

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4885 OF 2009
WITH
CIVIL APPLICATION NO. 6652 OF 2017

Nayabrao Bhivsan Zanjali,
Age 54 years, Occ. Junior Clerk,
R/o Sujit Nagar, Near Harsul Lake,
Aurangabad.

..Petitioner

Versus

Aurangabad Municipal Corporation,
Through its Chief Officer, office of
Aurangabad Municipal Corporation,
Aurangabad.

..Respondent

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Advocate for Applicant : Shri Naseem R. Shaikh
Advocate for Respondent : Smt. Manjusha Deshpande
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 14, 2017
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ORAL JUDGMENT:-

1. The petitioner has challenged the order of dismissal dated 16.10.2008, by which, he has been punished for proved misconducts. A full-fledged enquiry is said to have been conducted and he has been held guilty of mis-appropriation of Rs.13,74,275/-. The petitioner is a Clerk with the respondent / Corporation. It is informed by the learned Advocate for the petitioner that the petitioner has been acquitted from the

criminal proceedings in RCC No. 409 of 2004 dated 5.11.2015 for the offences punishable under Sections 409 read with 34 of the Indian Penal Code.

2. It appears that this Court, prior to issuing notices, has admitted this petition on 7.8.2009.

3. There can be no debate that the petitioner is a 'workman' under Section 2(s) of the Industrial Disputes Act and the respondent is an 'industry' under Section 2(j) of the said Act.

4. It is equally settled that in the matters of disciplinary proceedings, if the enquiry is vitiated for any reason whatsoever, including for the reason that the findings of the Enquiry Officer are perverse, the enquiry is watered down and the management is granted the liberty to conduct a de novo enquiry in the Court. If such an eventuality occurs in this proceeding, such a de novo enquiry cannot be conducted in this Court under its supervisory jurisdiction. In contra distinction, if the petitioner is to approach the Labour Court, under the ID Act or under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"), the fairness of the enquiry and the findings of the enquiry officer would be decided as

preliminary issues for delivering the Part I award / judgment. If the enquiry is vitiated, the Labour Court would then be a Judge in the de novo enquiry and that would be a sufficient protection to the petitioner as such a de novo enquiry would be conducted in the Court itself.

5. Considering the above, I find that it would be advantageous to the petitioner to raise an industrial dispute under Section 2A of the ID Act and after the matter is referred to the Labour Court for adjudication, all his contentions would be considered by the Reference Court.

6. In the light of the above, this petition is disposed off with liberty to the petitioner to raise an industrial dispute under Section 2A of the ID Act. If such a dispute / demand is raised, the Conciliation Officer, Aurangabad would conduct the conciliation proceedings as expeditiously as possible and preferably within a period of six months. In the event of a failure in the conciliation proceedings and if the appropriate Government concludes that the matter deserves to be referred to the Labour Court at Aurangabad, the petitioner would then be at liberty to raise all contentions before the Labour Court.

7. Rule is discharged.

8. Pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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