

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3231 OF 2015

THE DIVISIONAL CONTROLLER, JALGAON & ANR
VERSUS
AVINASH SHRIKRISHNA JOSHI

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Advocate for Petitioners : Shri Shinde Manoj
h/f Shri Goyanka M.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 16, 2017

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PER COURT :-

1. Despite service of notice and an adjournment granted to enable the respondent to participate in these proceedings, none appears.

2. I have considered the submissions of learned Advocate for the petitioner.

3. While issuing notice, I had passed the following order on 23.10.2015:-

“1. The Petitioner is aggrieved by the judgment and order dated 22.10.2012 delivered by the Labour Court by which Complaint (ULP) No.23/2011 filed by the Respondent, has been allowed. The show cause notice dated 27.11.2009

proposing the punishment of dismissal from service for proved misconducts is quashed and set aside with the further direction that no disciplinary action should be taken against the Respondent/ Employee

2. *The Petitioner is also challenging the judgment and order dated 25.04.2014 delivered by the Industrial Court by which Revision (ULP) No.35/2013 filed by the Petitioner has been dismissed.*

3. *It is submitted that the Respondent was charged with having committed misconduct of issuing used tickets to three passengers and thereby, committing misappropriation of the State Revenue.*

4. *The learned Advocate for the Petitioner submits that as on date, the Respondent has been reinstated in employment pending the challenge posed in this petition.*

5. *Issue notice before admission to the Respondent, returnable on 27.11.2015.”*

4. It is quite apparent from the judgment of the Labour Court that it has failed to consider the law laid down by the Honourable Apex Court and this Court in the following cases:-

i. Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803],

- ii. Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh - [1972 (1) SCC 595 = AIR 1972 SC 1031],
- iii. Shambhu Nath Goyal Vs. Bank of Baroda - [1984 (4) SCC 491],
- iv. The Workmen of Firestone Rubber and Tyre Company Vs. The Management and others [(1973) 1 SCC 813],
- v. Bharat Forge Company Ltd., Vs. A.B. Zodge and another[AIR 1996 SC 1556]
- vi. Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam [2014 III CLR 547 = 2014 (4) Mah.L.J.687] and
- vii. Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande [2014 MLJ 339 : 2014 I CLR 878].

5. It is trite law for the past about 50 years that when an employee challenges the fairness of the enquiry and terms the findings of the enquiry officer are perverse, the following two issues have to be framed:-

- (i) Whether the employee / complainant proves that the enquiry is vitiated for non-observance of the principles of natural justice?

(ii) Whether the employee / complainant proves that the findings of the Enquiry Officer are perverse?

6. It is equally settled that unless the above said two issues are not framed and dealt with peremptorily, the Labour or Industrial Court as the case may be, cannot proceed with the pending proceedings. Similarly, even if the enquiry is set aside, no relief can be granted to the employee in the light of the following judgments:-

(i) Neeta Kaplish Vs. Presiding Officer, Labour Court [AIR 1999 SC 698], and

(ii) Mumbai Cricket Association Vs. Pramod G. Shinde [2011 (7) All M.R. 678].

7. In the instant case, the respondent had approached the Labour Court against the second show cause notice. Without setting aside the enquiry, the Labour Court concluded that the show cause notice issued by the reviewing authority and seeking to impose the punishment of dismissal, could not have been done. Without considering the provisions of the Discipline and Appeal procedure (D & A), the Labour Court has concluded that the reviewing authority has no power to set aside the order of the first

appellate Tribunal. Clause (9) of D & A clearly provides for the reviewing authority to review the earlier orders passed, which includes the order passed by the Disciplinary Authority as well as the order passed by the first appellate authority. It is equally surprising that the Labour Court considered one judgment delivered by the Industrial Court in a different case, as being a precedent and concluded that the law is settled by the judgment of the Industrial Court.

8. In the light of the above, the impugned judgment of the Labour Court is apparently perverse and unsustainable. For the said reasons, the judgment of the Industrial Court is equally unsustainable as it failed to notice the perversity in the conclusions of the Labour Court.

9. As such, this petition is allowed. The impugned judgment of the Labour Court dated 22.10.2012 is quashed and set aside. Complaint (ULP) No. 23 of 2011 is remitted to the Labour Court at Jalgaon for framing appropriate issues.

10. Since this Court has concluded that the appellate authority can review the orders passed by the competent authority and reduce or enhance the punishment, the said aspect before the

Labour Court stands settled in the light of Clause (9) of D & A procedure. Consequentially, the Labour Court shall decide Complaint (ULP) No.23 of 2011 afresh on it's own merits. The impugned judgment of the Industrial Court dated 25.4.2014 is, therefore, quashed and set aside and Revision (ULP) No.35 of 2013 stands disposed off.

(RAVINDRA V. GHUGE, J.)

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