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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5345/2015

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

...Petitioner...

Versus

Jaswant S/o. Brijlal More,
Age – 45 years,
R/o. Gut No.117, Plot No. 27,
Himkhedi Shewar, Opp. Hiragavri Park,
Jalgaon, Tq. & Dist. Jalgaon.

...Respondent...

.....

Shri Manoj Shinde, Advocate h/f Shri M.K. Goyanka,
Advocate for petitioner.

Shri V.Y. Patil, Advocate for respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 22.02.2016

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard

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finally by the consent of the parties.

2] The petitioner seeks to challenge the judgment of the Labour Court dated 9.11.2012 by which Complaint (ULP) No.26/2012 filed by the respondent for challenging his dismissal from service dated 11.12.2010 has been allowed. The petitioner also challenges the judgment of the Industrial Court dated 16.7.2014 by which Revision (ULP) No.18/2012 filed by the petitioner has been dismissed by the Industrial Court.

3] I have considered the submissions of the learned Advocates for the respective sides.

4] It is not in dispute that the respondent – employee had challenged the validity of the enquiry as well as the findings of the Enquiry Officer in his complaint. It is also undisputed that the two issues pertaining to the validity of the enquiry and the findings of the Enquiry Officer were framed by the Labour Court.

5] The learned Apex Court in the cases of - [1] *Delhi Cloth and General Mills Company Ltd. v. Lud Budh Singh (1972) 1 SCC 595*, [2] *Bharat Forge Company Ltd. v. A.B. Zodge (1996 (73) FLR 1754)* and [3] *KSRTC v.*

Lakshmiddevamma & another (2001 II CLR 640) and this Court in the matters of *Permanent Magnets Ltd., Mumbai v. Vinod Vishnu Wani (2002 (3) Mh.L.J., 413)* and *MSRTC, Beed v. Syed Saheblal Syed Nijam (2014 (4) Mh.L.J., 687)*, has laid down the law that the first two issues need to be framed by the Labour Court or the Industrial Court, as the case may be, if the enquiry and the findings are under challenge. It is also trite law that these two issues have to be decided peremptorily since the conclusion of the Court on the said two issues amounts to the part one judgment of the Labour Court (read *Shivaji Daulat Dadar, Ahmednagar v. Divisional Controller, MSRTC, Ahmednagar Division, Ahmednagar, 2016 I CLR 312* - February issue).

6] It emerges from the record that a joint Purshis (Exh.U-C-1) was filed by the petitioner as well as the respondent – employee praying to the Labour Court that all the issues be tried together. This Purshis was in opposition to the law laid down by the Hon'ble Supreme Court and by this Court.

7] In my view, the Labour Court should have rejected the said Purshis and should not have accepted the request of both the litigating sides to try all the

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issues together since the fate of the enquiry has to be first decided by the part one judgment and if the enquiry is set aside, the issue of conducting a *de-novo* enquiry, provided the employer reserves a right to do so in the written statement in the light of the *Lakshmidevamma* judgment (*supra*), would have to be dealt with.

8] This Court has come across similar instances involving the MSRTC wherein a joint Purshis is filed for requesting the Court to try all the issues together. This Court has imposed costs of Rs.25,000/- on the petitioner in some of such cases while allowing the petition while entertaining the request of remand of the proceedings.

9] The instant case is one more of such examples. Learned counsel for the petitioner submits that after this Court has imposed costs on the petitioner, they have taken necessary steps, have enquired into the matter and in some cases have also relieved the Advocate, who had voluntarily filed such a joint Purshis on behalf of the MSRTC. He further submits that even in the instant case, the concerned Advocate has been a party to the joint Purshis without instructions from the petitioner.

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10] Shri Patil, learned Advocate for the employee, has vehemently opposed this petition. He submits that the Labour Court and the Industrial Court have applied their mind to the case and have rightly concluded that the respondent deserves to be reinstated. Merely because the petitioner has committed an error in filing the joint Purshis (Exh.U-C-1) would not mean that the complaint be remanded back to the Labour Court.

11] I am unable to accept the submissions of Shri Patil for the reason that the Labour Court or the Industrial Court, as the case may be, cannot conduct proceedings in opposition to the law laid down by the Hon'ble Supreme Court. If the first two issues are required to be decided in order to arrive at the part one judgment, the Labour Court could not have bypassed the said stage. It is only in circumstances wherein the employee gives up the challenge to the enquiry and the findings of the Enquiry Officer, that the Labour Court could skip over the first two issues.

12] In the light of the above, this petition is partly allowed. The impugned judgment of the Labour Court dated 9.11.2012 and the judgment of the Industrial

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Court dated 16.7.2014 are quashed and set aside. Complaint (ULP) No.26/2012 is remitted back to the Labour Court for dealing with the first two issues in the light of the ratio laid down in the case of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v. Vasant Ambadas Deshpande* (2014(1) CLR 878) and *MSRTC, Beed* (supra).

13] The litigating sides shall appear before the Labour Court on 14.3.2016. Separate notices need not be issued.

14] Nevertheless, this Court cannot ignore the hardships caused to the respondent – workman notwithstanding the fact that he is a party to the joint Purshis (Exh.U-C-1). As such the petitioner shall deposit costs of Rs.10,000/- before the Labour Court on or before 14.3.2016 as a pre-condition for proceeding with the said complaint. Upon depositing the amount, the respondent will be at liberty to withdraw the said amount without conditions.

15] Needless to state, all the contentions of the litigating sides including the contention of the respondent that no right to conduct a *de-novo* enquiry has

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been reserved by the petitioner, are kept open. The Labour Court shall decide the complaint on its own merits.

16] Rule is made partly absolute in the above terms.

No order as to costs.

(RAVINDRA V. GHUGE, J.)