

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1324 OF 2017
(Karbhari S.Kedar Vs.MSEDCL, Chalisgaon, Dist.Jalgaon)

Mr.V.A.Pawar, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/02/2017

PER COURT :

1. The petitioner is aggrieved by the Part I order dated 30/08/2016 by which issue Nos. 1 and 2 in Complaint (ULP) No.86/2015 have been answered against the petitioner.

2. The Industrial Court has concluded that the summary enquiry conducted against the petitioner was properly done and the findings recorded by the Enquiry Officer are not perverse.

3. Mr.Pawar, learned Advocate for the petitioner has strenuously submitted that Rule 90 of the M.S.E.D.C.L. Employees Service Regulations could not have been invoked by the petitioner and a full fledged departmental enquiry was mandatory by following Rule 88 of the said Rules. He, therefore, submits that the Industrial Court could not have concluded while answering the first two issues, that

no further evidence was required to prove the charges against the petitioner.

4. I find from the record that on 20/04/2012 during an agitation of the Union, it is alleged that the petitioner had manhandled two junior officers, dragged them before the Executive Engineer and locked them in a cabin. He pushed and abused the Officers in filthy language and broke the furniture of the Establishment. These events have occurred in the presence of certain Officers.

5. The respondent invoked Rule 90 which permitted a summary enquiry by intimating the delinquent about his misdemeanors, calling for his explanation and then proceeding to prepare a report. Rule 90 reads as under :-

“90. Summary Proceedings :-

The Competent Authority may hold summary proceeding/s in case,

(a) Where the employee is caught red-handed having committed or while committing an act of misconduct,

(b) where there is obvious evidence of the act of misconduct having been committed or,

(c) where the misconduct or misbehaviour is considered too grave and convincing to warrant or justify the normal procedure to be followed,

(d) where having regard to the surrounding circumstances and the gravity of the offence for which the employee is convicted in a court of criminal law, Competent Authority is of the opinion that summary proceedings are appropriate for deciding any punishment including dismissal or removal,

(e) where an employee is involved in misconduct of serious nature causing loss to the Company is due for retirement from the services of the Company within a period of three months.

Without following the procedure prescribed in Service Regulation 88 and take a decision on the evidence available after charge sheeting the employee concerned, as prescribed in Annexure 3 and after giving him an opportunity to make a statement.

The summary decision may be made effective forthwith unless stayed by the Appellate Authority.”

6. I find from the pleadings in the complaint that the petitioner has nowhere averred that the enquiry should have been conducted under Rule 88 and Rule 90 could not have been invoked. It is merely pleaded that the recording of evidence was not done and the petitioner was not permitted to lead his evidence.

7. The stage before the Industrial Court was as to whether the summary enquiry conducted was as per the Rules and the principles of natural justice and whether the findings were perverse. The

Industrial Court was not dealing with the issue as to whether the enquiry ought to have been conducted under Rule 88. In the above backdrop, the Industrial Court referred to Rule 90 and concluded that the Establishment had conducted a summary enquiry as per the prescription of Rule 90 and principles of natural justice were not violated. The findings of the Enquiry Officer were sustained as they were made on the material made available before the Establishment. The petitioner had submitted a detailed reply alongwith case law and he had referred to certain citations indicating that an extensive reply was submitted.

8. So also, Rule 90 was struck down by this Court in Prakash Narayan Shinde and others Vs. MSEDCL and others in WP No.5778/2015 decided on 28/08/2013. On the date of conducting of summary enquiry in 2012, Rule 90 was in force. Thus the effect of Rule 90 was lost from the date of the judgment of this Court in Prakash Shinde case (supra).

9. Considering the above, as the Industrial Court was dealing with a limited issue as to whether the summary enquiry was properly conducted and whether findings were proper, I do not find that it has committed any error in the impugned judgment. Needless to state, as

there were no pleadings as regards Rule 88 and its applicability in the complaint, the Industrial Court has not dealt with Rule 88. Had such pleadings been set out, the Industrial Court could have considered the aspect as to whether Rule 88 could have been attracted or not.

10. As such, this petition, being devoid of merit, is dismissed.

(RAVINDRA V. GHUGE, J.)