

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2514 OF 2015

Pandurang Gangaramji Karhale
Age: 53 years, Occu.: Labour,
R/o Yeldarkar Colony, Parbhani,
Dist. Parbhani.

..PETITIONER

VERSUS

1. State of Maharashtra
(deleted as per Court's order)
2. M.S.R.T.C., Parbhani Division,
Through it's Divisional Controller,
Tq. & Dist. Parbhani.
3. M.S.R.T.C., Parbhani Division,
Through its Divisional Traffic
Superintendent (DFL) Parbhani
Division, Dist. Parbhani.

..RESPONDENTS

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Mr. Mukund P. Ambekar, Advocate alongwith Mrs. M.D. Thube-
Mhase, Advocate for petitioner.

Mr. A.D. Wange, Advocate for Respondent Nos.2 and 3.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 9th FEBRUARY, 2016**

ORAL JUDGMENT:

1. The petitioner is aggrieved by the impugned judgment of
Industrial Court dated 21.08.2014 by which Revision ULP No.

174/2013 filed by the respondent-MSRTC has been allowed and the dismissal of the petitioner has been upheld.

2. The petitioner submits that he had joined employment with respondent-Corporation as a bus conductor in 1990. On 25.5.2008 when the bus was subjected to a surprise check, the petitioner-conductor was alleged to have resold used tickets. The charge-sheet dated 18.06.2008 was served upon the petitioner. He replied to the charge-sheet on 20.06.2008. After conducting a departmental/domestic enquiry, the respondent issued a show cause notice dated 12.11.2008 proposing the punishment of dismissal from service.

3. The petitioner submits that he challenged the show cause notice dated 12.11.2008 by filing Complaint ULP NO. 240/2008 before the Labour Court, Nanded. The application for interim relief dated 23.08.2010 was rejected by the Labour Court. His Revision ULP No. 52/2010 was dismissed by the Industrial Court and finally the petitioner was dismissed from service by order dated 21.09.2012.

4. The petitioner submits that he filed a Complaint ULP No. 64/2012 before the Labour Court for challenging the dismissal dated 21.09.2012. By Part-I judgment dated 09.05.2013, the Labour Court concluded that the enquiry was vitiated and the findings of the enquiry officer were perverse. Thereafter, the respondent-corporation was given an opportunity to conduct a denovo enquiry. The petitioner filed an affidavit vide Exhibit U-9 denying the charges leveled upon him. The respondent-Corporation did not lead any evidence before the Labour Court and did not conduct a denovo enquiry. The cross examination of the petitioner conducted prior to the Part-I judgment dated 09.05.2013 was adopted by the respondent-Corporation. By judgment dated 25.07.2013, the Labour Court allowed the complaint partly and directed the reinstatement of the petitioner in service with continuity. The punishment of dismissal was converted into a punishment of stoppage of three annual increments.

5. The petitioner submits that he has not challenged the judgment of the Labour Court dated 25.07.2013 before the

Industrial Court. However, the respondent-Corporation filed Revision ULP No. 174/2013 and challenged the judgment dated 25.07.2013. The Part-I judgment dated 09.05.2013 was not challenged by the respondent before the Industrial Court.

6. The petitioner has drawn my attention to the impugned judgment of the Industrial Court and the operative part of the judgment, whereby the Industrial Court has quashed and set aside the Part-I judgment dated 09.05.2013 as well as the judgment dated 25.07.2013, upheld the domestic enquiry and the dismissal order and has dismissed the complaint filed by the petitioner.

7. The petitioner submits that when the Part-I judgment dated 09.05.2013 was not challenged by the respondent-Corporation before the Industrial Court, the Industrial Court could not have sprung a surprise by setting aside the Part-I judgment suo moto. Based on such conclusions, the revision of the respondent was allowed.

8. The petitioner further submits that when the respondent did not conduct a denovo enquiry before the Labour Court, it amounts to giving up the charges. Once the charges are not proved, there is no question of awarding any punishment to the petitioner. Yet, the petitioner has accepted the punishment of stoppage of three annual increments as was directed by the Labour Court, which is now challenged in this petition. The Industrial Court was only to look into whether the findings of the Labour Court were perverse or not. While doing so, it has set aside the Part-I judgment dated 09.05.2013 without the said issue having been addressed to the Industrial Court.

9. The learned Counsel for the respondent-Corporation has strenuously supported the impugned judgment. His contentions is that the past service record of the petitioner is highly blemished. The Industrial Court noticed the perversity in the findings of the Labour Court. It also noticed the perversity in the Part-I judgment of the Labour Court and therefore set aside the Part-I judgment dated 09.05.2013. The Industrial Court noticed that the enquiry

was conducted in a fair and proper manner. The findings of the enquiry officer were also proper. The enquiry was therefore sustained.

10. Mr. Wange further submits that the Industrial Court then considered the proportionality of the punishment. It was noticed that the punishment of dismissal awarded to the petitioner was commensurate to the gravity and seriousness of the misconduct. The past service record was highly blemished and hence the Industrial Court has rightly set aside the final judgment of the Labour Court dated 25.07.2013. As a natural consequence, while upholding the dismissal of the petitioner, the Industrial Court dismissed the complaint. He further submits that neither is the impugned judgment perverse nor could it be said to be erroneous. He therefore prays for the dismissal of the petition.

11. I have considered the submissions of the learned Counsels.

12. The undisputed factors in this case are with regard to the dismissal of the petitioner dated 21.09.2012, the Part-I judgment of the Labour Court dated 09.05.2013 and the final judgment of the Labour Court dated 25.07.2013.

13. While considering the legality of the judgment of the Industrial Court, it would be necessary to revisit the judgment of the Labour court dated 25.07.2013. In doing so, cognisance has to be taken of the Part-I judgment dated 09.05.2013 delivered by the Labour Court by which the enquiry was set aside.

14. The Revision Petition No. 174/2013 filed by the respondent begins with the following sentences:

“That being aggrieved by the judgment and order dated 25.07.2013 passed in complaint ULP NO. 64/2012 by Hon'ble Labour Court Nanded in favour of the respondent conductor this revision is being filed within reasonable time.”

15. Prayer clauses set out by the respondent in the revision petition read as under:

“1) *The revision petition filed by the MSRT Corporation may kindly be allowed, and judgment and order in Complaint ULP No. 64/2012 dated 25.07.2013 passed by Labour Court, Nanded may kindly be set aside.*

2) *That record and proceeding in complaint ULP No. 64/2012 dated 25.07.2013 may kindly be called from Labour Court, Nanded.*

3) *It may kindly be declare that the petitioner corporation has not engaged in any unfair labour practice while issuing dismissal dated 21.09.2012.*

4) *Any other suitable relief in the favour of petitioner corporation may kindly be granted.”*

16. With the assistance of the learned Counsel for both the sides, I have myself gone through the memo of the revision petition. There is no whisper in the revision petition nor the prayer clauses that the Part-I judgment of the Labour Court be set aside and the enquiry deserves to be restored. In fact, the reproduced part of the revision petition as above would indicate that the respondent has specifically challenged the final judgment of the Labour Court dated 25.07.2013.

17. Even in the impugned judgment, the Industrial Court has observed in paragraph no.1 that the revisional petitioner (MSRTC) is aggrieved and dissatisfied by the judgment and order dated 25.07.2013 delivered by the Labour Court.

18. In the above back drop, the Industrial Court could not have considered the legality and validity of the Part-I judgment dated 09.05.2013 suo moto. Without there being any challenge posed and without the said issue being addressed to the Industrial Court, it could not have sprung a surprise to the petitioner by dealing with the said issue and setting aside the Part-I judgment. For this reason, the impugned judgment of the Industrial Court to the extent of setting aside the Part-I judgment deserves to be quashed and set aside.

19. In the above fact situation, it needs to be scrutinised as to whether the respondent-Corporation, after setting aside the domestic enquiry has conducted a denovo enquiry or not. It is a

settled law (read *Maharashtra State Cotton Growers Marketing Federation Vs. Vasant Ambadas Deshpande* reported in **2014 MLJ 339** and **2014 I CLR 878**) that the fairness of the enquiry and the perversity in the findings of the enquiry officer are not to be scrutinised on the basis of fresh evidence adduced before the Labour Court.

20. These two aspects of the enquiry have to be scrutinised on the basis of the oral and documentary evidence recorded before the enquiry officer. Whether the enquiry is conducted by adhering to the principles of natural justice has to be scrutinised from the enquiry proceedings. Similarly, whether the findings of the enquiry officer are perverse or not is to be assessed on the basis of the reasons and conclusions set out in the report. As such, the evidence recorded before the Labour Court when it dealt with the first and second issues regarding the enquiry, cannot substitute the conducting of a *denovo* enquiry since the issue nos.1 and 2 were totally different than the issue of conducting a *denovo* enquiry.

21. I find from the record that the respondent-Corporation, probably to reduce its hard-work, adopted the evidence recorded before the Labour Court pursuant to issue nos. 1 and 2 which have nothing to do with the denovo enquiry. The Labour Court has noted in paragraph no.6 of the impugned judgment that the respondent-Corporation did not adduce any evidence.

22. It is to be noted that a denovo enquiry has to be conducted by an employer if the right to do so is reserved in the written statement. This stage arrives after the enquiry is set aside. It is therefore an inescapable conclusion that if an employer declines to conduct a denovo enquiry before the Labour Court, it would mean that the employer has given up its right to conduct an enquiry and prove the charges against the employee.

23. In this peculiar situation, the charges cannot be said to be proved and the same would therefore fail. In this back drop, the Labour Court had no option but to allow the complaint, though I find it a bit surprising that the Labour Court has awarded

punishment to the petitioner. I am not going into the said issue since the petitioner has not chosen to challenge the punishment imposed by the Labour Court before the Industrial Court.

24. The petitioner has made a feeble attempt to assail the imposition of punishment by the Labour Court directly before this Court without preferring a revision petition. In the light of the judgment of this Court in the case of *Engineering Employees Union Vs. Devidayal Rolling and Refineries Pvt. Ltd., Thane* reported in *1986 Mh.L.J. 331* and *1986 (52) FLR 40*, an order passed by the Labour Court under the MRTU & PULP Act, 1971, cannot be directly challenged before this Court without exhausting the remedy under Section 44 of the 1971 Act.

25. In the above back drop, the Industrial Court ought to have consider that neither was the Part-I judgment challenged before it nor did the respondent-Corporation conduct a denovo enquiry before the Labour Court. Though the Industrial Court has taken the pains to write a judgment running into 33 pages, I find it

to be a futile exercise. In the absence of a challenge to the Part-I judgment and in the absence of conducting a denovo enquiry, it was an 'open and shut case' before the Industrial Court. It neither could have reopened the aspect of the domestic enquiry, nor could have considered the proportionality of the punishment since the Part-I judgment had attained finality and no charge was proved before the Labour Court by conducting a denovo enquiry.

26. In the light of the above, this petition succeeds and is allowed. The impugned judgment of the Industrial Court dated 21.08.2014 is quashed and set aside. Revision ULP No. 174/2013 stands dismissed.

27. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)