

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 2471 OF 2014

The Chief Executive Officer,  
Zilla Parishad, Ahmednagar

..Petitioner

Versus

Prashant Dinkar Bargaje,  
Age major, Occ. Nil  
R/o Nirmiti Apartment, Flat No.6,  
Near Pund Hospital, Court Galli,  
Ahmednagar.

..Respondent

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Advocate for Petitioner : Shri Shelke Shivaji T.  
Advocate for Respondents : Shri Pavse Ashok S.

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CORAM : RAVINDRA V. GHUGE, J.  
Dated: January 30, 2017

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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the Part I award dated 22.8.2013, vitiating the enquiry and the Part II award dated 11.11.2013, vide which, Reference IDA No.60 of 2009 was answered in the affirmative.

2. I have considered the strenuous submissions of Shri Shelke, learned Advocate for the petitioner and Shri Pavse, learned Advocate for the respondent / workman. While admitting this petition on 28.7.2014, this Court had observed that the reinstatement of the respondent would be subject to the result of this petition.

3. I have gone through the record with the assistance of the learned Advocates.

4. In so far as the enquiry is concerned, the record reveals that there was no evidence about service of the enquiry notice on the delinquent. Without intimating him of the schedule of the enquiry, the same was commenced on 5.9.2006. As the respondent / employee was not aware about the commencement of the enquiry, he did not participate in the same. So also, the roznama of the enquiry conducted on 9.8.2006, 5.9.2006, 19.9.2006 and 6.10.2006 was not served upon the employee.

5. Record further reveals that the enquiry officer has noted in his findings that the statement of the witnesses of the establishment were recorded. However, there is no such record indicating the examination of the management witness. So also, the enquiry report makes a mention that considering the evidence of the management witnesses, the charges are proved against the respondent, when in fact, no witness was examined and there was no evidence before the enquiry officer so as to conclude that his findings are based on the testimony of the management witness.

6. Considering the above, I do not find that the Part I award,

dated 22.8.2013, thereby vitiating the enquiry and branding the findings of the enquiry officer as perverse, calls for any interference.

7. It is evident that after the enquiry was vitiated, the petitioner / Zilla Parishad could have conducted a de novo enquiry, provided, they had reserved a right to do so in the light of the judgment of the Honourable Apex Court (Five Judges) in the matter of Karnataka State Road Transport Corporation Vs. Laxmidevamma & another [AIR 2001 SCW 1981].

8. The Part II award dated 11.11.2013 indicates that the petitioner did not conduct a de novo enquiry before the Labour Court. In the face of no enquiry having been conducted, none of the charges levelled upon the respondent were proved in the enquiry. In this backdrop, there was no reason for the Labour Court to consider the proportionality of the punishment as no charge was proved against him. The respondent has been deprived of backwages, though continuity has been granted from the date of termination i.e. 7.8.2007. The respondent has also been reinstated. Learned Advocate for the respondent submits that he has not challenged the Part II award to the extent of denial of backwages.

9. In the light of the above, this petition being devoid of merits is, therefore, dismissed. Rule is discharged.

10. Pending Civil Application, if any, stands disposed off.

( RAVINDRA V. GHUGE, J. )

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