

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3696 OF 1999
WITH
CIVIL APPLICATION NOS. 9327/2005,
2083/2008 & 2082/2008

Divisional Controller,
Maharashtra State Road
Transport Corporation,
Latur.

..Petitioner

Versus

Sham Venkatrao Gangakhedkar
(since deceased) through L.Rs.:-

1. Meenabai Shamrao Gangakhedkar
Age 73 years, Occ. Household,
R/o Lekchar colony, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

2. Sitaram Shamrao Gangakhedkar
Age 39 years, Occ. Agriculture,
R/o Lekchar colony, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

3. Laxmikant Shamrao Gangakhedkar
Age 37 years, Occ. Agriculture,
R/o Lekchar colony, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

..Respondents

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Advocate for Petitioner : Smt. Ranjana Reddy
Advocate for Respondent : Shri Milind Patil
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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 28, 2016
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ORAL JUDGMENT :-

1. This petition was admitted by this Court by order dated 29.7.1999.

Impugned judgment was stayed only to the extent of backwages, on the condition that the petitioner / Corporation deposits Rs.50,000/-. The said amount was deposited in this Court on 10.3.2000.

2. By order dated 7.4.2000, the respondent / employee was permitted to withdraw the entire amount on furnishing a security to the satisfaction of the Additional Registrar of this Court.

3. I have heard the learned Advocates for the petitioner and L.Rs. of deceased respondent, at length.

4. Considering the order that I intend to pass, the entire submissions of the learned Advocates are not required to be considered.

5. The petitioner is aggrieved by the judgment of the Labour Court dated 1.11.1996, by which, Complaint (ULP) No.36 of 1998 was allowed. The petitioner is also aggrieved by the judgment of the Industrial Court dated 22.1.1999 by which Revision (ULP) No.13 of 1997 filed by the petitioner has been dismissed.

6. Certain developments that have occurred prior to the delivering of the impugned judgments and the passing away of the respondent / employee would have an impact on the case in hand.

7. The respondent was dismissed from service by way of punishment on account of the charges proved against him. He questioned the enquiry as well as its findings before the Labour Court, while challenging the order of punishment. The Labour Court framed the following issues:-

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| 1. Whether the enquiry was held against the principles of natural justice? | Yes |
| 2. Does complainant prove that the respondent has exercised unfair labour practice against him by way of victimization and for patently false reasons? | Yes |
| 3. If so, is complainant entitled to a relief of reinstatement, continuity of service and back wages? | Yes |

8. By its judgment dated 22.11.1990, the enquiry was set aside and the complaint was allowed granting reinstatement with continuity and full backwages to the respondent.

9. The petitioner preferred Revision (ULP) No.26 of 1990 before the Industrial Court, which was partly allowed. The judgment of the Labour Court dated 22.11.1990 was set aside in its totality. Consequentially, the conclusion of the Labour Court that the enquiry is vitiated on account of non-observance of the principles of natural justice, stood set aside. Surprisingly, the Industrial Court allowed the petitioner to lead evidence for

proving the charges against the respondent. It is, therefore, apparent that though the Industrial Court held that there is a material infirmity in the exercise of jurisdiction by the Labour Court, it did not direct the Labour Court to frame the following issues in addition to issue No.1 framed by the Labour Court:-

“Whether the complainant proves that the findings of the Enquiry Officer are perverse?”

10. It is trite law that unless the fairness of the enquiry and the findings of the Enquiry Officer are not adjudicated upon by the Labour Court or the Industrial Court as the case may be, the charges are not required to be proved once again before the said Court. In the matter of Maharashtra State Co-operative Cotton Grovers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande [2014 MLJ 339 : 2014 I CLR 878] and in the matter of Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam [2014 III CLR 547 : 2014 (4) Mah.L.J.687], this Court has referred to the law as is laid down by the Honourable Supreme Court and has concluded that the first two issues, which form the Part I judgment of the Court, are to be decided purely on the basis of the record and proceedings of the domestic enquiry conducted.

11. To add to the confusion, the petitioner did not pray before the Labour Court to frame the second issue and decide the fate of the enquiry. The deceased employee led evidence and the Corporation as well led its

evidence to prove the charges, despite the fact that in effect, the domestic enquiry already conducted, did not stand set aside under any order of any Court. Based on the evidence, the Labour Court again concluded that the enquiry is vitiated, there is no evidence before the Enquiry Officer to hold the employee guilty and the conclusion reached by the Enquiry Officer was prejudicial. Based on such conclusions, the Labour Court allowed the complaint. The Industrial Court, which could have gone into the illegality committed by the Labour Court, dismissed the Revision Petition, filed by the Corporation.

12. In the above backdrop, both the judgments impugned, deserve to be quashed and set aside. However, it cannot be ignored that there is no purpose in remanding the complaint back to the Labour Court, either for following the due procedure laid down in law or for conducting a *de novo* enquiry, since the employee has passed away.

13. The deceased respondent was dismissed by order dated 14.1.1988 made effective from 18.1.1988. In the peculiar facts of this case, I am of the view that the retiral benefits of the deceased employee, if not already paid, need to be ordered to be paid, as the deceased had worked till 17.1.1988. Shri Patil, learned Advocate for the legal heirs of the deceased respondent, makes a serious grievance that despite the order of reinstatement of the Labour Court as well as by the Industrial Court and these orders having not been stayed by this Court, the deceased employee

was not reinstated in service by the Corporation.

14. Learned Advocate for respondent submits on instructions that the Corporation has declared the respondent medically unfit and declined to reinstate him in service.

15. Considering the above and to balance the equities, I am of the view that the gratuity payable to the deceased employee, with effect from 18.1.1988 deserves to be granted with simple interest @ 3% p.a. effective from 18.2.1988 (as it payable one month after severing relationship of master - servant).

16. In the light of the above, this petition is partly allowed. The impugned judgments of the Industrial Court dated 22.1.1999 and of the Labour Court dated 1.11.1996 are quashed and set aside. The legal heir of the deceased employee, namely, Meenabai Shamrao Gangakhedkar, who is the wife of the deceased, shall be entitled for all retiral benefits, if not already paid inclusive of gratuity, calculated on the 18 years of service, put in by the respondent / employee with interest at the rate of 3% p.a. from 18.2.1988, if not already paid. Unpaid legal dues, therefore, shall be paid by the Corporation to the wife of the deceased employee within a period of ten weeks from today.

17. Rule is partly made absolute accordingly.

18. It is clarified that the amount of Rs.50,000/- already withdrawn by the deceased under the orders of this Court are not to be adjusted against the retiral benefits payable to the respondent. The L.Rs. of the deceased are released from security which the deceased had furnished to the Registrar of this Court.

19. All pending Civil Applications stand disposed off.

(RAVINDRA V. GHUGE, J.)

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