents in the said Court. As has been observed here-in above, if the litigating parties desire that the validity of the enquiry and the

findings of the EO are required to be considered by the Industrial Court, it is under an obligation to follow the procedure as is laid down in law by framing the two issues and arrive at a conclusion thereon. Having not so done, obviously needs to be met with an order of remand so as to enable the Industrial Court to frame the two preliminary issues in the light of the challenge posed by the respondents herein.

24. In the light of the above, these petitions are partly allowed with the following directions :-

A] The impugned judgments of the Industrial Court dated 02-01-2014, 17-07-2014, 02-01-2014, 6-03-2014 and 02-01-2014 in Complaint (ULP) Nos. 9 of 2008, 81 of 2013, 8 of 2008, 10 of 2008, and 07 of 2008 are quashed and set aside.

B] Issue No. 1 'whether the complainants prove that the enquiries are conducted in violation of the principles of natural justice' and Issue No. 2 'whether the complainants prove, that the findings of the EO are perverse and unsustainable, shall be framed by the Industrial Court.

C] The ratio and guidelines in the case of *Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nizam*, **2014(4) Mh.L.J. 687** shall be followed by the Industrial Court in deciding issue Nos. 1 & 2.

D] Post decision on issue Nos. 1 & 2, the Industrial Court shall follow the law as is laid down in the *Laxmidevamma* judgment (supra) and shall thereafter deal with each of the complaints on its own merits.

E] The Industrial Court shall not be influenced by any of its observations made in the impugned judgments which have been quashed and set aside by this Court.

F] The Industrial Court shall endeavour to decide the complainants as expeditiously as possible and preferably on or before the 31st Day of March, 2016. Needless to state, adjournments sought by either of the parties on frivolous or unreasonable grounds shall not be granted by the Industrial Court.

25. Rule is accordingly made absolute.

(**RAVINDRA V. GHUGE, J.**)