

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6209 OF 2015

The Divisional Controller,
Maharashtra State Road Transport
Corporation,
Jalgaon Division, Jalgaon

-- PETITIONER

VERSUS

Deepak Namdeo Adangale,
Age-45 years, Occu-Service,
R/o Siddharth Nagar, Jalgaon,
Tq. and Dist. Jalgaon

-- RESPONDENT

Mr.Manoj Shinde h/f Mr.M.K.Goyankar, Advocate for the petitioner.
Mr.V.Y.Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/02/2017

ORAL JUDGMENT :

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

2. While issuing notice on 01/07/2015, this Court had observed in paragraph Nos. 1 and 2 of its order as under :-

“1. Charges of mis-appropriation are proved against the respondent. Second show cause notice with Enquiry Officer's Report dated 14/11/2013 was served on the respondent. He filed Complaint (ULP) No.25/2013 before the Labour Court.

Application for interim relief Exhibit U-2 is allowed by the order dated 13/12/2013. Revision (ULP) No.5/2014 is dismissed on 20/01/2015.

2. *Contention is that the observations of the Apex Court in paragraph Nos. 53 and 54 in the case of Hindustan Lever V/s. Ashok Vishnu Kate, (1995) 6 SCC 326 have been disregarded by the Labour Court. Interim relief of the said nature can be granted in rarest of rare cases. The impugned order has been casually passed by the Labour Court notwithstanding the fact that there are 24 punishments in the default card of the respondent, who is working as a bus-conductor, which includes one termination in 2004."*

3. I have heard the learned Advocate for the petitioner and the strenuous submissions of Mr.Patil, learned Advocate for the respondent.

4. Interim relief in the nature of a final relief has been granted by the Labour Court in Complaint (ULP) No.25/2013 wherein the respondent/employee has challenged the proposed punishment under the second show cause notice dated 14/11/2013. The Industrial Court, by the impugned judgment dated 20/01/2015 has concluded that it does not find any perversity or illegality committed by the Labour Court in granting relief to the respondent.

5. About 50 years ago, the Hon'ble Supreme Court in the matter of Workmen of Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Limited, AIR 1965 SC 1803 has laid down the law that when an employee challenges the enquiry and the findings of the Enquiry Officer, the following two issues have to be framed before passing any order :-

- a. “1. Whether the workman proves that the enquiry is vitiated for non observance of the principles of natural justice ?
- b. Whether the workman proves that the findings of the Enquiry Officer are perverse ?”

6. The judgments delivered by the Hon'ble Supreme Court in the last 40 years have been considered by this Court in the matter of MSRTC, Beed Vs. Syed Saheblal Syed Nizam, reported at 2014(3) CLR 514 and has concluded that unless the enquiry is set aside for any reason whatsoever, inclusive of the reason that the findings are perverse, the Labour Court or the Industrial Court cannot proceed to consider the effect of the order of punishment. For considering these two issues, no evidence is to be recorded before the Court in the light of the judgment of this Court in the matter of 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.

7. In paragraph Nos. 53 and 54 of the judgment delivered by the Hon'ble Supreme Court in the matter of Hindustan Lever Vs. Ashok Vishnu Kate, it has been observed as under :-

“53. Reference made in paragraph VI to the Bombay High Court's judgments also cannot be of any avail as they were based on the view which was accepted by the learned Single Judge of the High Court of Bombay at Nagpur which has rightly been overturned by the Division Bench of the Bombay High Court in the judgment under appeal on a correct interpretation of the relevant provisions of the Act. Therefore, the earlier view taken by the learned Single Judges of the Bombay High Court cannot be said to be well- sustained. For all these reasons, the appellant has made out no case for our interference in this appeal.

54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of chargesheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour

Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under [Section 30\(2\)](#) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.”

8. In so far as grant of any relief even after setting aside the enquiry is concerned, the law is settled that the workman will not be entitled even to subsistence allowance, much less reinstatement, in the following judgments :-

- [1] Neeta Kaplish Vs.Presiding Officer, Labour Court, AIR 1999 SC 698.
- [2] Mumbai Cricket Association Vs.Pramod G.Shinde, 2011 (1) CLR 745.

9. It is settled in so far as the MSRTC is concerned that the Enquiry Officer and the disciplinary authority is the same person. The enquiry cannot be set aside on this count. Rule 18 with Rule 19

of the Discipline and Appeal Procedure will have to be read together. It is only on this count that the Labour Court has granted interim relief to the respondent without considering the note of caution voiced by the Hon'ble Apex Court in paragraph No.54 of the Hindustan Lever Judgment (supra).

10. Comparative hardships and inconvenience also have to be taken into account even if interim relief is to be granted and which cannot be of the nature of a final relief. The respondent / Bus conductor has been punished on 24 occasions and which includes one termination in 2004. The Labour Court as well as the Industrial Court have stayed the second show cause notice only for the reason that the Enquiry Officer is the disciplinary authority which is permissible under the Rules applicable to the MSRTC.

11. Considering the above, I find that the Labour Court has committed a patent error in granting interim relief without even considering the merits of the matter by observing in paragraph No.21 as under :-

“ I am of the view that this order is not going to dispose of main complaint, nor this Court has taken any issue, over consideration and decision, at this interim stage which would require sure and reliable evidence in the final.”

12. The above patent error has been ignored by the Industrial Court by concluding that “it does not find any perversity or illegality committed by the Lower Court”.

13. Considering the above, this petition is allowed. The impugned order dated 13/12/2013 delivered by the Labour Court, Jalgaon is quashed and set aside. Application Exh.U-2 stands rejected. Consequentially, the judgment of the Industrial Court dated 20/01/2015 stands quashed and set aside and Revision (ULP) No.5/2014 is disposed of.

14. The Labour Court, Jalgaon is directed to frame the above two issues set out in paragraph No.5 mentioned hereinabove and shall consider the said two issues purely on the basis of the record and proceedings of the enquiry in the light of the law laid down in the case of Vasant Ambadas Deshpande's case (supra).

15. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)