

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

WRIT PETITION NO. 4715 OF 1995

Maharashtra State Road Transport
Corporation.
Through Divisional Controller,
Parbhani.

...PETITIONER

-VERSUS-

Shaikh Abdul Shaikh Babamiya,
Aged 43 years, Occupation : Service,
R/o H.No.488, Kranti Nagar,
Parbhani, District Parbhani.

...RESPONDENT

...

Advocate for Petitioner : Shri A D Wange.
Advocate for Respondent : Shri B.B.Lakhkar.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 12th August, 2016

Oral Judgment :

1 The Petitioner/ MSRTC is aggrieved by the judgment dated
26.04.1995 delivered by the Industrial Court, Jalna in Complaint (ULP)
No.1397/1994.

2 This petition was admitted and interim relief was granted by
which the impugned judgment was stayed.

3 The learned Advocate for the Petitioner/ MSRTC submits that

the Respondent was in employment and has retired from service upon attaining the age of superannuation in 2007. He, however, submits that retiral benefits of the Respondent have still not been paid owing to the pendency of this Writ Petition.

4 I have considered the submissions of the learned Advocates for both the sides and have gone through the impugned judgment.

5 The Respondent joined the services of the MSRTC as a Driver on 15.11.1982. He was served with the charge sheet on 15.01.1994. The allegation of driving the Bus after consuming alcohol was levelled upon him. His bus dashed a Tempo near Pathri, District Parbhani. He then got out of the Bus and assaulted the driver of the Tempo. He left the duty mid way. These charges were proved against him and hence, he was awarded the punishment of reducing his basic pay by three stages permanently with cumulative effect.

6 The Respondent had filed Complaint (ULP) No.1397/1994. He challenged the fairness of the enquiry as well as the findings of the Enquiry Officer. The Industrial Court, by the impugned judgment dated 26.04.1995, allowed the complaint and directed the Petitioner/ MSRTC to withdraw the order of punishment dated 26.09.1994 and quashed the

same.

7 I find from the impugned judgment that the Industrial Court, without framing the two issues with regard to the enquiry and the findings of the Enquiry Officer, dealt with the evidence recorded in the enquiry. It concluded that the enquiry was not fair and proper and there was no evidence to prove the charges against the Respondent/ Employee. The enquiry was thus, set aside and the complaint was allowed in the same judgment.

8 The Honourable Supreme Court in the matter of *Workmen of the Motipur Sugar Factory Private Limited vs. The Motipur Sugar Factory Private Limited*, **AIR 1965 SC 1803**, has laid down the law that when the litigant challenges the enquiry and the findings of the Enquiry Officer, following two issues have to be necessarily framed:-

(a) Whether, the litigant/ delinquent proves that the enquiry is vitiated on account of non observance of the principles of natural justice?

(b) Whether, the litigant / delinquent proves that the findings of the Enquiry Officer are perverse?

9 It is trite law that unless the above said two issues are framed and are decided, there can be no interim relief that could be granted,

inasmuch as, the complaint cannot be dealt with without deciding the fairness of the enquiry and the findings of the Enquiry Officer.

10 This Court in the matters of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v/s Vasant Ambadas Deshpande*, **2014(1) CLR 878 : 2014(3) Mh.L.J. 339** and in the case of *MSRTC, Beed v/s Syed Saheblal Syed Nijam*, **2014 (III) CLR 547 : 2014(4) Mh.L.J. 687**, has concluded that even when the delinquent challenges the enquiry before the Industrial Court, the Industrial Court is required to frame the above said two issues.

11 Considering the fact that the mandatory two issues were not framed and the Industrial Court allowed the complaint by the impugned judgment without giving an opportunity to the Petitioner/ MSRTC to conduct a de-novo enquiry, the impugned judgment is rendered perverse and erroneous.

12 Consequently, this Writ Petition is partly allowed. The impugned judgment and order dated 26.04.1995 is quashed and set aside. Complaint (ULP) No.1397/1994 is remitted to the Industrial Court for framing the above said two issues.

13 The Petitioner/ MSRTC shall appear before the Industrial Court, Jalna on 29.08.2016. A notice of hearing may be issued to the Respondent/ original Complainant.

14 Needless to state, the Petitioner/ MSRTC shall produce the entire record and proceedings with regard to the enquiry conducted against the Respondent/ Employee pursuant to the charge sheet dated 15.01.1994 within a period of FOUR WEEKS after appearing in the matter.

15 The Industrial Court shall decide the above said two issues in the light of the ratio laid down by this Court in the matters of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. and MSRTC, Beed (supra)*.

16 Since the complaint is of 1994, the Industrial Court shall endeavour to decide the same in accordance with law, as expeditiously as possible and preferably on or before 31.03.2017.

17 Rule is made partly absolute in the above terms.