

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 90 OF 2012
IN WRIT PETITION NO. 7606 OF 2011

WITH
CIVIL APPLICATION NO. 127 OF 2012
IN LETTERS PATENT APPEAL NO. 90 OF 2012

Maharashtra State Electricity Distribution
Company Limited
Senapati BAAT Marg,
Near Chatushrungi Mandir,
Pune 411 016.

... Appellant/Applicant
(Orig. Petitioner)

Vs.

Mr. Sanjay Shivaji Adhav
Matoshri Ramabai Ambedkar Nagar
Deolaligaon, Nashik Road
Nashik District

... Respondent
(Org. Respondent)

.....
Mrs. Kavita Anchan & Mr. Kunal Chheda i/b. M.V. Kini & Co. for
the Appellant-MSEB.
Mr. M.S. Topkar for the Respondent.
.....

**CORAM : A. S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : 06th December, 2016

ORAL JUDGMENT (PER A. S. OKA, J.) :

1. By order dated 21st November 2016, parties were put to notice that the Letters Patent Appeal will be taken up for final hearing as the same is against an interim order passed by the

learned Single Judge while admitting the Writ Petition filed by the appellant.

2. With a view to appreciate the controversy involved, a reference to the factual aspect will be necessary. The respondent was an employee of the appellant. It appears that in view of involvement of the respondent in criminal proceedings under the Prevention of Corruption Act, 1988, by taking recourse to Regulation 90 of the Maharashtra State Electricity Distribution Company Limited Employees Service Regulations (for short "the said Regulations"), employment of the respondent was terminated without following the procedure prescribed by Regulation 88 of the said Regulations. Regulation 88 provides for holding a full fledged departmental enquiry in relation to a major misconduct. By invoking Regulation 90, without holding a regular departmental enquiry, the employment of the respondent was terminated.

3. Therefore, the respondent filed a complaint complaining of unfair labour practice under Sub-section (1) of Section 28 read with item 1(a, b, c, d, f, g) of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 (for short "the said Act"). Learned Judge of the Labour Court, by judgment and order dated 29th November 2010, upheld the contention of the respondent that the appellant engaged in unfair labour practice under items 1(a, b, d) of Schedule IV of the said Act by terminating the employment of the respondent. Therefore, the learned Judge of the Labour Court directed

reinstatement of the respondent with continuity of service alongwith full back wages as well as the consequential reliefs with effect from 2nd July 2009. Being aggrieved by the decision of the Labour Court, a Revision application under Section 44 of the said Act was preferred by the appellant before the Industrial Court. Learned Member of the Industrial Court, by the judgment and order dated 18th April 2011, upheld the findings of the learned Judge of the Labour Court. The learned Member of the Industrial Tribunal held that the act of termination of employment of the respondent by following summary procedure under Regulation 90 amounts to unfair labour practice. Being aggrieved by the decisions of the Labour Court and the Industrial Court, Writ Petition No.7606 of 2011 was filed before the learned Single Judge by the present appellant-employer. The impugned order dated 27th February 2012 passed by learned Single Judge in the said petition reads thus:

"1. Heard Learned Advocate for the Petitioner and Respondent. The case registered against the Respondent under the Prevention of Corruption Act, is pending before the concerned Criminal Court. The outcome of such criminal trial will have bearing on the controversy involved in the Writ Petition.

2. Rule.

3. Mr. Topkar waives service for the Respondent.

4. By way of interim Order, the Order directing reinstatement with all consequential benefits including continuity of service is not stayed, however the order regarding back wages shall remain stayed. Needless to state that, the reinstatement will be subject to final outcome of.

the writ petition and subject to final outcome of the Criminal case, which is pending against the Respondent."

4. Learned counsel appearing for the appellant relied upon the decision of Division Bench of this Court dated 23rd June 2010 passed in Writ Petition No. 4692 of 2010 (Shri Arun Kumar Jagannath Patil vs. The Maharashtra State Electricity Distribution Co. Ltd. & others). Learned counsel submits that Division Bench was dealing with the case where an employee of the appellant was caught red handed while accepting bribe of Rs.300/-. The Division Bench held that considering the serious nature of misconduct, there was every justification for taking recourse to the said Regulation 90 for terminating the employment without following the procedure prescribed under the said Regulation 88. The submission of learned counsel appearing for the appellant is that by ignoring the said Regulation 90 and the said decision dated 23rd June 2010, learned Single Judge, while admitting the petition filed by the appellant, stayed only the order regarding back wages. Learned Single Judge refused to grant stay to the order of reinstatement. She relied upon the order dated 17th October 2011 passed in Writ Petition No. 7606 of 2011 by the learned Single Judge, by which even the order of reinstatement was stayed. Her submission is that by a subsequent decision, Regulation 90 may have been struck down, however, when the order of termination was passed by the appellant, the said Regulation 90 was very much on the statute book. As at the relevant time, the appellant was justified in taking recourse to Regulation 90, after admitting

the petition filed by the appellant, order of reinstatement ought to have been stayed.

5. The learned counsel for the respondent relies upon a decision of the Division Bench of this Court at Aurangabad in the case of ***Praveen Prabhakar Rao Jawale vs. Maharashtra State Electricity & another***¹, by which it was held that the said Regulation 90 of the said Regulations was *ultra vires* and the same was struck down. He also placed reliance upon the judgment and order dated 29th September 2014 passed by learned Special Judge, Nashik in Special Case (ACB) No. 13 of 2009 under the provisions of Prevention of Corruption Act, 1988. He pointed out that by the said judgment and order, the respondent named as the accused no.2 has been honourably acquitted. He submits that in view of the decision of this Court, in the case of **Praveen Prabhakar Rao Jawale** (*supra*), the order of termination passed by taking recourse to Regulation 90 is completely illegal.

6. We have given careful consideration to the submissions. As noted earlier, the challenge in this Letters Patent Appeal is to that part of the interim order passed by learned Single Judge, by which he declined to stay the order of reinstatement of respondent while granting stay to the order of back wages. We have examined the contentions raised by the appellant without going into the question whether the impugned order is a judgment within the meaning of Letters Patent.

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7. It is an admitted position that without holding a regular departmental enquiry as contemplated under Regulation 88 of the said Regulation, by taking recourse to Regulation 90, an order of termination has been issued by the appellant. When the order of termination was made by invoking Regulation 90, the said Regulation 90 was very much in the Rule book. A Division Bench of this Court, in the case of **Praveen Prabhakar Rao Jawale** (*supra*) held that Regulation 90 does not stand to the acid test of being *intra vires*, and therefore, proceeded to struck down the said Regulation. The finding of the Division Bench is that Regulation 90 is *ultra vires* and violative of Article 14 of the Constitution of India as it does not stand the test of reasonableness. Moreover, by order dated 29th September 2014, the learned Special Judge, Nasik has acquitted the respondent. We have perused the said judgment. The learned Special Judge, in paragraph 47, has recorded a finding that the complainant admitted in his cross-examination that he had no grievance against the respondent. A finding was recorded by the learned Special Judge that there is absolutely nothing on record to infer that respondent was aware about the prior demand of bribe made by the accused no.1. Therefore, learned Special Judge held that the charge against the respondent is not established.

8. Hence, in our view, there is a complete justification for the impugned order made by learned Single Judge by which, while

granting stay to the order of payment of back wages, he declined to grant stay to the order of reinstatement. Learned Single Judge observed that reinstatement will be subject to final outcome of the Writ Petition and subject to final outcome of the criminal case. Now the criminal case has been decided which has resulted in acquittal. Though the decision in the case of ***Praveen Prabhakar Rao Jawale*** is subsequent in point of time, it holds that Regulation 90 is *ultra vires*. The action of termination against the respondent was taken under the said Regulation which is held to be *ultra vires*.

9. Hence, we find no merit whatsoever in the Letters Patent Appeal and the same is accordingly dismissed with no order as to costs.

10. We make it clear that the observations made in this order are confined only to deciding the legality and validity of the impugned interim order.

11. In view of dismissal of the Letters Patent Appeal, Civil Application No. 127 of 2012 does not survive and the same is disposed of.

(ANUJA PRABHUDESSAI, J.)

(A. S. OKA, J.)