

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1633 OF 2016

1. Deogiri Nagari Sahakari Bank Ltd.,
Aurangabad : Its Head Office,
At Arth Complex, Adalat Road, Aurangabad
Through : Its Chairperson - represented by
The Administrative Officer,
Shri Datta Madhavrao Shinde,
Age-41 years, Occu-Service,
R/o Aurangabad,

2. Deogiri Nagari Sahakari Bank Ltd.,
Aurangabad : Its Head Office,
At Arth Complex, Adalat Road, Aurangabad
Through its Chief Executive Officer,
Represented by The Administrative Officer,
Shri Datta Madhavrao Shinde, Age-42 years,
Occu-Service, R/o Aurangabad

PETITIONERS

VERSUS

Ravindra Balakrishna Deshpande,
Age-53 years, Occu-Service,
R/o Plot No.2, Saptashruni Apartments,
Bank Colony, Garkheda,
Aurangabad

RESPONDENT

Mr.S.S.Vidwauns, Advocate for the petitioners.
Mr.Ajay S.Deshpande, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/02/2016

ORAL JUDGMENT :

1. Learned Advocates for the respondent as well as the petitioners submit that they have no objection if this Court hears this matter.
2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
3. The petitioner is aggrieved by the order dated 12/01/2016 delivered by the Industrial Court, Aurangabad by which Application Exh.C-8 filed by the petitioners praying for deciding whether the respondent is a workman or not as a preliminary issue, has been rejected.
4. The petitioners contend that this Court, by its judgment dated 14/08/2015 delivered in WP No.6085/2014 had directed the Industrial Court to decide the complaint on or before 31/05/2016. It is pointed out that in this case before the Industrial Court, the issue as to whether the respondent is a workman or not, whether a domestic enquiry was conducted or not and if yes, whether the enquiry is sustainable on the grounds of observance of the principles of natural justice and the findings of the Enquiry Officer, are at

issue.

5. Mr.Vidhwauns, learned Advocate for the petitioners further submits that unless the Industrial Court concludes as to whether the respondent is a workman or not, conducting the entire case would be a futile exercise, since the issue of whether the Industrial Court has jurisdiction to entertain the complaint, goes to the root of the matter. He, therefore, strenuously submits that the Industrial Court should have decided the issue of jurisdiction/workman before touching the merits of the matter. The impugned order is, therefore, unsustainable and should be quashed and set aside.

6. Mr.Deshpande, learned Advocate for the respondent / employee has strenuously supported the impugned order. He draws my attention to the observations of this Court below paragraph No.18 in the judgment dated 14/08/2015.

7. He submits that since the petitioners have been attempting to tire out the respondent and frustrate his right, this Court had imposed costs of Rs.1,00,000/- on the petitioners to be paid to the respondent/employee. Despite the judgment being dated 14/08/2015, the petitioners have moved an application Exh.C-8 only

on 12/01/2016, which is again aimed at delaying the matter. The respondent had immediately tendered his say opposing Exhibit C-8 and the Industrial Court in fairness decided the fate of Exhibit C-8 on the same date. This would indicate the promptitude on the part of the respondent as well as the Industrial Court considering the limitation directed by this Court for deciding the complaint.

8. He, therefore, submits that Exhibit C-8 as well as this petition is in furtherance of the malafide intentions of the petitioners in delaying the matter. He, therefore, prays for the dismissal of this petition with imposition of heavy costs. In the alternative, he submits that as the Industrial Court has framed two issues with regard to the enquiry and the findings of the Enquiry Officer, the Industrial Court could very well decide the said issues prior to 31/03/2016 and the complaint could be disposed of prior to 31/05/2016.

9. Mr.Deshpande further submits that the pay slip of the respondent for December 2015 would indicate that his designation is of a Clerk and his Grade is C-21. Considering this aspect, it would demonstrate that the respondent is an employee.

9. I have considered the submissions of the learned Advocates.

10. It is trite law [Read Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. and another Vs. Vasant Ambadas Deshpande, 2014 I CLR 878 = 2014(3) Mh.L.J. 339] that the fairness of the enquiry and the fairness of the findings of the Enquiry Officer are to be dealt with on the basis of the original enquiry proceedings and the oral and documentary evidence recorded in the enquiry. Fresh evidence on these counts is not required to be adduced before the Labour / Industrial Court.

11. It is also trite law [Read - MSRTC Beed Vs.Syed Saheblal Syed Nijam, 2014(3) CLR 547 = 2014(4) Mh.L.J. 687] that the first two issues with regard to an enquiry are to be dealt with prior to dealing with all other issues.

12. This Court, in the matter of Shivaji Daulat Dadar, Ahmednagar Vs. The Divisional Controller, MSRTC, Ahmednagar, 2016 (1) CLR 312 (in paragraph Nos.3 and 17) has concluded that the Part I award/order on the two issues cast constitute the part I judgment and would not tantamount to an interlocutory order. As such, the Industrial Court would be obliged to decide the issue as regards the

enquiry prior to taking up the other issues with regard to the prayer for setting aside the order of punishment on the ground of proportionality and grant of consequential reliefs.

13, It is also trite law [D.P.Maheshwari Vs Delhi Administration and others, [(1983) 4 SCC 293 and Cooper Engineering Ltd., Vs. P.P.Munde [1975(2) LLJ 339]] that cases should not be decided piecemeal. The Industrial Court, in my view, has therefore rightly rejected the application Exh.C-8 since application Exh.C-8 was made on 12/01/2016 when this Court had delivered its earlier judgment on 14/08/2015.

14. As such, I find that ends of justice would be met by directing the Industrial Court to decide the issues with regard to the domestic enquiry as noted above alongwith the issue as to whether the respondent is a workman or not. This could be done by the Industrial Court on or before 31/03/2016.

15. In the light of the above, this petition is partly allowed with the following directions :-

[a] The Industrial Court shall decide the two issues framed with regard to the enquiry alongwith the issue mentioned in

paragraph No.1 of the impugned order dated 12/01/2016 on or before 31/03/2016 in the light of the law laid down in the Vasant Ambadas Case (supra).

- [b] The petitioners shall file the entire original record and proceedings with regard to the enquiry said to have been conducted against the respondent, before the Industrial Court on or before 29/02/2016 and supply copies to the respondent.
- [c] Admission/denial of the documents filed shall be concluded by both the sides on or before 05/03/2016.
- [d] Additional oral and documentary evidence on the issue of workman shall be adduced by both the sides on or before 15/03/2016.
- [e] The Industrial Court shall decide the above mentioned 3 issues on or before 31/03/2016.

16. The issue as to whether a *denovo* enquiry is required or not and other issues with regard to the proportionality of the punishment may be considered by the Industrial Court (after its Part-I judgment on the above mentioned 3 issues is delivered), as expeditiously as possible and preferably on or before 15/07/2016. Needless to state, this is subject to the decision of the Industrial Court on the status of the respondent. In the event the issue as to “Whether the complainant proves that the findings of the Enquiry Officer are perverse?”, has not been framed, the Industrial Court shall promptly add the said issue and decide the 3 issues as directed above.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)