

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9009 OF 2014

Bhaskar Appaji Thorat,
Age-63 years, Occu-Retired,
R/o Supa, Taluka Parner,
Dist.Ahmednagar

-- PETITIONER

VERSUS

1. Maharashtra State Electricity
Distribution Co.Ltd.,,
4th floor, Plot No.G-9,
Station Road, Bandra (E),
Mumbai,
through its Director (Discipline & Appeal)

2. Executive Engineer,
Maharashtra State Electricity
Distribution Co.Ltd.,,
(City Division), Station Road,
Ahmednagar

-- RESPONDENTS

Mr.P.V.Barde, Advocate for the petitioner.
Mr.A.S.Bajaj, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/06/2017

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the judgment of the Industrial

Court dated 06/12/2013 vide which Complaint (ULP) No.7/2009 filed by him has been dismissed.

3. The submissions of Mr.Barde, learned Advocate for the petitioner can be summarized as follows :-

- [a] The petitioner joined respondent No.1 as a “line helper” in 1970.
- [b] In November 1999, he was promoted as a “lineman” and then transferred from Supa to Parner in Ahmednagar District.
- [c] He was issued with a charge dated 09/05/2001 charging him of negligence which led to the theft of electricity by a consumer.
- [d] After conducting a departmental enquiry, he was awarded the punishment of reversion and his salary was brought down to the basic pay scale by order dated 24/03/2003.
- [e] He preferred first department appeal on 09/05/2003.
- [f] On 18/05/2004, his first appeal was dismissed.
- [g] Thereafter he preferred his second appeal on 08/08/2004.
- [h] He attained the age of superannuation on 30/06/2008.
- [i] By communication dated 26/11/2008, he was informed that his second appeal would not be considered as he has superannuated.
- [j] He preferred Complaint (ULP) No.7/2009 on 28/01/2009 for challenging his order of reversion dated 24/03/2003.
- [k] By the impugned judgment, his complaint has been dismissed on the count of delay.

4. Mr.Bajaj, learned Advocate appearing on behalf of the

respondents submits as under :-

- [a] The complaint filed by the petitioner suffers from delay in the light of Regulation 101 of the Industrial Court Regulations, 1975 which mandates filing of a complaint within 90 days from the date of occurrence of the ULP.
- [b] In the event the complaint is filed beyond 90 days, the complainant can prefer an application seeking condonation of delay alongwith an affidavit.
- [c] No such application was filed by the petitioner and as such there was no explanation for condonation of delay.
- [d] The impugned judgment cannot be termed as being perverse or erroneous.
- [e] No interference is called for in the impugned judgment keeping in view the limited jurisdiction of this Court under Article 227.

5. I find that the petitioner had specifically contended in the complaint that the enquiry conducted against him was vitiated. Principles of natural justice were violated. The enquiry be set aside for being unsustainable in law. All these contentions are found in paragraph No.2(ee) and prayer clause 8(b) and (c). It is, therefore, obvious that he had challenged the validity and legality of the enquiry.

6. The Hon'ble Apex Court in the matters of Workmen of Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private

Limited, AIR 1965 SC 1803, The Workmen of M/s Fire Stone Tyre and Rubber of India Private Ltd., Vs. The Management and others, AIR 1973 SC 1227 = 1973(1) SCC 813, Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh, 1972 (1) SCC 595, Bharat Forge Vs. A.B. Zodge reported at 1996(73) FLR 1754 has concluded that once the fairness of the enquiry and the findings of the Enquiry Officer are challenged, the said two issues have to be tried peremptorily.

7. This Court in similar set of facts in the matter of MSRTC, Beed Vs. Syed Saheblal Syed Nizam, reported at 2014(3) CLR 514 has concluded that the Industrial Court ought to frame the following issues when the enquiry and the findings are challenged :-

- [a] Whether the complainant proves that the enquiry has been conducted in violation of the principles of natural justice and is vitiated ?
- [b] Whether the complainant proves that the findings of the Enquiry Officer are unfair and perverse ?

8. No such issues were cast by the Industrial Court. For this reason, the impugned judgment is unsustainable.

9. However, it cannot be ignored that the petitioner had

challenged the order of punishment dated 24/03/2003 by filing a ULP complaint on 28/01/2009. His case was squarely covered by Regulation 100 and 101. Notwithstanding, whether the petitioner can make out a case of recurring cause of action, an application for condonation of delay ought to have been filed if the complaint was to be registered on 28/01/2009 wherein the order dated 24/03/2003 was challenged.

10. Considering the above, this petition is partly allowed. The impugned judgment dated 06/12/2013 is quashed and set aside and complaint (ULP) No.7/2009 is restored to the file of the Industrial Court, Ahmednagar.

11. Both the litigating sides shall appear before the Industrial Court on 15/07/2017. No notice be issued by the Court. The petitioner shall file an application for condonation of delay under Regulation 101 on 15/07/2017 and serve a copy of the same on the respondents. The Industrial Court shall thereafter deal with the application for condonation of delay on its own merits. In the event, the delay is condoned and subject to the litigating rights of the parties, the Industrial Court would thereafter proceed to frame the above mentioned two issues. The respondent shall then file the

original record and proceedings of the departmental enquiry conducted against the petitioner. The Industrial Court shall thereafter decide the above mentioned two issues in view of the law laid down by this Court in the Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(3) Mh.L.J. 339 = 2014(1) CLR 878.

12. Rule is made partly absolute in the above terms.
13. All contentions of the litigating sides are kept open.

(Ravindra V.Ghuge, J.)