

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2736 OF 2015
WITH
WRIT PETITION NO. 2737 OF 2015
WITH
WRIT PETITION NO. 3027 OF 2015

Bhatu Kautik Kumbhare,
Age 54 years, Occ. Service
R/o Prabhat Nagar, Deopur Dhule.

..Petitioner

Versus

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

..Respondent

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Advocate for Petitioner : Shri Paranjape Prakash S.
Advocate for Respondent : Shri Jain Rakesh h/f Shri Bagul D.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 02, 2016

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ORAL JUDGMENT:-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petitions are taken up for final disposal.
4. Considering the order that I intend to pass, I am not

required to advert to the entire submissions of the learned Advocates for the respective parties. However, while remanding the matters to the Industrial Court, I intend to ensure that the issue which needs to be dealt with by the Industrial Court shall be specifically set out in this order.

5. In all these three matters, issue of three different accidents, committed by the petitioner / Driver, while driving the MSRTC Bus, are at issue. In each of these three accidents, death of one person, has occurred, meaning thereby, that three persons have died. In each of these matters, the petitioner has been awarded a punishment of stoppage of increments for limited periods, mentioned in the orders which have been challenged by the petitioner in independent three ULP Complaints before the Industrial Court.

6. The petitioner had questioned the fairness of the enquiry and the findings of the Enquiry Officer. In each of these matters, the following two issues were not specifically framed:-

(A) Whether the complainant proves that the enquiry is vitiated in account of non-observance of the principles of natural justice?

(B) Whether the complainant proves that the findings of the Enquiry Officer are perverse?

7. Despite the above, it appears from the impugned judgment that the litigating sides have addressed the Industrial Court on the issue of perversity in the findings of the Enquiry Officer. Considering their submissions, the Industrial Court has come to a conclusion that the evidence on record before the Enquiry Officer support his conclusions and therefore, the findings arrived at can be said to be based on the oral and documentary evidence available. The contention that the findings are perverse is thus, rejected in all these three matters, by the Industrial Court.

8. From the discussion in the impugned judgment, by which all these three complaints filed by the petitioner have been dismissed by the Industrial Court, I do find that the evidence before the Enquiry Officer was considered by the Industrial Court and after concluding that the findings are supported by the available material, the Industrial Court has rightly held that the Enquiry Officer's findings cannot be termed as being perverse. The challenge to this extent thus stands rejected in this petition and shall not be reopened after the three complaints are remanded to the Industrial Court.

9. In so far as the fairness of the enquiry is concerned, there is no discussion in the impugned judgments. Though it cannot be overlooked that neither of the litigating sides have taken the efforts to request the Industrial Court to frame the issue with regard to the fairness of the enquiry, the duty cast on the Industrial Court in framing a proper issue, has not been performed and which cannot be ignored. The Industrial Court was obliged to frame the proper issues, in view of the law laid down by this Court in the matter of Permanent Magnets Vs. Vinod Vishnu Wani and others [2002 (93) FLR, 32].

10. As such, since the contention of the petitioner that the challenge to the fairness of the enquiry has not been dealt with by the Industrial Court, I am constrained to remand the matter to the Industrial Court for framing an additional issue as under:-

“ Whether the complainant proves that the enquiry is vitiated for non-observance of the principles of natural justice?”

11. In the light of the law laid down by this Court in the case of Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam [2014 III CLR 547 = 2014 (4) Mah.L.J.687] and Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande [2014

MLJ 339 : 2014 I CLR 878], the Industrial Court shall allow the litigating sides to address the Court only on the basis of the R & P of the domestic enquiry and no further evidence will be permitted to the adduced.

12. If the above issue is answered in the negative, the parties will also address the Industrial Court as to whether the punishment awarded is shockingly disproportionate to the gravity and seriousness of the misconduct. Needless to state, the past service record of the petitioner will also be considered since a blemished service record amounts to an aggravating factor and would, therefore, aggravate the seriousness and the gravity of the misconduct proved against the petitioner in the enquiry.

13. In the light of the above, these petitions are partly allowed only to the extent of the directions set out in the above paragraph Nos. 10, 11 and 12. The impugned judgments of the Industrial Court are set aside only for the purpose of enabling the Industrial Court to consider the above issues. The Complaints (ULP) Nos. 86 of 2012, 14 of 2013 and 13 of 2013 are remitted back to the Industrial Court only for the above purpose. Needless to state, the issue of perversity in the findings of the Enquiry Officer having been answered and this Court having rejected the challenge to that extent, stands closed.

14. The litigating sides shall appear before the Industrial Court on 20.8.2016 and formal notices need not be issued.

15. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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