

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10509 OF 2016

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Ramesh Shridhar Katkar	..Respondent

**ALONGWITH
WRIT PETITION NO.10835 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Sidhram Ayappa Mhetre	..Respondent

**ALONGWITH
WRIT PETITION NO.11098 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Jalindhar Tukaram Shinde	..Respondent

**ALONGWITH
WRIT PETITION NO.11137 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Sou. Shahanaj Murtuj Dandu	..Respondent

**ALONGWITH
WRIT PETITION NO.11147 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Nandkumar Khandappa Shivsharan	..Respondent

**ALONGWITH
WRIT PETITION NO.11150 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Laxman Sidram Jadhav	..Respondent

**ALONGWITH
WRIT PETITION NO.11151 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Baban Shamrao Dongare	..Respondent

**ALONGWITH
WRIT PETITION NO.11255 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Prakash Sadaba Dalvi	..Respondent

**ALONGWITH
WRIT PETITION (STAMP) NO.21124 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Subhash Ratan Baddurkar	..Respondent

**ALONGWITH
WRIT PETITION (STAMP) NO.21162 OF 2016**

Solapur Municipal Corporation, Through Commissioner	..Petitioner
Versus	
Shri. Riyajuddin Shaikh Gulabhusen Sagari	..Respondent

Shri. Dilip Bodake for the Petitioner in all the Writ Petitions.
Shri. Neel Helekar for the Respondent in all the Writ Petitions.

CORAM : R. M. SAVANT, J.
DATE : 4th OCTOBER, 2016

PC.

1 The above Writ Petitions take exception to the identical orders all dated 10.02.2016 passed by the Learned Member of the Industrial Court, Solapur. By the said orders, the Industrial Court has ruled upon two preliminary issues, namely whether the enquiry was fair and proper and whether the findings recorded by the Enquiry Officer are perverse, and decided them against the Petitioner.

2 The cause for filing the Complaints under the MRTU & PULP Act, 1971 by the Respondent in each of the above Petitions was the fact that an enquiry was commenced against the Complainants pursuant to the charge-sheet dated 20.08.2010. The charge against the Complainants was in respect of recovery of the property tax due to the Petitioner Municipal Corporation. The Complainants were at the relevant time working with the Land and Property Department of the Petitioner Municipal Corporation. The Complainants have all retired between the years 2006 to 2010. However charge-sheet came to be issued to them on 20.08.2010 alleging misconduct committed by them between the periods 19.06.2002 to 03.11.2003 and 07.09.2004 to 30.11.2009. In the said domestic enquiry, evidence was led on behalf of the Petitioner Municipal Corporation and the charge of embezzlement to the tune of

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Rs.30,86,464/- was held to be proved. The said amount was sought to be recovered from the Complainants i.e. the Respondent to each of the Petitions herein in varying proportions. This resulted in the Complainants filing the Complaints in question being Nos.10 of 2011, 11 of 2011, 14 of 2011, 15 of 2011, 17 of 2011, 20 of 2011, 47 of 2013, 48 of 2013, 49 of 2013 and 50 of 2013. In the said Complaints, the Industrial Court framed preliminary issues as regards the fairness of the enquiry as also as regards whether the findings of the Enquiry Officer were perverse. In so far as the enquiry is concerned, since the same was commenced against the employees after their retirement, the question arose whether the Petitioner Municipal Corporation could proceed against the said employees. The applicability of Rule 27.3 of the Maharashtra Civil Services Pension Rules, 1982 was in contention. The said rule postulates that an enquiry can be held in respect of a misconduct which has occurred not beyond four years prior to the retirement. The Learned Member of the Industrial Court having regard to the said rule came to a conclusion that since in the instant case the misconduct alleged is referable to the years 2002 to 2003 and 2004 to 2009, it is questionable whether the Petitioner Municipal Corporation could have commenced an enquiry against the said employees who have retired in the year 2010. The Learned Member of the Industrial Court also adverted to the fact that

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though the Complainants had sought the assistance of a lawyer to represent them in the enquiry, the same being rejected by the Municipal Corporation, the enquiry can be said to be held in violation of the principles of natural justice. The Learned Member of the Industrial Court has thereafter adverted to the evidence which has come on record and on such consideration has held that the findings recorded by the Enquiry Officer on the basis of the said evidence were perverse. The Learned Member of the Industrial Court has as indicated above, accordingly answered the two preliminary issues by holding that the enquiry was not fair and proper and that the findings recorded are perverse.

3 The Learned Counsel appearing on behalf of the Petitioner Shri. Dilip Bodake endeavoured to demonstrate as to how the enquiry was fair and proper and that the findings were not perverse. The Learned Counsel also sought to contend that the Petitioner Municipal Corporation was entitled to hold an enquiry in respect of the alleged misconduct which had taken place in the years 2002 to 2003 and 2004 to 2009. In the light of the findings of fact recorded by the Learned Member of the Industrial Court, it is not possible to accept the said contentions as it is well settled that the writ jurisdiction of this Court need not be exercised just because another view is possible to be taken in the facts and circumstances of the case.

4 In my view, therefore, the impugned order passed by the Learned Member of the Industrial Court does not warrant any interference at the hands of this Court under Article 227 of the Constitution of India. However, having regard to the fact that the Learned Member of the Industrial Court has recorded a finding that the enquiry is not fair and proper and the findings are perverse, the Petitioner Municipal Corporation would undoubtedly be entitled to lead evidence in Court to prove the misconduct against the Respondent in each of the above Petitions by filing an appropriate application in that regard before the Industrial Court. The same would be without prejudice to the rights and contentions of the parties as regards whether an enquiry could be held against the Complainants i.e. the Respondent to each of the above Petitions having regard to Rule 27.3 of the Maharashtra Civil Services Pension Rules, 1982. The contentions of the parties in that regard are kept open. Having regard to the fact that the Complainants are all retired employees of the Petitioner Municipal Corporation, the hearing of the Complaints is expedited and are directed to be disposed of latest by 30.09.2017. With the aforesaid directions, the Writ Petitions are disposed of.

[R.M.SAVANT, J]