

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

WRIT PETITION NO. 12041 OF 2015

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

..PETITIONER

VERSUS

Kailas Nago Thakur

..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 is aggrieved by the judgment and order dated 27.03.2015 delivered by the Industrial Court, Dhule by which Complaint (ULP) No.14/2014 filed by the Respondent has been allowed.

2. The Petitioner submits that the domestic enquiry was conducted against the Respondent Bus Conductor for having committed acts of misappropriation. He was awarded the punishment of stoppage of one annual increment for three years dated 28.09.2010. He challenged the same in Complaint (ULP) No.14/2014 before the Industrial Court. The Industrial Court by the impugned judgment has allowed the complaint by concluding that an independent Enquiry Officer was not appointed, enquiry is illegal, not fair and proper and the punishment imposed on the basis of such enquiry cannot be sustained.

3. I find that the Industrial Court has noted in paragraph 3 that the Respondent Employee had alleged that the charges levelled upon him are false, enquiry was not conducted in a fair and proper manner and

hence, the punishment imposed upon him deserves to be set aside. I also find that the Industrial Court has not framed the vital two issues, i.e. whether, the Complainant proves that the enquiry is vitiated on account of non observance of the principles of natural justice? and whether, the findings of the Enquiry Officer can be branded as being perverse?

4. I also find that the Industrial Court has failed to follow the procedure as laid down in law in the light of 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. Despite the same, the Industrial Court has set aside the enquiry in paragraph 7 of the impugned judgment and has straightaway proceeded to allow the complaint.”

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 no7, 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 despite the respondent having prayed for setting aside the domestic enquiry and findings of the enquiry officer as perverse, the Industrial Court by itself concluded that the findings are perverse and the enquiry is illegal (paragraph no.7) in the impugned order, without framing the two issues noted above.

6. In the light of the same, this petition is partly allowed. The impugned judgment and order dated 27.03.2015 is quashed and set aside. Complaint ULP No. 14/2014 is remitted to the Industrial Court, Dhule for considering the complaint afresh and by framing the two issues, as per the ratio laid down in the Vasant Ambadas Deshpande case (supra) and M.S.R.T.C., Beed (supra).

7. The Industrial Court, Dhule shall issue notices to the litigating sides and shall decide Complaint ULP No. 14/2014 afresh and on its own merits.

(RAVINDRA V. GHUGE, J.)