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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11935 OF 2015

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

Versus

Shri. Mohammad Jahur Badruddin Ansari,
Age : 51 yrs, Occu.: Service,
R/o : Mohammad Nagar, Plot No.5(A)
Deopur, District Dhule.
...Respondent...

.....

Shri D.S. Bagul, Advocate for petitioner.
Shri A.T. Shaikh, Advocate for respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 16.02.2016

ORAL JUDGMENT :

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

2] The respondent was a Driver posted at Dhule Depot. He had completed 25 years of service. While on duty on the Dhule-Surat Bus on 3.3.2011, the Bus collided

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with a bullock-cart near village Khede. The accident was said to have occurred on account of the negligent driving of the respondent. One person died alongwith the bullock and a woman was injured in the said accident.

3] The petitioner issued a charge-sheet-cum-show cause notice to the respondent and after conducting a full-fledged departmental enquiry, imposed the punishment of reduction of pay by three stages. The respondent preferred an appeal before the first appellate authority and the decision of the disciplinary authority was sustained.

4] The respondent filed Complaint (ULP) No.26/2013. It was contended in paragraph nos.4 and 5 of Complaint (ULP) No.26/2012 that the enquiry was conducted in a slipshod manner and the principles of natural justice were not followed. There was no evidence against the respondent to conclude that the charges are proved against him. As such the fairness of the enquiry and the findings of the Enquiry Officer were challenged.

5] The Industrial Court has allowed the complaint by the impugned judgment dated 30.4.2015 by concluding in paragraph nos.6 and 8 that the Enquiry Officer has not

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followed a proper procedure while recording the evidence in the enquiry and hence the domestic enquiry conducted against the respondent was not fair and proper. The findings recorded by the Enquiry Officer are perverse. The Industrial Court, therefore, granted the relief of setting aside the order of punishment and restored the salary of respondent by setting aside the order of punishment. Costs were also imposed on the petitioner – Corporation

6] The learned Apex Court in the case of *Workmen of Motipur Sugar Factory v. Motipur Sugar Factory* (**AIR 1965 SC 1803**) has concluded that when the fairness of the enquiry and the findings of the Enquiry Officer are challenged, following two issues need to be cast :

[1] Whether the complainant proves that the domestic enquiry is vitiated for non-observance of the principles of natural justice ?

[2] Whether the complainant proves that the findings of the Enquiry Officer are perverse ?

7] The learned Apex Court (five Judges Bench) in the matter of *Karnataka State Road Transport Corporation v. Lakshmiddevamma & another* (**2001 II CLR 640**) has

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concluded that if a domestic enquiry conducted by any employer is set aside for any reason whatsoever by the Court, the employer can conduct a *de-novo* enquiry before the Court to prove the charges leveled upon the employee, provided such a right is reserved in the written statement.

8] I find from the proceedings that the Industrial Court has lost sight of the fact that when the enquiry was under challenge, it should have framed the above mentioned two issues. The law laid down by this Court in the case of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v. Vasant Ambadas Deshpande* (2014(1) CLR 878) and in the case of *MSRTC, Beed v. Syed Saheblal Syed Nijam* (2014 III CLR 547) has not been considered. Without framing the above mentioned two issues and without dealing with the said two issues in the light of the ratio of this Court in the cases of *Vasant Ambadas Deshpande* (supra) and *MSRTC, Beed* (supra), the entire complaint has been allowed by one judgment.

9] In the light of the above, the impugned judgment is rendered unsustainable. Same is, therefore, quashed and set aside. Complaint (ULP) No.26/2013 is remitted to

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the Industrial Court, Dhule, for framing of the two issues, as noted above.

10] The Industrial Court shall, therefore, issue notices to both the litigating sides in the said complaint and shall frame the two issues mentioned above. It shall decide the said two issues on the basis of the record and proceedings of the enquiry as is the law laid down by this Court in the case of *Vasant Ambadas Deshpande* (supra). After deciding the said two issues, the Industrial Court then shall proceed with the matter and decide the complaint in accordance with law.

11] Writ petition is accordingly partly allowed and Rule is made partly absolute. No order as to costs.

(RAVINDRA V. GHUGE, J.)