

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9904 OF 2016
WITH
WRIT PETITION NO. 9905 OF 2016

THE SUPERINTENDING ENGINEER, MSEDCL, LTD. JALGAON
VERSUS
SUNIL KRISHNARAO DESHPANDE

Advocate for Petitioner : Shri U.S. Malte.
Advocate for Respondent : Shri H.H. Padalkar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13th December, 2017

PER COURT :

1. While issuing notice in these two matters on 04/10/2016,
I have considered the submissions of the Petitioner/
Management in my order which read as under :

“1. In both these matters filed against the same
Respondent/Employee, the Petitioner/Management is
aggrieved by the part-1 judgment dated 21.08.2015 by
which the disciplinary enquiry in Complaint (ULP) Nos.
22/2013 and 23/2013 has been set aside on the ground
that the findings of the Enquiry Officer are vitiated. The
Petitioner is also aggrieved by the judgment dated
13.01.2016 by which the Industrial Court allowed
Complaint (ULP) Nos. 22/2013 and 23/2013 as, despite

an opportunity to conduct a de-novo enquiry, the Petitioner/Management failed to lead evidence and as such, no charges were proved before the Industrial Court.

2. Shri Malte, learned Advocate for the Petitioner, submits that the Manager (HR) was transferred on 01.04.2015 on promotion out of Jalgaon. The Head Clerk was holding the charge of the Manager (HR) from 01.04.2015 till 08.12.2015. Consequentially, the Head Clerk did not pay attention to the pending complaints and the Petitioner/Management, therefore, lost an opportunity of conducting a de-novo enquiry. He further submits, on instructions, that if this Court allows these petitions, the Petitioner/Management is willing to conduct a de-novo enquiry before the Industrial Court with regard to the charge sheets issued to the Respondent in Complaint (ULP) Nos. 22/2013 and 23/2013.

3. I find that the Petitioner had been negligent in both the complaints. Despite the Industrial Court having granted an opportunity to conduct a de-novo enquiry, no evidence was led for four and half months and hence, the Industrial Court has allowed both the complaints. The matter is with regard to misconducts committed by the Respondent on two different occasions.

4. In the light of the above, issue notice before admission to the Respondent returnable on 24.10.2016.

5. The Petitioner/Management shall deposit an amount of Rs. 15,000/- (Rupees fifteen Thousand) in each of these petitions in this Court on or before the next date of hearing in this matter for considering the prayer of setting aside the final judgments of the Industrial Court and for remanding the matter to the Industrial Court for a de-novo enquiry.

6. On the condition of deposit of the above amounts, the Respondent is restrained from initiating any coercive steps pursuant to the impugned judgments.”

2. The Management has deposited Rs. 15,000/- (Rupees fifteen Thousand) in each of these two cases.

3. I have considered the strenuous submissions of the learned advocates for the respective sides. The Respondents pray that both these petitions be dismissed with heavy costs considering the negligence and laxity on the part of the Petitioner/Management. It is, further, informed that the sole

Respondent who is identical in both these matters and had suffered two different departmental enquiries, has now superannuated from service.

4. Learned counsel for the Petitioner/Management has also raised a ground on the basis of the pleadings in the written statement before the Industrial Court that the Respondent is not a workman under Section 2 (s) of the I.D. Act and is not an employee under Section 3 (5) of the MRTU and PULP Act, 1971. It is, therefore, submitted that while conducting the de-novo enquiry, the issue as to whether the original complainant is a workman or not, also needs to be framed. It is also pointed from paragraph No. 8 of the written statement that the Petitioner/Management has reserved its right to conduct a de-novo enquiry which is in tune with the law laid down by the Hon'ble Apex Court (Five Judges Bench) in the matter of Karnataka State Road Transport Corporation Versus Lakshmidevamma **[AIR 2001 SC 2090]**.

5. By the impugned judgment, the Industrial Court has

allowed the complaint, since the management failed to conduct a de-novo enquiry, though an opportunity to conduct such an enquiry was granted in between August, 2015 to January, 2016. I have directed the petitioner to deposit Rs. 15,000/- (Rupees fifteen Thousand) each in this Court, since the petitioner failed to conduct a de-novo enquiry despite eight adjournments granted to it.

6. Shri Padalkar, learned advocate submits that no leniency or sympathy deserves to be shown towards the Petitioner as the Petitioner has to blame itself for its negligence. The Complaint (ULP) Nos. 22/2013 and 23/2013 were before the Industrial Court for almost three years and it was by the impugned judgments dated 13/01/2016, that the complaints were allowed. Any interference at this stage would cause manifest inconvenience and serious hardships to Respondents.

7. It requires no debate that once the employer reserves its right in the written statement to conduct a de-novo enquiry, such right cannot be taken away. The

ingredient required under the law for conducting the de-novo enquiry is by reserving of such a right. No doubt, failure on the part of the petitioner to conduct a de-novo enquiry despite several adjournments would not mean that the Industrial Court could have kept the matter pending till the petitioner found it convenient to conduct the enquiry. At the same time, it cannot be ignored that the lapse on the part of the petitioner might lead to a guilty person being exonerated only because a de-novo enquiry is not conducted. Equities would be balanced, if the amount deposited by the Petitioner in both these cases is paid to the Respondent as costs for reducing his rigours of litigation.

8. Considering the above, the impugned judgments dated 13/01/2016, in Complaint (ULP) Nos. 22/2013 and 23/2013 are quashed and set aside and both these petitions are allowed. Both the complaints are restored to the file of the Industrial Court, Jalgaon.

9. Learned counsel for the Respondent/Employee prays that

a time frame may be granted for deciding the two complaints and a date for appearance may be granted to avoid wastage of time in issuance of notices. As such, the litigating sides shall appear before the Industrial Court on 06/01/2018.

10. The petitioner shall file all such documents on which they intend to place reliance for the purposes of conducting a de-novo enquiry, before the Industrial Court, on/or before 15/01/2018. The Industrial Court shall frame an issue, as to whether the Petitioner/Management in the two complaints proves that the original complainant is not a workman under Section 2 (s) of the I.D. Act and is not an employee under Section 3 (5) of the 1971 Act. The litigating sides shall extend their cooperation to the Industrial Court for the expeditious disposal of the two complaints and the Industrial Court shall endeavor to decide the said complaints on/or before the 20/12/2018.

11. The amount deposit in this Court by the petitioner, shall

be withdrawn along with accrued interest by the Respondent towards costs.

(RAVINDRA V. GHUGE, J.)

S.P.C.