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

WRIT PETITION NO. 11936 OF 2015

Subhash s/o Madhavrao Bhogade,
Age : 59 years, Occ : Nil,
R/o Goldancity, Akole Byepass,
Sangamner, Tq.Sangamner,
District Ahmednagar.

...PETITIONER

-VERSUS-

1 Superintending Engineer,
MSEDCL Limited,
New Administrative Building,
Vidhyut Bhavan, Station Road,
Ahmednagar.

2 Executive Engineer,
MSEDCL Limited,
Karjat Division,
Tq.Karjat,
District Ahmednagar.

...RESPONDENTS

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Advocate for Petitioner : Shri K.N.Lokhande a/w Shri D.G.Nagode.
Advocate for Respondents : Shri Bajaj Anil S..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 2015

Oral Judgment:

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

2 I have heard Shri Lokhande, learned Advocate for the Petitioner and Shri Bajaj, learned Advocate for the Respondents, at length.

3 The Petitioner is aggrieved by the judgment dated 12.10.2015 delivered by the Industrial Court by which Revision (ULP) No.29/2015 has been partly allowed.

4 Shri Lokhande has narrated the facts of the case in details. I am not required to advert to the entire narration of the facts for the reason that the issue before the Industrial Court and before this Court was as to whether, the judgment of the Labour Court dated 07.07.2015 could be said to be perverse and erroneous.

5 Shri Lokhande points out that the Labour Court has narrated the entire charge sheet in the judgment delivered in Complaint (ULP) No.77/2010 below paragraph 14 therein. He concedes that the Petitioner was charged with remaining unauthorizedly absent, leaving headquarters without authorization, abusive behaviour in relation to superiors, refusing to obey lawful and reasonable orders of the superiors, dishonesty and acts subversive of discipline and rules.

6 He points out that a de-novo enquiry was conducted by the Respondent/ Management before the Labour Court since by the part-1 judgment dated 09.04.2014, the enquiry was vitiated and the findings of the Enquiry Officer were branded as perverse. This conclusion was partly set aside by the Industrial Court in revision to the extent of the findings of the Enquiry Officer. In effect, since the Industrial Court concluded that the enquiry was vitiated, a de-novo enquiry was conducted before the Labour Court.

7 He further points out that though the Petitioner did not lead any evidence against the charges levelled upon him, the cross-examination of the Management's sole witness, namely, Jayendra Bhand disproved all the charges levelled upon the Petitioner. He, therefore, justifies the conclusions drawn by the Labour Court by the judgment dated 07.07.2015 resulting in the complaint being partly allowed and the Petitioner being granted full back-wages from 15.04.2013 to 31.03.2015 as he stood retired by reaching the age of superannuation on 31.03.2015.

8 Shri Lokhande has strenuously criticized the impugned judgment of the Industrial Court. He submits that the revisional jurisdiction of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971 is limited. It is a revisional jurisdiction and not in the form of an

appellate jurisdiction. The Industrial Court could not have gone into the entire evidence recorded before the Labour Court threadbare and could not have upset the findings on facts arrived at by the Labour Court.

9 He, therefore, submits that the Industrial Court has exercised jurisdiction not vested in it by law. It has enlarged the scope of revisional jurisdiction under Section 44 and by concluding that certain documents have not been considered by the Labour Court, it has erroneously upset the conclusions of the Labour Court. He, therefore, prays for quashing and setting aside of the impugned judgment of the Industrial Court.

10 Shri Bajaj, learned Advocate for the Respondent/Management, has straightaway drawn my attention to an aspect which clearly appears to be a vital issue. He submits that the Petitioner was charged with having abused the superiors by using abusive language in certain letters addressed to them. The documents which would indicate that the Petitioner had used abusive and defamatory language in his correspondence with the superiors, which are about 28 documents, were placed on record before the Labour Court.

11 He further submits that neither did the Labour Court consider the said documents, nor has the Petitioner denied his signatures on such

documents. Since the Petitioner has not placed the said documents on record, Shri Bajaj has drawn my attention to the said documents which are at Exhibits C/37 to C/45. He then points out from the impugned judgment of the Labour Court that Exhibits C/37 to C/45 have not even been looked at by the Labour Court, much less considered and discussed.

12 He then points out the observations of the Industrial Court in paragraph 17, bottom line on internal page 13 onwards till the conclusion in paragraph 17 on internal page 15, to indicate that the Industrial Court has come to the conclusion that these vital documents which were placed before the Labour Court by the Management in support of their serious charges against the Petitioner, were not considered.

13 I have considered the submissions of the learned Advocates as have been recorded herein above.

14 There is no dispute that the documents from Exhibits C/37 to C/45 and the list of documents below Exhibit C/22 were before the Labour Court. I find that the Petitioner was charged with using abusive language and making defamatory allegations against superiors in his correspondence. I can also see that the Petitioner did not deny his signatures on these documents as he did not step into the witness box.

Had the Labour Court considered these documents, it could have viewed the case in the light of the said documents. This would have resulted in a proper adjudication of the complaint. I, therefore, do not find that the conclusions drawn by the Industrial Court could be termed as being perverse or erroneous.

15 Shri Lokhande, learned Advocate for the Petitioner, submits that if the judgment of the Industrial Court is being upheld by this Court, the Petitioner be given the liberty of stepping into the witness box and leading evidence.

16 Shri Bajaj submits that this Court may pass an appropriate order as it may deem fit and proper.

17 In the light of the above, this petition stands disposed of without interfering in the impugned judgment.

18 However, considering the interest of the Petitioner, I am permitting the Petitioner to step into the witness box and lead evidence since the matter has been remanded to the Labour Court by the Industrial Court for a decision afresh.

19 Needless to state, both the sides will be at liberty to adduce additional evidence if they so desire. The Labour Court shall decide Complaint (ULP) No.77/2010 afresh by considering the oral and documentary evidence already on record and the additional evidence as may be brought on record by the litigating sides.

20 It is made clear that Labour Court shall consider the documents before it which have been proved and while deciding the complaint, it shall not be influenced by any of its earlier observations. So also, it shall have no reason to refer to the evidence recorded by it while passing its part-1 order dated 09.04.2014 below Exhibit O/11.

21 Considering that the Petitioner has already superannuated, the Labour Court may endeavour to decide the complaint expeditiously.

22 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)