

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10271 OF 2014

THE DIVISIONAL CONTROL, MSRTC, JALGAON
VERSUS
MURLIDHAR BHAGWAN PAWAR, GHODEGAON

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Advocate for Petitioner : Shri Goyanka M.K.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th February, 2017

Per Court:

1 Despite the court notice having been served on the Respondent, he has not appeared either through an advocate or in person.

2 The Petitioner is aggrieved by the judgment of the Labour Court dated 25.04.2012 by which Complaint (ULP) No.7/2007 has been allowed. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 21.12.2013 by which it's Revision (ULP) No.64/2012 has been dismissed.

3 I have considered the submissions of the learned Advocate for the Petitioner and have gone through the petition paper book with his assistance.

4 The Respondent/ Bus Conductor had joined service in 1980. In 1981, he was terminated for committing the misconduct of misappropriation. In departmental appeal, the first appellate authority of the Petitioner/ MSRTC reinstated him. Again in 1996, he was terminated for the misconduct of misappropriation. Again the first appellate authority of the Petitioner/ MSRTC reinstated him. He was once again terminated in 2005, which is the matter at issue. In between 1980 to 2005, he has been punished on 38 occasions which includes three suspensions and two terminations for having committed the misconducts of misappropriation.

5 In the instant case, after a full fledged domestic enquiry was conducted against the Respondent, he was dismissed from service by way of punishment by order dated 05.05.2007 w.e.f. 06.05.2007. He preferred Complaint (ULP) No.7/2007 before the Labour Court. The following issues were cast by the Labour Court:-

<i>Sr.No.</i>	<i>Points</i>	<i>Findings</i>
1	<i>Does the complainant prove that the enquiry held against him is improper, illegal and unfair and the findings of the Enquiry Officer are perverse?</i>	<i>Partly Yes</i>

2	<i>Does the complainant prove that the punishment imposed upon him is shockingly disproportionate looking to the gravity of misconduct and the respondent by indulging in an unfair labour practice under item 1(a), (b), (e), (f) & (g) of Sch.IV of the MRTU & PULP Act, dismissed him from service w.e.f. 06.05.2007 by order dated 05.05.2007?</i>	Yes
3	<i>Does the complainant prove that he is entitled for reinstatement with continuity of service and payment of full back wages?</i>	Partly yes.
4	<i>What order?</i>	As per final order.

6 It, however, cannot be ignored that both the litigating sides filed the purshis at Exhibit U/24 and requested the Labour Court to decide all the issues together. This Court has, in several such matters, come across such purshis having been filed by the litigating sides and has noted, in several such cases, that the Labour Court or the Industrial Court has permitted the litigating sides to take up all the issues together.

7 The Honourable Supreme Court, in the matter of *Workmen of the Motipur Sugar Factory Pvt.Ltd. Vs. The Motipur Sugar Factory*, **AIR 1965 SC 1803**, followed by *Delhi Cloth and General Mills Company Limited v/s Ludh Budh Singh*, **1972 (1) SCC 595**, *Workmen of M/s Firestone Tyre & Rubber Company of India v/s Management*, **AIR 1973 SC 1227 : 1973 SCR (3) 587**, *Shambhu Nath Goyal v/s Bank of Baroda*,

1984(4) SCC 491 and *Workmen of Firestone, Bharat Forge Company Ltd. v/s A.B.Zodge*, 1996 (73) FLR 1754 : AIR 1996 SC 1556, has laid down the law that when the enquiry and the findings of the Enquiry Officer are challenged, the first two issues with regard to the fairness of the enquiry and the findings of the Enquiry Officer have to be decided peremptorily. If for any reason (keeping in view the law laid down by the Honourable Supreme Court in the *State Bank of Patiala vs. S.K.Sharma*, AIR 1996 SC 1669), the enquiry is vitiated, a de-novo enquiry is to be conducted by the Management in view of the law laid down by the Honourable Supreme Court (five judges Bench) in the matter of *KSRTC v/s Lakshmiddevamma*, 2001 (2) CLR 640.

8 In my view, even if the litigating sides furnish such purshis, once the Labour Court or the Industrial Court notices that the enquiry and the findings of the Enquiry Officer are under challenge, they should discard such purshis and should decide the first two issues strictly on the basis of the record and proceedings of the enquiry without permitting the litigating sides to adduce fresh evidence keeping in view the law laid down by this Court in the matter of the *Maharashtra State Cooperative Cotton Growers Marketing Federation Limited vs. Vasant Ambadas Deshpande*, 2014 (1) CLR 878 : 2014 (3) Mh.L.J. 339.

9 The Labour Court took up all the issues together and in the same judgment, vitiated the enquiry, branded the findings of the Enquiry Officer as perverse and partly allowed the complaint by granting reinstatement with continuity and 25% back wages from the date of dismissal which is 05.05.2007. The past service record of 38 misconducts including two terminations as recorded above, is not even referred to by the Labour Court. In fact it is shocking to note that the Labour Court has concluded in paragraph 13 that 25 years service of the Respondent/ Employee was clean and unblemished and the previous clean record of the Respondent was not considered by the Petitioner/ Employer. This conclusion is drawn despite the Enquiry Officer recording in the report itself that the past record of the Respondent is seriously blemished. Same pleadings were also taken in the Written Statement.

10 In the above backdrop, when the Petitioner filed its Revision Petition, it was an obligation for the Industrial Court to exercise its revisional jurisdiction under Section 44 of the MRTU & PULP Act, 1971 and find out as to whether, the impugned judgment of the Labour Court was perverse and erroneous. The Industrial Court equally failed in doing so and has dismissed the revision petition by concluding that the judgment of the Labour Court is not perverse and is not erroneous.

11 Considering the above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 21.12.2013 is quashed and set aside and Revision (ULP) No.64/2012 stands disposed of. The impugned judgment of the Labour Court dated 25.04.2012 stands quashed and set aside and Complaint (ULP) No.7/2007 stands restored to the file of the Labour Court at Jalgaon.

12 The Labour Court shall frame the following two issues:-

- (a) Whether, the Complainant proves that the enquiry is vitiated for non observance of the principles of natural justice?
- (b) Whether, the Complainant proves that the findings of the Enquiry Officer are perverse?

 The first issue framed by the Labour Court shall stand replaced with these two issues.

13 The Petitioner shall appear before the Labour Court on 24.02.2017. The Labour Court shall issue notice to the Respondent/ Employee. The Petitioner shall produce the entire record and proceedings of the enquiry within four weeks from the date of appearance before the Labour Court. The first two issues shall be decided by the Labour Court strictly in the light of the law laid down by this Court in the matter of

Vasant Ambadas Deshpande (supra) and by taking into account the entire record and proceedings of the enquiry. After deciding the two issues, the Labour Court shall proceed in accordance with the law laid down by the Honourable Supreme Court in the matter of KSRTC vs. Lakshmiddevamma. (supra) if it concludes that the enquiry is vitiated for any reason whatsoever.

14 It cannot be ignored that since the Petitioner is a party to the joint purshis which has led to the serious violation of law and procedure before the Labour Court, I am imposing costs of Rs.5,000/- (Rupees Five Thousand) which the Petitioner / MSRTC shall deposit with the Advocates Association of Bombay High Court, Bench at Aurangabad, within a period of FOUR WEEKS from today.

15 The Registrar (Judicial) of this Court is requested to place the copy of this order before Shri W.J.Daithankar and Shri B.D.Gaikwad, the then learned Judge of the Labour Court, Jalgaon and the then In-charge learned Member of the Industrial Court, Jalgaon, respectively.