

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11609 OF 2016

The Commissioner,
Ahmednagar Municipal Corporation,
Ahmednagar

-- PETITIONER

VERSUS

Lata Ramesh Sadafale,
Age-52 years, Occu-Business,
R/o Kothi, Station Road,
Ahmednagar,
Tq. and Dist. Ahmednagar

-- RESPONDENT

Mr.K.N.Lokhande, Advocate for the petitioner.
Mr.Y.V.Kakade, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 01/02/2017

ORAL JUDGMENT :

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

2. While issuing notice on 05/12/2016, I have passed the following order :-

"1 The Petitioner is aggrieved by the judgment and order dated 29.04.2016 by which the Industrial Court has allowed Complaint (ULP) No.67/2014 and set aside the punishment of stoppage of one increment.

2 I have considered the submissions of the learned Advocate for the Petitioner and have gone through the impugned judgment.

3 In paragraph 22 on internal pages 13 and 14 of the impugned judgment, the Industrial Court has concluded that the principles of natural justice in conducting the enquiry have been violated, the enquiry is not conducted fairly and the findings of the Enquiry Officer are wrong and perverse. As a consequence, the domestic enquiry is vitiated. However, the two issues which are mandatorily required to be framed for consideration, (i) whether, the Complainant proves that the enquiry is vitiated and (ii) whether, the Complainant proves that the findings of the Enquiry Officer are perverse, have not been framed and in the same judgment, the entire complaint has been allowed.

4 Prima facie, the law laid down in *MSRTC, Beed v/s Syed Saheblal Syed Nijam*, **2014 (III) CLR 547**, has been violated.

5 Issue notice to the Respondent, returnable on 13.01.2017.

6 Until further orders, the parties shall maintain status-quo.”

3. Mr.Kakade, learned Advocate for the respondent / employee has strenuously supported the impugned judgment. Contention is that the Industrial Court has rightly concluded that the enquiry conducted was not in consonance with the principles of natural justice, proper opportunity was not given to the respondent and the findings of the Enquiry Officer are contrary to the facts.

4. He submits that when such conclusions have been arrived at, the Industrial Court has rightly set aside the punishment of stoppage of one increment. As the punishment was found to be disproportionate, the Industrial Court rightly interfered with the

impugned order and accordingly, set aside the punishment. The Industrial Court also concluded that 'warning' was a sufficient punishment.

5. I have considered the submissions of the learned Advocates.

6. Despite the law having been settled for the last 50 years and despite this Court having considered the entire Law in the MSRTC, Beed case (supra), I find that this is not the first instance of the concerned Learned Member of the Industrial Court passing this type of an order. When the law is settled and when earlier these judicial pronouncements were brought to the notice of the Industrial Court, Ahmednagar, it was not expected that the said Court would continue to pass such type of orders.

7. In the light of the above, the impugned judgment dated 29/04/2016 is quashed and set aside. Complaint (ULP) no.67/2014 is restored to the file of the Industrial Court, Ahmednagar for framing of the two issues mentioned in paragraph No.3 of the order dated 05/12/2016. Needless to state, while deciding the said issues, the Industrial Court shall rely only upon the record and proceedings of the domestic enquiry and the findings of the Enquiry Officer. The

petitioner shall produce the entire R & P of the enquiry before the Industrial Court on the day of appearance.

8. The litigating sides shall appear before the Industrial Court on 24/02/2017. After the petitioner produces the R & P of the enquiry on the said date, the Tribunal shall proceed to hear the learned Advocates on the first two issues considering the law laid down in the case of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande [2014(3) Mh.L.J. 339] = [2014(I) CLR 878]. Thereafter, in the event the enquiry is set aside for any reason whatsoever and in the event the petitioner has reserved its right to conduct a *denovo* enquiry in its written statement, the Industrial Court shall proceed to decide the complaint considering the law laid down in the matter of KSRTC Vs. Laxmidevamma and another [2001(2) CLR 640].

9. This petition is partly allowed in the above terms and rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)