

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

WRIT PETITION NO. 11872 OF 2015

Maharashtra State Road Transport Corporation,
Dhule Division, Dist. Dhule
Through the Divisional Controller

..PETITIONER

VERSUS

Dilip Appaji Bagal

..RESPONDENT

....

Mr. U.B. Shriram, Advocate holding for Mr. D.S. Bagul, Advocate
for petitioner.

....

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 17th FEBRUARY, 2016**

ORAL ORDER :

1. Despite service of Court notice on the sole respondent, the said respondent has neither caused an appearance through an advocate nor in person.

2. While issuing notice to the respondent, this Court had considered the submissions of the learned Counsel for the petitioner and have recorded the said submissions in its order dated 14.12.2015.

3. It would be apposite to reproduce paragraph nos.1 to 4 of the order dated 14.12.2015 as under:

“1. The Petitioner/ Corporation is aggrieved by the judgment and order dated 10.03.2015 by which the Industrial Court, Dhule has allowed Complaint (ULP) No.50/2013 and set aside the order of punishment dated 14.08.2003 and has fully exonerated the Respondent. The Respondent/Employee has committed an accident in which the motorcyclist has died.

2. The learned Advocate for the Petitioner submits that the original Complainant / Respondent herein, who challenged his order of punishment dated 14.08.2003 before the Industrial Court, had neither pleaded, nor prayed for setting aside the domestic enquiry and for branding the findings of the Enquiry Officer as being perverse, in the light of the observations of this Court in paragraphs 31 and 32 of the judgment delivered in the case of MSRTC, Beed v/s Syed Saheblal Syed Nijam, 2014 (III) CLR 547 : 2014(4) Mh.L.J. 687.

3. Without framing two issues i.e. whether, the Complainant proves that the enquiry is vitiated for non observance of the principles of natural justice and whether, the Complainant proves that the findings of the Enquiry Officer are perverse or not, the Industrial Court

in paragraph 9 has concluded that the findings of the Enquiry Officer are improper. The enquiry, therefore, has been set aside. In paragraph 10, the Industrial Court has concluded that the enquiry is illegal since the Respondent was acquitted of the charges levelled upon him by the court of criminal jurisdiction in Summary Case No.1276/2003.

4. At the outset, it needs to be recorded that it does not appear from the impugned judgment that the Petitioner Corporation has cited the ratio laid down by this Court in the case of Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v/s Vasant Ambadas Deshpande, 2014(1) CLR 878 : 2014(3) Mh.L.J. 339 and in the case of MSRTC, Beed v/s Syed Saheblal Syed Nijam, 2014 (III) CLR 547 : 2014(4) Mh.L.J. 687. Had the Petitioner Corporation cited these two judgments, the Industrial Court would have realized that there was no challenge to the findings of the Enquiry Officer as well as the legality of the enquiry. Hence, the Industrial Court was left with no other option but to decide one issue as to whether, the punishment awarded to the Respondent/ Employee was proportionate and commensurate to the seriousness and gravity of the misconduct.”

4. With the assistance of Mr. Bagul, learned Counsel for the petitioner, I have gone through the entire petition paper book, past service record of the respondent and the impugned judgment of the Industrial Court.

5. It is apparent that in paragraph nos.9 and 10, the Industrial Court has set aside the enquiry and in one stroke has allowed the complaint without following the law laid down by this Court in the matter of M.S.R.T.C. Beed (supra) and Vasant Ambadas Deshpande (supra). It is also apparent that the respondent has challenged the enquiry and the findings in paragraph nos.7 and 8 of the complaint. The Industrial Court has concluded that the findings are perverse (paragraph no.9) and the enquiry is illegal (paragraph no.10) in the impugned order.

6. In the light of the above, this petition is partly allowed. The impugned judgment and order dated 10.03.2015 is quashed and set aside. Complaint ULP No. 50/2013 is remitted to the Industrial Court, Dhule for considering the complaint afresh and by framing proper issues.

7. Industrial Court, Dhule shall issue notices to the litigating sides and shall decide the Complaint ULP No. 50/2013 afresh and on its own merits in the light of the above observations.

(RAVINDRA V. GHUGE, J.)