

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7265 OF 2012

- 1 Maharashtra State Road
Transport Corporation,
State Road Transport Office,
Beed, District Beed.
Through its Divisional Controller,
Shri. Dattu Bhausahab Mane,
Age : 54 years, Occu.: Service,
R/o : Beed, District Beed.

- 2 Depot Manager,
State Road Transport,
Dharur Depot, Dharur,
District Beed.

...PETITIONERS

VERSUS

Shri Waman Hanumantrao Chaudhari,
Age : 58 years, Occu.: Service,
R/o : Dharur, District Beed.

...RESPONDENT

WITH
WRIT PETITION NO.7266 OF 2012

- 1 Maharashtra State Road
Transport Corporation,
State Road Transport Office,
Beed, District Beed.
Through its Divisional Controller,
Shri. Dattu Bhausahab Mane,
Age : 54 years, Occu.: Service,
R/o : Beed, District Beed.

- 2 Depot Manager,
State Road Transport,
Dharur Depot, Dharur,
District Beed.

...PETITIONERS

VERSUS

Shri Vitthal Gangadharrao Galphade,
Age : 48 years, Occu.: Service,
R/o : Dharur, District Beed.

...RESPONDENT

WITH

WRIT PETITION NO.7278 OF 2012

- 1 Maharashtra State Road
Transport Corporation,
State Road Transport Office,
Beed, District Beed.
Through its Divisional Controller,
Shri. Dattu Bhausahab Mane,
Age : 54 years, Occu.: Service,
R/o : Beed, District Beed.

- 2 Depot Manager,
State Road Transport,
Dharur Depot, Dharur,
District Beed.

...PETITIONERS

VERSUS

Shri Vijay Prasad Suraj Prasad Awasthi,
Age : 56 years, Occu.: Service,
R/o : Dharur, District Beed.

...RESPONDENT

WITH

WRIT PETITION NO.7281 OF 2012

- 1 Maharashtra State Road
Transport Corporation,
State Road Transport Office,
Beed, District Beed.
Through its Divisional Controller,
Shri. Dattu Bhausahab Mane,
Age : 54 years, Occu.: Service,
R/o : Beed, District Beed.

2 Depot Manager,
State Road Transport,
Dharur Depot, Dharur,
District Beed.

...PETITIONERS

VERSUS

Shri Manik Shankarrao Galphade
Age : 50 years, Occu.: Service,
R/o : Dharur, District Beed.

...RESPONDENT

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Mr. R.N. Jain, Advocate h/f Mr. D.S. Bagul, Advocate for the
petitioners.

Mr. Y.R. Marlapalle, Advocate for the respondents.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/03/2016

ORAL JUDGMENT :

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

2. Learned Advocates for the petitioner and the respondents in all
these matters submit that all these matters involve an identical issue
in law. The facts are virtually identical. In one identical group of
petitions in the matter of MSRTC and another Vs. Shivaji Bhairuba
Dhapatte, this Court, by its judgment dated 10/12/2014 reported in
2015(2) Lj.Soft 73 has, after placing reliance upon the earlier
judgments of the Hon'ble Supreme Court and this Court, has

quashed and set aside the judgment of the Industrial Court and remitted Complaint (ULP) Nos. 39/2006 and 40/2006 to the Industrial Court for a decision afresh.

3. I have considered the joint statement of the learned Advocates. In paragraph Nos. 5 to 12 of the judgment of this Court in the matter of MSRTC Vs Shivaji Bhairuba Dhapate (supra), this Court has observed as under :-

"5. In both the cases before me, though the domestic enquiry was questioned on the grounds of non-adherence to the principles of natural justice and the findings of the Enquiry Officer, the Industrial Court was expected to frame two preliminary issues and which are required to be decided peremptorily in the light of the crystallized position in law. No such issue was framed.

6. While deciding the complaints by the impugned judgments dated 22.12.2011, the Industrial Court has arrived at its conclusion in paragraph Nos.16 and 22, whereby it is concluded that the domestic enquiry was not conducted in accordance with the principles of natural justice and a fair and proper opportunity was not given the workman to defend himself. It was thus concluded that the enquiry is not fair and proper and the Enquiry Officer's findings based on such enquiry, are perverse. The domestic enquiry was, therefore, held to be vitiated.

7. The procedure adopted by the Industrial Court and the conclusions arrived at are in opposition to all tenets of law. The procedure that is required to be followed was considered in the case of Delhi Cloth and General Mills Company Limited Vs. Ludh. Budh Singh (1972 (1) SCC 595) and in various other judgments subsequent thereto. A similar view has been taken in the case of Shambhu Nath Goyal Vs. Bank of Baroda (1984 (4) SCC 491) as regards the procedure that is required to be followed while setting aside an enquiry. This position has been taken into account by this Court in the case of *MSRTC Beed (supra)*.

8. This Court has also concluded in the case of Maharashtra Cotton Growers' Marketing Federation Limited and another Vs. Vasant Ambadas Deshpande [2014(3) Mh.L.J.339] that the fairness of the enquiry and the findings of the Enquiry Officer are to be considered on the basis of the enquiry proceedings and the evidence recorded in the enquiry.

9. In the light of the above, the impugned judgments in both these petitions are unsustainable and are, therefore, quashed and set aside. Complaints (ULP) Nos. 39 of 2006 and 40 of 2006 are remitted back to the Industrial Court, Aurangabad so as to enable the Industrial Court to consider the procedure that is required to be followed as has been laid down in the case of *MSRTC Beed (supra)*. It is expected that the Industrial Court shall, accordingly, frame two preliminary issues as regards the fairness of the enquiry as well as the findings of the Enquiry

Officer and decide the same peremptorily.

10. *The Industrial Court, in the event answers the two preliminary issues in the affirmative, it shall take into account the fact that the petitioner MSRTC has reserved its right to conduct a de novo enquiry before the Industrial Court, which is in tune with the ratio laid down by the Apex Court in the case of Bharat Forge Company Ltd. Vs. A.B. Zodge and another (AIR 1996 SC 1556) and Karnataka State Road Transport Corporation Vs. Laxmidevamma & another (AIR 2001 SCW 1981).*

11. *The litigating parties shall appear before the Industrial Court on 9.1.2015. Notices of hearing, therefore, need not be issued by the Industrial Court. Needless to state, this Court has not dealt with the merits of the matter. The Industrial Court shall decide both these cases on their own merits and without being influenced by any of the observations made in this order. Both the litigating parties are at liberty to canvass their contentions and all contentions, therefore, are kept open.*

12. *In the result, both these Writ Petitions are accordingly allowed. Rule is made absolute with no order as to costs."*

4. Considering the identical situation involved in these four matters as well, all these 4 writ petitions are partly allowed. The impugned judgment of the Industrial Court in all these 4 matters are quashed and set aside. Complaint (ULP) Nos. 42/2006, 43/2006,

44/2006 and 45/2006 are remitted back to the Industrial Court to be decided in the light of the directions set out in paragraph Nos. 10 and 11 of the judgment reproduced as above.

5. Rule is made absolute in the above terms with no order as to costs.

(RAVINDRA V. GHUGE, J.)