

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5756 OF 2015

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Dhule Division,
Dhule. = **PETITIONER**

VERSUS

Narendra s/o Nandlal Chatre,
Age: 44 Yrs., occu. Service,
R/o Behind Madhyamik Vidyalaya,
Deopur, Dhule, Dist. Dhule. = **RESPONDENT**

Mr.RN Jain, Adv.h/for Mr. DS Bagul, Advocate for
Petitioner;

Mr.SP Tiwari, Advocate for Respondent.

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT : 13th June, 2016.

DATE OF PRONOUNCING JUDGMENT: 5th JULY, 2016

JUDGMENT:

1) Heard. Rule. Rule made returnable
forthwith and heard finally with consent of the
learned Counsel appearing for the parties.

2) The present petition is filed against judgment and order dated 7th August, 2014 passed by the Member, Industrial Court, Dhule in Complaint (ULP) No.27/2013.

. The aforesaid Complaint was filed by the present respondent against the present petitioner alleging unfair labour practice on the part of the present petitioner in imposing punishment upon him of reducing his basic pay by one stage permanently. The learned Member of the Industrial Court has allowed the Complaint and has thereby set aside the order passed by the present petitioner on 12.10.2007, thereby imposing the aforesaid punishment. Aggrieved thereby, the present petition is filed.

3) Shri Bagul, learned Counsel appearing for the petitioner, submitted that before imposing the subject punishment, the respondent was duly served with a charge sheet and subsequently a Departmental Enquiry was also conducted against the respondent in regard to the

charges levelled against him. The learned Counsel further submitted that the charge of financial irregularity and misappropriation was levelled against the respondent. The learned Counsel further submitted that due opportunity was given to the respondent at every stage of the enquiry proceedings to defend himself. The learned Counsel further submitted that the Enquiry Officer, on the basis of evidence brought in the enquiry proceedings, held the respondent guilty for the charge levelled against him and accordingly, having regard to the nature of the charge proved against the respondent, the punishment of reducing his basic pay by one stage permanently, was imposed upon him. The learned Counsel further submitted that the learned Member of the Industrial Court ought to have framed a preliminary issues as about fairness of the enquiry conducted against the respondent and whether the findings recorded by the Enquiry Officer were perverse. The learned Counsel submitted that without framing the aforesaid

issues and without recording any finding on the said aspects, the Industrial Court ought not have concluded that the findings recorded by the Enquiry Officer are not sustainable as the Enquiry Officer has not properly considered the findings recorded in the enquiry. The learned Counsel further submitted that the conclusions of the Industrial Court are ex facie unsustainable in the light of the law laid down by this court in the case of MSRTC, Beed Vs. Syed Saheblal Syed Nijam – 2014 (3) CLR 514. The learned Counsel, therefore, prayed for setting aside the impugned judgment and remand the matter to the Industrial Court with a direction to frame preliminary issues as regards to the enquiry and to decide the matter afresh.

4) Shri S.P.Tiwari, learned counsel appearing for the respondent, has supported the impugned judgment. The learned Counsel submitted that the reasoning given by the Industrial Court after having perused the proceedings of enquiry,

cannot be faulted with and no further enquiry is required, as has been submitted on behalf of the petitioner. The learned Counsel, therefore, prayed for dismissal of the writ petition.

5) After having considered the submissions advanced by the learned Counsel appearing for the respective parties and on perusal of the impugned judgment, it is apparently revealed that in view of the law laid down by this Court in the case of MSRTC, Beed (cited supra), the impugned judgment cannot be sustained.

6) It is not in dispute that before imposing the subject punishment on the respondent, departmental enquiry was conducted against him. It is further not in dispute that the petitioner did participate in the said departmental enquiry. It is further not in dispute that due opportunity was given to the respondent to make his submissions on the findings recorded by the Enquiry Officer. It is

further not in dispute that second show-cause notice was also issued to the respondent and after having considered the findings recorded by the Enquiry Officer and having regard to the misconduct proved against the respondent in the enquiry proceedings, the punishment of reducing basic pay of the respondent by one stage permanently, was imposed upon him. If it was the contention of the respondent before the Industrial Court that he was not given proper opportunity to defend him in the said enquiry proceedings and for the said reason, the enquiry was liable to be vitiated, the Industrial Court was bound to frame a preliminary issue as about the enquiry. The industrial Court has admittedly not framed any such issue. The Industrial Court, in para 12 and 13 of the impugned judgment has observed that, 'the conclusions of the Enquiry Officer are not sustainable as he has not properly considered the findings recorded in the enquiry.' The Industrial Court has further observed that 'the findings do not support the

charges.' The findings so recorded by the Industrial Court necessarily amount to branding the finding of the Enquiry Officer as perverse, which has in turn effect of setting aside the enquiry.

7) The law is well-settled that if the findings recorded by the Enquiry Officer are branded as perverse, a *de novo* enquiry can be permitted. In the instant case, since the learned Industrial Court has, without framing any issue as regards to the fairness of the enquiry and whether the findings recorded by the Enquiry Officer are perverse, has held the punishment imposed upon the respondent by the petitioner Corporation, to be unsustainable, the impugned order cannot be sustained and deserves to be set aside and the matter needs to be remanded back to the Industrial Court to decide it afresh by framing appropriate issues and to decide the issues as regards to the enquiry to be the preliminary issues. In the result, the following

order, -

ORDER

i) The Writ Petition is partly allowed;

ii) The impugned judgment and order dated 7th August, 2014 passed by the learned Member, Industrial Court, Dhule in Complaint (ULP) No.27/2013, is quashed and set aside;

iii) The matter is remitted back to the Industrial Court with a direction to frame appropriate issues as regards to the fairness of the enquiry and about the findings of the Enquiry Officer whether perverse or otherwise and to decide the aforesaid issues as preliminary issues;

. In the event the aforesaid issues are answered in affirmative, the petitioner Corporation be granted liberty to conduct a *de novo* enquiry or

to adduce evidence before the court to prove the charges levelled against the respondent (original complainant);

iv) The Parties shall appear before the Industrial Court, Dhule on 20.7.2016.

v) The Industrial Court, Dhule to decide the matter as expeditiously as possible and preferably within a period of six months from today.

vi) Rule is made absolute in the aforesaid terms.

sd/-
(P.R.BORA,J.)

bdv/

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