

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

WRIT PETITION NO. 3644 OF 1996

Maharashtra State Road Transport
Corporation,
Through it's Works Manager
S.T.Chikalhana, Aurangabad.

...PETITIONER

-VERSUS-

Babulal Chhaganlal Choudhari,
Age Major, Occupation : Ex Security Guard,
R/o House No.1-28-10,
Opposite Ajintha Hotel, Chalipura,
Aurangabad.

Since died, through his L.Rs.:-

- 1a) Smt.Jamnabai wd/o Babulal Choudhari,
Age : 53 years, Occupation : Household,
R/o Chelipura, Aurangabad.
- 1b) Sow.Asha w/o Santosh Raut,
Age : 31 years, Occupation : Household,
R/o Waluj Pandharpur, Tq.Gangapur,
District Aurangabad.
- 1c) Prakash s/o Babulal Choudhari,
Age : 29 years, Occupation : Laundry,
R/o Chelipura, Aurangabad.
- 1d) Sow.Varsha w/o Manoj Nawale,
Age : 27 years, Occupation : Household,
R/o Subhash Nagar, Dhule.
- 1e) Sow.Jyoti w/o Kailash Parate,
Age : 25 years, Occupation : Household,
R/o Subhash Nagar, Dhule.

..RESPONDENTS

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None for Petitioner.

Shri Pradeep L. Shahane h/f Shri C.R.Deshpande, Advocate for the Respondents.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th August, 2016

Oral Judgment :

1 This petition has been admitted on 05.08.1996 and this Court declined interim relief to the Petitioner Corporation. Subsequently, after the Respondent/ Employee passed away on 27.08.2003, his legal heirs have now been brought on record in this petition.

2 The Petitioner Corporation is aggrieved by the judgment and order dated 20.06.1996 delivered by the Industrial Court by which Revision (ULP) No.2/1995 filed by the deceased employee was allowed. Consequentially, the judgment of the Labour Court dated 30.08.1994 dismissing the complaint was set aside and Complaint (ULP) No.49/1992 was allowed thereby, granting reinstatement with continuity of service and full back-wages to the deceased employee.

3 None appears for the Petitioner/ Corporation.

4 I have considered the strenuous submissions of Shri Shahane,

learned Advocate appearing on behalf of the legal heirs of the deceased employee.

5 The deceased employee had joined as a Security Guard on 19.03.1979 and was taken on regular time scale on 01.11.1980. He was served with the charge sheet dated 12.04.1986 alleging that on 01.08.1985 he had asked for illegal gratification to a Majdoor, namely, Ramchandra Ashruba Wavhal so as to permit him to enter the Central Work Shop. It was also alleged that he slapped the Majdoor two times. The departmental enquiry was conducted against the deceased employee. The second show cause notice dated 15.11.1988 proposing the punishment of dismissal was served upon him along with the findings of the Enquiry Officer. Despite his reply, the Petitioner Corporation dismissed the deceased employee by order dated 22.12.1988.

6 He submits that the deceased challenged his dismissal before the Labour Court. The contention is that the Labour Court had failed to consider the record and proceedings in the enquiry and had dismissed the complaint without proper application of mind. He preferred a revision petition which was allowed and he was granted reinstatement in service with continuity and back wages.

7 Shri Shahane submits that the deceased employee was reinstated on 24.08.1996 and he resigned from employment on 21.09.2002. Subsequently, he passed away on 27.08.2003. It is, therefore, submitted that the issue of full back-wages from 22.12.1988 till 23.08.1996 would be subject matter of this petition.

8 He further submits that the Industrial Court has rightly gone through the record and proceedings of the enquiry and has come to the conclusion that though the Enquiry Officer did not accept the proof about incident of slapping and demand of money, he held the deceased employee guilty of the charge of absence and leaving the place of work without permission. Glaring infirmities in the findings of the Enquiry Officer were appreciated by the Industrial Court and therefore, it concluded that the findings of the Enquiry Officer are perverse. As such, the Industrial Court allowed the revision and granted the reliefs to the deceased employee as the charges were not proved against him.

9 I have considered the record available with the assistance of Shri Shahane and also his strenuous submissions. He has placed reliance on the judgments of the Honourable Supreme Court in *Gauri Shankar vs. State of Rajasthan*, **2015 (2) CLR 497** and *Nicholas Piramal India Limited v/s Hari Singh*, **2015 (2) CLR 468**, to contend that at least 50% of the

back wages deserve to be granted to an employee if the termination is held to be illegal.

10 The deceased employee had resigned from employment on 21.09.2002. The Employer-Employee relationship as such was brought to an end. This aspect needs to be considered in the light of the fact that though the deceased employee had challenged the fairness of the enquiry and the findings of the Enquiry Officer, the Labour Court did not frame the following two issues:-

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

(b) Whether, the Complainant proves that the findings of the Enquiry Officer are perverse?

11 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 for the first time that in the cases where the delinquent challenges the fairness of the enquiry and the findings of the Enquiry Officer, the above said two issues need to be framed so as to consider whether, the enquiry can be sustained or not. It was, therefore, concluded by the Honourable Supreme Court that if the enquiry is set aside for any reason whatsoever, the case would

stand on a footing of no enquiry and the whole issue, therefore, would be open before the Court. The Employer would then be at liberty to justify the charges levelled upon the delinquent and the punishment awarded to him.

12 The judgment of the Honourable Supreme Court in the matter of Motipur Sugar Factory (supra) was subsequently considered in the matter of *Delhi Cloth and General Mills Company Limited v/s Ludh Budh Singh*, **1972 (1) SCC 595** and thereafter, in *Shambhu Nath Goyal v/s Bank of Baroda*, **1984(4) SCC 491**.

13 In the judgment of the Honourable Supreme Court in the matter of *Bharat Forge Company Ltd. v/s A.B.Zodge*, **1996 (73) FLR 1754 : AIR 1996 SC 1556**, it was held that the enquiry can be set aside on any count including for non observance of the principles of natural justice and/or the findings of the Enquiry Officer being perverse. It was thus, held that oral evidence recorded in such an enquiry, thereafter, would not be available and the Court need not rely upon the same as the Employer can conduct a de-novo enquiry before the Court.

14 In the instant case, neither the Labour Court framed the

above said two issues, nor did the litigating sides request the Labour Court to do so. It appears from the judgment of the Labour Court dated 30.08.1994 that the litigating sides did not adduce any evidence. The deceased employee admitted the enquiry papers in his oral submissions and further admitted that he does not desire to challenge the enquiry.

15 These submissions, while addressing the Court finally, were taken into account by the Labour Court and therefore, the Labour Court proceeded to decide the complaint only on the point of whether, the punishment awarded to the deceased employee was proportionate or was shockingly disproportionate. The Labour Court, therefore, concluded that the charge of slapping the Majdoor was proved and hence, the punishment awarded was not shockingly disproportionate. As such, the complaint was dismissed.

16 Before the Industrial Court, the entire enquiry was reopened and based on oral submissions, the Industrial Court, in its revisional jurisdiction under Section 44 of the MRTU & PULP Act, 1971, concluded that the Labour Court did not consider the entire record and proceedings of the enquiry and the charge of slapping the Majdoor two times was not proved. The findings of the Enquiry Officer were held to be perverse and as such, the enquiry was set aside. This could not have been done after the

deceased had given up his challenge to the enquiry before the Labour Court.

17 Even otherwise, in my view, considering the long standing law of more than 50 years, the Industrial Court should have remanded the complaint to the Labour Court for permitting the Petitioner Corporation to lead evidence and justify the charges and the punishment, the moment the Industrial Court concluded that the findings are perverse. It could not have branded the findings as perverse in the same judgment in which it granted the relief of reinstatement with continuity and full back-wages to the deceased employee. For these reasons, the impugned judgment of the Industrial Court deserves to be quashed and set aside.

18 Pursuant to my conclusions as above, Complaint (ULP) No.49/1992 deserves to be remitted to the Labour Court for permitting the Petitioner Corporation to conduct a de-novo enquiry. However, I find it appropriate to accept the submissions of Shri Shahane that as the delinquent employee is no more and since the order of reinstatement had already been complied with, it would be harsh to remit the matter to the Labour Court and make the legal heirs of the deceased employee suffer the rigours of litigation.

19 Considering the request of Shri Shahane, I am not directing the remittance of the complaint to the Labour Court for permitting the Petitioner Corporation to conduct a de-novo enquiry. Notwithstanding the same, it is apparent that the deceased employee has gained success in the revision before the Industrial Court by the impugned judgment under fortuitous circumstances because the judgments of the Honourable Supreme Court in the cases of *Motipur Sugar Factory*, *Delhi Cloth and General Mills and Bharat Forge Company (supra)* were not cited. Had those judgments been placed on record, the Industrial Court would have remanded the complaint to the Labour Court in 1996 itself. So also, under these fortuitous circumstances, the deceased employee was reinstated and was granted continuity in service. The back wages were, however, not paid as this Court had stayed the direction to pay the back-wages.

20 In the light of the peculiar facts as recorded above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 20.06.1996 stands modified by setting aside the direction of the Industrial Court awarding full back-wages to the deceased employee. The direction of reinstatement with continuity of service will, therefore, stand sustained in the light of the above facts.

21 In the event the deceased was entitled to the retiral benefits

and/or pensionary benefits and if not already paid, they shall, therefore, be paid by the Petitioner Corporation to the widow of the deceased employee, namely, Smt.Jamnabai wd/o Babulal Choudhari, within a period of TWELVE WEEKS from today.

22 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)