

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 852 OF 2016

Subhash Ganpat Sonar,
age 53 years, Occ. Service,
R/o C/o Pramod Gangadhar
Wankhede, Group No.95,
Plot No.3, Siddhi Vinayak Colony,
Asawanagar, Pimprala,
Jalgaon.

..Petitioner

Versus

Jalgaon Municipal Corporation,
Jalgaon, through its Commissioner
Jalgaon.

..Respondent

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Advocate for Petitioner : Shri Jagtap V.B.h/f Shri Sapkal V.D.
Advocate for Respondent : Shri Gunale V.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 28, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. This Court had considered the submissions of the petitioner on 25.1.2016 and had recorded the same as under:-

“1. The petitioner is aggrieved by the judgment of the Industrial Court dated 04/12/2015 by which his Complaint (ULP) No.18/2014 has been dismissed without even framing any issue.

2. The petitioner points out that in paragraph No.7 of the complaint, it was specifically contended that the enquiry has been conducted in defiance of the principles of natural justice and though the witnesses of the respondent have deposed in favour of the petitioner, the Enquiry Officer has erroneously concluded that the charges levelled upon the petitioner are proved. The enquiry was, therefore, sought to be set aside and so also the findings of the Enquiry Officer for being perverse. A similar prayer in paragraph No.18(B) has also been set aside.

3. It is, therefore, submitted that the Industrial Court has short circuited the procedure in dismissing the complaint.

4. I find that the Apex Court in case of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803] has held that where there is a challenge to the domestic enquiry and the findings of the Enquiry Officer, these two issues need to be framed. This Court has recently considered the entire law on this point in its judgment in the matter of MSRTC Beed Vs. Syed Saheblal Syed Nizam, 2014(3) CLR 547 = 2014(4) Mh.L.J. 687 thereby mandating framing of the two issues with regard to the fairness of the enquiry and findings of the Enquiry Officer.

5. I, ex facie, find that the law has not been followed by the Industrial Court while dealing with the said complaint filed by the petitioner.”

5. I have heard Shri Jagtap and Shri Gunale, learned Advocates for the respective parties at length.

6. I have considered the proceedings before the Industrial Court.

7. It is apparent that the ratio laid down by the Honourable Supreme Court in the case of Motipura Sugar Factory (supra) and the view taken by this Court in the matter of MSRTC Beed (supra), has not been followed by the Industrial Court.

8. Considering the challenge put forth by the employee against the enquiry and the findings of the enquiry officer, the Industrial Court was obliged to cast two issues and decide the said two issues peremptorily so as to arrive at its Part I judgment, which is not an interlocutory order.

9. Since the Industrial Court has failed to do so, the impugned judgment, dated 4.12.2015, delivered by the Industrial Court, Jalgaon is quashed and set aside. Complaint (ULP) No.18 of 2014 is remitted back to the Industrial Court for framing of the two issues. The said two issues shall be decided by the Industrial Court purely on the basis of the original record and proceedings in the domestic enquiry in the light of the ratio laid down by this Court in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande [2014 MLJ 339 : 2014 I CLR 878].

10. It is expected that the Industrial Court shall deal with the complaint after going through the ratio laid down in the matter of Motipura Sugar Factory (supra) and the view taken by this Court in the matter of MSRTC Beed (supra), and Vasant Ambadas Deshpande (supra).

11. The litigating sides shall appear before the Industrial Court on 6.6.2015. Formal notices need not be issued. The respondent / management shall produce the entire original record and proceedings of the domestic enquiry said to have been conducted against the petitioner before the Industrial Court expeditiously and in any case before 18.6.2016.

12. Writ Petition, therefore, stands partly allowed and the Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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