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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1699 OF 2004

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

...Petitioner...

Versus

Dattatraya s/o Shravan Ingale,
Age : 51 years, Occ: Labouer,
R/o. Gautam Housing Society, Kandari,
Taluka Bhusawal, District 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] This petition was admitted on 15.3.2004.

Interim relief was refused by the Court.

2] The petitioner has preferred this petition for
challenging the judgment and order dated 1.7.2003
delivered by the Industrial Court, Jalgaon, by which

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Complaint (ULP) No.1637/1999 (old No.567/1998) was partly allowed. The learned Advocate for the petitioner narrates the facts of the case in brief as follows:-

a] The respondent joined the petitioner as a Helper in 1977,

b] Thereafter he was promoted as an Assistant Artisan Mechanic.'

c] The respondent subsequently passed his departmental promotional examination.

d] On 24.5.1994, since he had passed the departmental examination, he was promoted as Head Artisan and was placed under probation for one year.

e] Since his performance during probation was found to be unsatisfactory, he was reverted by order dated 20.3.1995.

f] The respondent preferred the above mentioned complaint before the Industrial Court for challenging the order of reversion.

g] By the impugned judgment and order dated 1.7.2003, the complaint was allowed and the respondent was reinstated as Head Artisan.

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h] The petitioner implemented the order of the Industrial Court since this Court refused interim relief.

i] On 31.12.2009, the respondent retired from the position of Head Artisan.

j] On 31.12.2009, the respondent was paid his provident fund accumulations, which are Rs.3,56,742/-.

k] On 23.10.2010, the respondent was paid his gratuity of Rs.2,03,338/-.

3] The petitioner has strenuously criticized the impugned judgment. Submission is that when a candidate was on probation, his reversion to the earlier position on account of his unsatisfactory performance during the probation period, is neither a punitive order nor would it call for any interference. The promotional post was made available to the respondent since he had passed the departmental examination. That would not mean that the respondent ought to be confirmed on the promotional post notwithstanding whether his performance is satisfactory.

4] Learned counsel for the petitioner further submits that the respondent had challenged his order of

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reversion by preferring a first appeal. His compulsory reversion to the position of Artisan (C) was converted into reversion to Artisan (C) for a period of only three years. His second departmental appeal was dismissed. The Industrial Court, therefore, should not have interfered with the order passed.

5] Shri Patil, learned Advocate appearing on behalf of the sole respondent, has supported the impugned judgment. He submits that there was no opportunity of hearing given prior to his reversion. There can be no probation period made applicable to a promotional post. The respondent had worked satisfactorily during the probation period and there was no communication to him that his performance is unsatisfactory. There was no communication with regard to the adverse inference drawn about his performance.

6] He further submits that if the petitioner desired to level charges upon the respondent, it was incumbent upon the petitioner to conduct an enquiry by following the Discipline and Appeal Rules. The averments set out in the written statement indicate that the petitioner had a grievance against the respondent and

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hence he was reverted. He, therefore, prayed that this petition be dismissed.

7] I have considered the submissions of the learned Advocates.

8] I find from the instant proceedings that the petitioner had in fact issued a charge-sheet dated 3.12.1994 to the respondent for his unsatisfactory work and negligence in duties. A full-fledged departmental enquiry was conducted and based on the report of the Enquiry Officer holding the respondent guilty of the charges leveled upon him, he was reverted by order of punishment dated 4.7.1995. The said order was interfered with by the first appellate authority, which imposed the punishment of reversion for only three years upon the respondent. The second appellate authority rejected the second appeal of the respondent on 20.1.1998.

9] Ordinarily, the manner in which the Industrial Court has conducted the proceedings warranted an interference. Since the domestic enquiry was conducted by the petitioner and the respondent was punished by the order of reversion, any interference in the order of punishment in the face of a challenge to the enquiry and

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its findings, warranted the Industrial Court to frame the following two issues:-

[a] Whether the complainant proves that the enquiry is vitiated due to non-observance of the principles of natural justice ?

[b] Whether the complainant proves that the findings of the Enquiry Officer are perverse ?

10] The Industrial Court has failed to cast the abovesaid two issues and decide them by way of its part one judgment, which is in opposition to the ratio laid down in the following judgments :-

[1] *Delhi Cloth and General Mills Company Ltd. v. Ludh Budh Singh* (1972) 1 SCC 595

[2] *MSRTC, Beed & another v. Syed Saheblal Syed Nijam* (2014 (4) Mh.L.J. 687) : (2014 (3) CLR 547)

11] It is, therefore, apparent that the Industrial Court has interfered with the punishment without following the due procedure and without considering whether the enquiry deserves to be set aside or not.

12] However, in the peculiar facts of the case, as recorded above, keeping in view that the respondent has retired from service on 31.12.2009 and all the legal and retiral benefits have been paid by the petitioner to the

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respondent, that I am not causing any interference in the impugned order. The provident fund accumulations as well as the gratuity have already been paid to the respondent. He has retired more than six years ago. An interference in the impugned judgment of the Industrial Court would, therefore, warrant a remand of the proceedings to the Industrial Court for framing of proper issues and for a fresh adjudication, which would drag the respondent into litigation six years after his retirement. Only from this humanitarian point of view, I am not interfering with the impugned judgment.

13] Considering the events subsequent to the admission of this matter in 2004, no interference is called for. This petition is, therefore, disposed of. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)