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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7035 OF 2012

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

...Petitioner...

Versus

Sambhaji Shankarrao Ghatkar
Age : 36 years, Occu.: Service,
R/o : Mhandol, Post Rohina,
Tq. Chakur, District Latur.

...Respondent...

.....

Shri D.S. Bagul, Advocate for petitioner.

Shri Y.R. Marlapalle, Advocate for respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 08.03.2016

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner – Corporation is aggrieved by the impugned judgment of the Industrial Court dated 13.3.2012 by which Complaint (ULP) No.120/2010 filed by the respondent – employee has been allowed. The order of punishment dated 28.2.2004 by which one year's increment

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was stopped permanently, has been quashed and set aside.

3] Shri Bagul, learned Advocate for the petitioner, submits that the Industrial Court has concluded in paragraph no.11 of the impugned judgment that important witnesses are not examined by the Corporation in the enquiry and there was no material for the Enquiry Officer to base his conclusions holding that the respondent is guilty. Shri Bagul submits that the respondent – driver was driving a Bus, which collided with a motorcyclist and the said accident led to the death of the motorcyclist after about four days.

4] He, however, submits that the Industrial Court concluded that the findings of the Enquiry Officer are perverse and hence the order of punishment deserves to be interfered with. He relies upon the judgment of this Court in the matters of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v. Vasant Ambadas Deshpande* (2014 I CLR 878) and *MSRTC, Beed v. Syed Saheblal* (2014 III CLR 547).

5] Shri Marlapalle, learned Advocate appearing on behalf of the respondent – employee, has strenuously supported the impugned judgment. Contention is that the

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motorcyclist was in a drunken state. The respondent was driving the Bus at the slow speed of about 10 Kms. per hour since he was passing through a crowded area and had slowed down the Bus. The drunken motorcyclist collided with the Bus and suffered injuries. As a consequence of which he passed away after about four days.

6] He further submits that a witness had stated that the motorcyclist had consumed liquor. There was no other evidence which could pinpoint the charge of reckless and negligent driving. The Industrial Court, therefore, rightly concluded that there is no evidence available for proving the charges against the respondent. He, therefore, prays for the dismissal of this petition with costs.

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

8] It is trite law that if a domestic enquiry is questioned on account of non-observance of the principles of natural justice or on the ground that the findings of the Enquiry Officer are not supported by evidence and hence are perverse, the Industrial or the Labour Court, as the case may be, has to frame two issues, which are as

under:-

a] Whether the complainant proves that the enquiry is vitiated on account of non-observance of the principles of natural justice ? and

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

The record reveals that these two issues were not framed by the Industrial Court before causing an interference in the findings of the Enquiry Officer.

9] It is trite law that these two issues have to be decided peremptorily since a verdict on these issues constitutes the part one judgment of the concerned Court. It does not amount to an interlocutory order. If the Court comes to a conclusion that the enquiry deserves to be set aside on any of the above referred two issues, the entire enquiry stands watered down and the employer acquires the right to conduct a *de-novo* enquiry, provided such a right is reserved in the written statement in the light of the judgment of the Hon'ble Supreme Court (five Judges) in the matter of *Karnataka State Road Transport Corporation v. Lakshmiddevamma* (2001 II CLR 640).

10] In the light of the above, the impugned judgment

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of the Industrial Court is unsustainable. This petition is, therefore, partly allowed. The impugned judgment of the Industrial Court dated 13.3.2012 is quashed and set aside. Complaint (ULP) No.120/2010 is remitted back to the Industrial Court for framing the above mentioned two issues.

11] Needless to state, the Industrial Court shall deal with the abovesaid two issues on the basis of the original record and proceedings of the enquiry and in the light of the ratio laid down by this Court in the case of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v. Vasant Ambadas Deshpande* (supra).

12] Since the petitioner has also raised an issue of delay as the order of punishment dated 28.2.2004 has been challenged in the complaint filed in 2010, the Industrial Court shall deal with the said issue. Contentions of the parties on the said issue are kept open.

13] Rule is made partly absolute in the above terms.
No order as to costs.

(RAVINDRA V. GHUGE, J.)