

(Reportable)

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

WRIT PETITION NO.2730 OF 2004

Divisional Controller,
Maharashtra State Road Transport
Corporation, Division Latur,
District Latur.

...PETITIONER

-VERSUS-

Bhushan Jagannathrao Bulbule,
Age : Major, Occupation : Nil,
ST Conductor,
R/o Udgir, Taluka Udgir,
District Latur.

...RESPONDENT

...
Smt.R.D.Reddy, Advocate for the Petitioner.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th May, 2018

Oral Judgment :

1 By this petition, the Petitioner Corporation has challenged the judgment of the Labour Court dated 15.07.1993 by which, Complaint (ULP) No.17/1992 filed by the Respondent/ original Complainant has been allowed and the second show cause notice proposing the punishment

of dismissal from service dated 17.06.1992, is quashed and set aside on the basis of evidence freshly adduced and without framing an issue as to whether, the enquiry is fair and proper and whether, the findings of the Enquiry Officer are perverse.

2 The Petitioner is also aggrieved by the judgment of the Industrial Court dated 27.03.2003 by which, the Industrial Court partly allowed Revision (ULP) No.91/1993 filed by the Petitioner and yet, granted the same relief that was granted by the Labour Court.

3 On 05.05.2004, this Court has admitted the petition and issued Rule on interim relief. On 27.07.2004, this Court noted that the notice of rule was served on the Respondent/ Workman and he has not caused his appearance either in person or through an Advocate. It was further noted that the Respondent was not reinstated pursuant to the impugned orders and hence, interim relief in terms of prayer clause "D" was granted to the Petitioner Corporation, staying the impugned judgments.

4 I have considered the submissions of the learned counsel for the Petitioner Corporation and have gone through the record available with her assistance.

5 The Respondent was a Bus Conductor with the Petitioner Corporation. On 07.02.1992, while on duty on the Aurangabad-Udgir segment, the bus was subjected to a surprise check. A group of passengers

traveling from Pachod to Georai was found to be possessing used tickets, which were already issued to other passengers previously. The checking squad found that these used tickets were resold by the Respondent/Conductor to the said passengers. An amount of Rs.236.85 were found less in the official cash bag of the Respondent /Conductor.

6 The Respondent was issued with a charge sheet and after conducting an enquiry as per the Discipline and Appeal Procedure, the Respondent was found guilty of the charges levelled upon him. He was, therefore, issued with the second show cause notice dated 17.06.1992. He was informed that he should show cause as to why the Petitioner Corporation should not agree with the findings of the Enquiry Officer and as to why, he should not be awarded the punishment of dismissal for his act of misappropriation.

7 The Respondent/ Conductor approached the Labour Court by filing Complaint (ULP) No.17/1992 challenging the proposed punishment. It was contended that the enquiry was conducted in defiance of the principles of natural justice, the findings of the Enquiry Officer were perverse and the punishment proposed was shockingly disproportionate to the gravity and seriousness of the misconduct at issue.

8 The Labour Court has framed the following issues :-

Sr.No.	Issues	Findings
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1	Does complainant prove that the show cause notice of dismissal dated 17.06.1992 issued by respondent is by way of :	
	i) Victimization	Yes
	ii) not in good faith but in the colourable exercise of the employer's rights	Yes
	iii) by conducted evidence	No
	iv) for patently false reasons	No
	v) in utter disregard of the principles of natural justice	Yes
	vi) with undue haste	Yes
	vii) for misconduct of minor or technical character without having any regard with the nature of particular misconduct so as to amount to shockingly disproportionate punishment?	Yes
2	Is complainant entitled for reinstatement with continuity and backwages?	Yes

(Reproduced verbatim)

9 It is crystallized law that when an employee challenges the fairness of a departmental/ domestic enquiry and the findings of the Enquiry Officer, two issues have to be framed by the Labour Court or the Tribunal, as the case may be, which are as follows :-

- (a) Does the Complainant/ second party workman prove that the enquiry was conducted in violation of the principles of natural justice and is vitiated ?
- (b) Does the Complainant/ second party workman prove that the findings of the Enquiry Officer are perverse ?

10 The learned counsel for the Petitioner raised an issue that lawyers and litigants are still unsure as to how the case of a challenge to the second show cause notice proposing a punishment, is to be dealt with by the Labour/ Industrial Court or Tribunal, as the case may be.

11 The Honourable Supreme Court, in the matters 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 *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.

12 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** and *Bharat Forge Company Limited (supra)*], the enquiry is vitiated, a de-novo enquiry can be conducted by the Management, keeping in view the law laid down by the Honourable

Supreme Court (five judges Bench) in the matter of *KSRTC v/s Lakshmiddevamma*, **2001 (2) CLR 640**.

13 This Court, in the case of *Permanent Magnets vs. Vinod Vishnu Wani*, 2002 (93) FLR 32 : 2002 (3) Mh.L.J. 413 (Coram : R.M.S. Khandeparkar, J.), concluded that when a right to conduct a de-novo enquiry was reserved in the written statement, the Labour Court could not have delivered its final judgment by arriving at a conclusion that the findings of the Enquiry Officer are perverse. The moment the enquiry is held to be vitiated for any reason, the right to conduct a de-novo enquiry is born for the first time. Relevant observations in paragraphs 14 and 15 of the *Permanent Magnets case (supra) (Single Bench)* read as under :-

"14. Referring to the decision of the learned Single Judge in Chandrikaprasad's case, it was strenuously argued by the learned Advocate for the respondent that there was not even an attempt on the part of the petitioner in the course of argument to submit that the petitioner would lead evidence in support of the charges of misconduct, in case the Labour Court holds the findings of the Enquiry Officer to be perverse. Indeed, in Chandrikaprasad's case, the learned Single Judge while considering the point of failure on the part of the Labour Court to allow the employer to adduce evidence pursuant to the finding that the domestic enquiry was not fair and proper and the findings recorded by the Enquiry Officer were perverse. It was observed that in the written statement filed by the employer, no plea was raised in the alternative that in case the enquiry held against the employee is not fair and proper or is held to be perverse, the employer be given an opportunity to prove the charges against the employee and even

when issues were framed after the parties had tendered draft issues, the employer had never pressed that the issue regarding fairness of the enquiry or the correctness of the findings recorded by the Enquiry Officer should be tried as preliminary issue. Not only that when during the course of arguments no request was made that if the Court holds that enquiry against the employee was not fair and proper or the findings recorded by the Enquiry Officer were perverse, the employer should be given opportunity to lead evidence. Having sat on the fence and allowed the proceedings to complete, it was not open to the employer, after the proceedings were closed before the Labour Court and judgment was delivered, to raise the contention, during the course of hearing of revision application for the first time even in absence of any ground in memo of revision that Labour Court ought to have asked employer to lead evidence to prove the misconduct on merits before the Labour Court. According to the learned Advocate for the petitioner, the facts of the case in hand are similar to those of Chandrikaprasad's case inasmuch as, there was no request made by the petitioner in the course of arguments for allowing the petitioner to lead evidence in case the Labour Court holds that the findings of the Enquiry officer to be perverse nor, the issue in that regard was requested to be tried as preliminary issue. It cannot be disputed that the petitioner could have certainly drawn attention of the Labour Court at the time of framing issues that the issue in relation to whether the findings of the Enquiry Officer to be perverse, ought to have been tried as preliminary issue. It is also a matter of record that on completion of the evidence led by the petitioner in answer to the evidence, led by the respondent, the petitioner had filed purshis closing its evidence. The impugned order also does not disclose any request having been made by the petitioner to the Labour Court in the course of arguments for reserving its right to lead evidence in support of the charges of misconduct and punishment imposed, in case the Labour Court holds the findings of the Enquiry Officer to be perverse. However, as

rightly submitted by the learned Advocate for the petitioner, in spite of these facts, the point which is required to be considered is whether the employer was afforded or not an opportunity to exercise his right to adduce evidence once the tribunal holds that the findings of the Enquiry Officer are perverse. Undisputedly, the decision of the Labour Court that the findings of the Enquiry Officer in the Domestic Enquiry were perverse was arrived in the judgment and order dated 6th April, 1999 itself and not prior to the delivery of the said judgment and order and, thereafter, there was no opportunity made available to the petitioner to lead any evidence in support of the charges against the respondent in spite of the fact that the pleadings in that regard disclose the required alternative plea. Undisputedly, in Chandrikaprasad's case, there was no such plea raised in the written statement. Basically, therefore, the employer had not disclosed any willingness on its part to lead evidence in support of the charges and punishment imposed by the management in case the Labour Court comes to the conclusion that the findings arrived at by the Enquiry Officer were perverse. Considering the law laid down by the Apex Court in Bharat Forge Company Limited's case and Karnataka State Road Transport Corporation's case, it being the matter of right of the employer on necessary alternative plea being made in the written statement, it was necessary for the Labour Court to afford an opportunity to the employer to lead evidence in support of the charges and punishment imposed once, the Labour Court has held that the findings arrived at by the Enquiry Officer were perverse. In this connection, it was sought to be contended by the learned Advocate for the respondent that there is no procedure prescribed whereby the parties are entitled to lead evidence in piecemeal on every issue. There can be no quarrel about the proposition canvassed by the learned Advocate for the respondent. However, the fact remains that it was necessary for the Labour Court to frame issue as to whether the findings of the Enquiry Officer being perverse along with the issue regarding

the Domestic Enquiry to be in accordance with the principles of natural justice or not. For the lapse on the part of the Labour Court, the parties cannot be blamed in that regard. No doubt, the parties also could have assisted the Labour Court by bringing the said fact to the notice of the Labour Court at the time of holding of the enquiry in relation to the point as to whether the Domestic Enquiry was in accordance with the principles of natural justice or not. But, having not done so, apparently, the right of the employer to lead evidence in support of the charges and punishment imposed, once the Labour Court comes to the conclusion that the findings of the Enquiry Officer were perverse, cannot be denied to the employer, and more particularly, when denial of such right has resulted in prejudice to the petitioner.

15. *It was also sought to be contended on behalf of the respondents that the plea that no opportunity was afforded to the petitioner to lead evidence after the said findings of the Enquiry Officer being held to be perverse, was not specifically raised in the revision application before the Industrial Court. However, the ground (C) of the revision application specifically refers to the point as to improper framing of issues resulting in miscarriage of justice and reference to the decisions of the Apex Court in Bharat Forge Company Ltd's case. Certainly, the decision of the Apex Court in Bharat Forge Company Ltd's case is regarding the employers right to adduce evidence in case the Labour Court comes to the conclusion that the findings arrived in disciplinary proceedings are perverse. Besides, the impugned judgment dated 16-1-2001 specifically refers to the arguments advanced in that regard and placing of reliance in the decision of the Apex Court in Bharat Forge Company Ltd's case. Being so, it cannot be said that it is for the first time the issue regarding the failure on the part of the Labour Court to give an opportunity to the employer to lead evidence pursuant to the decision regarding the findings of the Enquiry Officer being perverse is raised."*

14 The judgment of the Single Judge in the Permanent Magnets case (supra) was challenged before the Division Bench of this Court, Vinod Vishnu Wani and others vs. Permanent Magnets, 2002 (94) FLR 66 : 2002 (3) Bom.C.R. 334. The Division Bench upheld the view taken by the Single Judge.

15 It would be apposite to reproduce the conclusion of this Court in paragraphs 22 and 23 of the Permanent Magnets judgment (Division Bench) as under :-

- "22. *The first stage of the enquiry before the Labour Court ended by holding that the enquiry was fair and proper and as per the principles of natural justice. Second stage of enquiry before the Labour Court ended by holding that the findings recorded by the enquiry officer were perverse and there the third stage starts that of giving an opportunity to the management to lead evidence in support of the charges framed against the employees. Obviously, this third stage is subject to the condition that the management had reserved such a right in the written statement filed by the management. It is already pointed out that the management had reserved such right in the written statement. So when the learned Judge came to the conclusion that the findings recorded by the enquiry officer were perverse, then the learned Labour Judge ought to have called upon the management to lead evidence to substantiate the charges framed against the employees. This position is borne out by the observations made by the Supreme Court in the case of Bharat Forge Company Ltd. (supra).*
23. *The endeavour of the Supreme Court in all these cases is that there should not be delay in concluding the proceedings and therefore whatever stand the*

management has to take with respect to the allegations made by the complainant, that stand must be taken in the written statement itself. But once that stand is taken by the management, then the Court will have to work out the proceedings before it, according to the stand taken by the management. It will not be necessary for the Labour Court to call upon the management to lead evidence to substantiate the charges framed against the employees if no such right is reserved by the management in the written statement filed by the management. So in the present case, we find that though the management had reserved its right to lead evidence to substantiate the charges framed against the employees, the Labour Court failed to give that opportunity to the management and from that view the decision given by the Learned single Judge is quite right and it requires no interference."

16 Once the Labour Court or Industrial Court notices that the enquiry and the findings of the Enquiry Officer are under challenge, even if the litigating sides desire to lead fresh evidence on the said two issues, it 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.**

17 This Court has settled the law on recording of oral evidence while deciding the above mentioned two issues. The above two issues are

solely and exclusively based on the entire record and proceedings of the departmental/ domestic enquiry. Whether, the enquiry was conducted by violating the principles of natural justice and whether, the findings of the Enquiry Officer are perverse in the light of the evidence recorded in the enquiry, is to be scrutinized and assessed only by referring to the record and proceedings of the departmental enquiry. No additional oral evidence is required to be adduced while deciding the above said two issues since these two issues are to be decided only on the basis of reviewing the record and proceedings in the enquiry. Instances of violation of principles of natural justice are to be pointed out only from the record and proceedings of the enquiry. Neither the Enquiry Officer is a necessary party to such a complaint or reference, nor is the Enquiry Officer required to be examined as a witness. The fairness of the Enquiry Officer's findings is to be assessed purely on the basis of his conclusions and it has to be seen, by going through the evidence recorded in the enquiry, as to whether, the findings of the Enquiry Officer are supported by reasons and whether, such conclusions are on the basis of the evidence recorded. If there is some evidence on record on the basis of which, the Enquiry Officer has drawn his conclusions after preponderance on the principles of probabilities, the findings can be sustained. If any of the findings of the Enquiry Officer are not supported by any evidence in the enquiry, the said findings can, therefore, be termed as being perverse. The Labour Court or

Industrial Court or Tribunal, while going into these aspects, is not required to rely upon any fresh evidence, besides the evidence recorded in the enquiry appearing in the record and proceedings of the enquiry. Hence, no evidence is required to be freshly adduced, not even of the Enquiry Officer, while dealing with the above said two issues.

18 This Court (Coram : R.M.S.Khandeparkar, J.), in the matter of Association of Engineering Workers, Mumbai vs. Hindustan Motor Manufacturing Company, Mumbai, 2004 (II) LLJ 790, has observed that the findings of the Enquiry Officer must indicate that he has analyzed how the charges/ allegations against the delinquent are established by evidence recorded in the enquiry. There must be a link between the conclusions of the Enquiry Officer and the evidence recorded before him. Only then the findings can be sustained. Such observations in paragraphs 5, 6 and 7 read as under :-

"5. The Ruling of the Apex Court therefore clearly discloses the necessity for analysis of the evidence by the Enquiry Officer before arriving at the finding regarding the misconduct of the workmen. It is necessary for the Enquiry Officer to analyse the evidence and to disclose from such analysis as to how the allegations against the workmen are established by the evidence led by the employer. It is not a mere formality on the Enquiry Officer to conclude that allegations are proved by the evidence on record would suffice the requirement of law in that regard but the exercise of analysis of evidence should be disclosed from the application of mind by the Enquiry Officer to the facts brought on record vis-a-vis the

allegation of misconduct by the workman and such an exercise should be revealed on the face of the record of the report of the Enquiry officer itself. In the absence thereof, as rightly submitted by the advocate for the petitioner, it cannot be said that the Enquiry Officer has applied his mind to the matter in issue nor it can be said that the findings by the Enquiry Officer are borne out from the record. On the contrary in the absence of analysis it would have to be concluded that the findings are perverse. It is also to be noted that report of the Enquiry Officer is essentially to help the Tribunal to ascertain whether the approach of the Enquiry Officer in arriving at the findings had been appropriate or erroneous and whether the conclusions are perverse or not, beside being of great help to the workmen to place his contentions before the Disciplinary Authority in the matter of imposition of punishment, if any.

6. *Perusal of the Enquiry report in the case in hand, undoubtedly discloses that it runs into as many as 26 pages. However, out of said 26 pages as many as 10 pages thereof are utilised merely for reproduction of the issue and for narration of the proceedings relating to the issuance of the charge sheet and service of charge sheet. Out of the remaining 20 pages, about 18 pages disclose summary of testimonies of the witnesses examined in the course of the enquiry. The analysis of the evidence, if at all it can be said to be one, and the finding by the Enquiry Officer are comprised in one paragraph, i.e. the paragraph No. 38 and it reads that "in view of my findings on the above issues 1 to 23 in the affirmative I hold that the following acts of misconduct levelled against Sarvashree K.D. Bhere, S.R. Waze, P.K. Jikamde, A.S. Darde, S.G. Gang in the charge sheet dated May 1, 1993 which has been reproduced hereinabove have been proved." The affirmative finding referred to in the said paragraph is to be found in paragraph No. 10 of the Report, which reads that my findings on the above issues No. 1 to 23 are in affirmative. The paragraph 11 speaks about the reasons for findings and it reads that the reasons in support of my*

findings above were discussed herein below in respect of issues No. 1 to 23. Paragraph Nos. 12 to 37 summarises the testimonies of the witnesses. The said paragraph nowhere analyses the evidence vis-a-vis allegations of misconduct by the workmen, in other words in four sentences which merely disclose the conclusion that the issues are being answered in affirmative and the acts of misconduct alleged against the employee are proved. Apart from that no efforts have been made by the Enquiry Officer to ascertain whether any testimony of any of the witnesses disclose the involvement of the employee in any of the acts of misconduct alleged against the employee. It is not the general conclusion in the manner the Enquiry Officer has drawn in his report could be said to be a finding in relation to allegation of the misconduct based on appreciation of evidence to hold that the findings are borne out from the record. The report should disclose the overall analysis of the evidence in relation to the allegations of the misconduct against the workmen and in the absence thereof the findings cannot be held to be borne out from the record, and on the contrary in the absence of such exercise on the part of the Enquiry Officer disclosed from its report, the findings will have to be held to be perverse.

7. *As the report in question nowhere discloses analysis of evidence nor any efforts on the part of the Enquiry Officer to link any part of the evidence with the allegation of misconduct on the part of the employee, the findings arrived at by the Enquiry Officer are to be held as perverse. On that ground alone the Award (part 1) needs to be set aside. Once the finding of the Enquiry officer are held to be perverse, certainly there cannot be any occasion for the Labour Court to confirm the order of termination of service of the workmen and in such circumstances when the employer had prayed for opportunity to lead further evidence in support of the charges, such an opportunity has to be given to the employer. Indisputably in the written statement filed before the Labour Court, the respondent employer had clearly stated that if the Court comes to the conclusion that*

the enquiry is not fair, proper and justified, then it is prayed that this Hon'ble Court may be pleased to allow the company to lead the evidence to substantiate the charges..... Apparently right to lead the evidence in support of charges in case of findings by the Enquiry Officer being found perverse as reserved by the respondent company. While setting side the impugned award, the matter will have to be remanded to the Labour Court to give an opportunity to the respondent company to substantiate charges against the petitioner."

19 In fact, it is now well settled that even if a domestic enquiry is vitiated either for non observance of the principles of natural justice or on account of the findings of the Enquiry Officer being perverse, there can be no order of reinstatement in service or payment of subsistence allowance at the interim stage. This Court, in the matter of *Mumbai Cricket Association v/s Pramod G. Shinde*, **2011 (7) ALL MR 678**, has held that even if the enquiry is watered down, there cannot be an order of reinstatement pending the de-novo enquiry. In this backdrop, it is in fact in the interest of the worker that he does not waste time in unnecessarily leading oral evidence on the first two issues. The Division Bench of the Allahabad High Court, while dealing with an issue of framing of preliminary issues and deciding the same expeditiously, in *M/s DCM Shri. Ram Industries Limited vs. State of U.P. and others*, **1996 (72) FLR 713**, has observed in paragraphs 9, 10, 11, 14 and 15 as under :-

"9. *The whole tenor of the Industrial Disputes Act is for*

bringing peace and amenity in the industrial atmosphere of any industrial undertaking. The very purpose of having a provision like reconciliation is to stall and curtail litigation. Even on failure, when matter is referred to the Court this principle has to be kept in mind that on account of procedural wrangling employer does not stretches or unnecessarily prolongs litigation which frustrates and affects the right of a workman. Hence that procedure is to be adopted which eliminates such frustration or effect. On account of stretching the proceeding too long may amount to exploitation of the employee which he could ill-afford. It is in this domain courts should adopt that procedure, which curtails such a procedure. Whether an issue could be tried as a preliminary issue or not would be a question depending on the facts and circumstances of each case. We further find the aforesaid decision does not close the discretion of the Tribunal or courts to adjudicate whether, on the facts and circumstances of a particular case, an issue could be raised as preliminary issue or not. The fact in spite of recording, "There was a time when it was thought prudent and wise policy to decide preliminary issue first. But the time appears to have arrived for a reversal of that policy." In the same passage it further records which leaves the discretion of the tribunals and courts to decide whether a preliminary issue could be permitted to be raised or not, as it further records: "Tribunals and Courts who are requested to decide preliminary questions, must therefore ask themselves whether such threshold part-adjudication is really necessary."

10. On the other hand, in *The Cooper Engineering Ltd.* (supra) the Supreme Court records, specifically pertaining to a domestic enquiry for it being tried as a preliminary issue :

"..... It is, however, fair and in accordance with the principles of natural justice for the labour court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the

court to give an opportunity to adduce additional evidence at the commencement of the proceedings or at any rate, in advance of the pronouncement of the order in that behalf? In our considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the labour court prior embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to?

This is neither going to achieve the paramount object of the Act namely industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see section 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue the principles of natural justice..... On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the

preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

11. *This decision holds in case if such a question is not decided as preliminary issue where it would lead to. In case an order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor consequential second reference. In other words, it would not achieve object of the Act, namely, industrial peace as an award even if given by the Industrial Tribunal holding procedural irregularity in the domestic enquiry it would not lead to any settlement in effect it would lead to fresh enquiry, fresh reference and so on. Industrial peace is ruptured. This decision is, in no way, contrary to the decision in D.P.Maheshwari (supra). This decision also expresses anxiety of prolonging the litigation which is detrimental to the interest of the workman making employer the gainer. In both the cases principle is the same. Not to unnecessarily prolong industrial dispute affecting "workman" who can ill-afford, though in one case it denounced framing of a preliminary issue and other approves. Both the decisions keep in line with the paramount object of maintaining industrial peace and not prolonging a litigation. Apart from this in D.P.Maheshwari (supra) the said observations were made which are general in nature. That was raised in the background of a terminated employee in 1969 and even in 1983 preliminary question yet remained undecided whether, the said employee was a "workman" or not, within the meaning of the Industrial Disputes Act as the said question was raised and taken to the higher court which stalled the award and further proceedings.*
14. *In the present case examining on the principles of law laid down by two decision of the Supreme Court*

whether any prejudice is going to be caused to a party in case the aforesaid issue is not decided as a preliminary issue. The question of leading any evidence by the petitioner on the merits of termination would only arise in case it is held that the procedure adopted in the domestic enquiry violated the principles of natural justice and for that and other reasons raised in the dispute the said domestic enquiry is set aside. The stand of leading evidence at this stage cannot be taken by the petitioner as it would be consequential of the said decision.....

15. *The question still remains can management be asked to adduce evidence even before holding whether preliminary issue was defective or not. This decision can only be arrived at after the decision regarding the preliminary enquiry, otherwise there will be parallel evidence, one led in the preliminary enquiry and other before the Tribunal on merits that would embarrass to justify both on the basis of evidence of preliminary enquiry and the subsequent evidence led on the merits for the same set of facts. Thus question of holding enquiry on merits would only arise in case domestic enquiry is held to be illegal."*

20 When the Labour Court/ Tribunal is scrutinizing the record and proceedings of the enquiry to find out whether, the principles of natural justice have been violated or the findings are perverse, it is not required to rely upon new evidence. Any contention of the worker that the principles of natural justice have been violated, should be specifically pleaded in the complaint/ statement of claim and the Labour Court is required to scan through the record and proceedings of the enquiry to find

out whether, the principles of natural justice have been violated.

For illustration (a) :- If the worker/ delinquent insists that he was not permitted to cross-examine the Management Witness, this aspect can be scrutinized through the record and proceedings to find out whether, the Enquiry Officer has unfairly deprived the delinquent from cross-examining the Management Witness. Fresh evidence is not required in such a situation.

Illustration (b) :- If the delinquent claims that he was desirous of adducing further evidence and the Enquiry Officer prevented him from doing so, this aspect can also be assessed by scanning the record and proceedings of the enquiry to find out whether, the delinquent had given the list of witnesses, though not mandatorily required, or he had filed an application in the enquiry praying for liberty to further examine the witnesses. If there is no documentary evidence available in the record and proceedings of the enquiry in this regard, by which, it could be assessed that the delinquent had indeed made a request for leading further evidence, this absence of evidence cannot be supplanted by leading fresh evidence before the Labour Court to suggest that the delinquent had desired to lead more evidence in the enquiry.

21 The Labour/ Industrial Court or Tribunal while scanning the record and proceedings of the enquiry is, in fact, exercising its revisional jurisdiction. The entire record and proceedings file placed on record by

the Management would become a part of the record of the Court. The said record is only to be revisited by the Court to test whether, the contentions and challenges posed by the delinquent can be substantiated by the oral and documentary evidence available in the record and proceedings. The Honourable Supreme Court, in the matter of Debotosh Pal Choudhary vs. Punjab National Bank and others, 2002 AIR SCW 3803, has concluded that unless prejudice or injustice is established by the delinquent, any infraction of procedural law will not render the enquiry vitiated.

22 Whether, sufficient opportunity in defence and to cross examine the Management Witness has been afforded to the delinquent by the Enquiry Officer or not, is to be considered on the basis of what has actually transpired in the enquiry. The scope of judicial review of the Court in relation to the record and proceedings of the enquiry is, therefore, restricted only to the contents of the record and proceedings. In this context, paragraphs 19, 20 and 21 of the judgment of the Honourable Supreme Court in the matter of Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and others, 2001 (I) CLR 12, are relevant. The Honourable Supreme Court has noted that the records have to be considered while scrutinizing the allegations made by the delinquent and from such record, it has to be gathered as to how the enquiry has been conducted and whether, a reasonable opportunity was granted to the

delinquent. Paragraphs 19, 20 and 21 read as under :-

- "19. While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above however do find some support from the decision of this Court in the case of *Apparel Export Promotion Council v. A.K. Chopra* (1999 I CLR 597= JT 1999 (1) SC 61 =1999 (1) SCC 759).
20. It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependant upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste: this is however, apart from the issue of bias which would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of *Sayeedur Rehman v. The State of Bihar & Ors.* (1973 (3) SCC 333) seem to be rather apposite. This Court observed:
- "The omission of express requirement of fair hearing in the rules or other source of power claimed

for reconsidering the order, dated April 22, 1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

21. *Incidentally, Hidayatullah, C.J. in Channabasappa Basappa Happali v. The State of Mysore (AIR 1972 SC 32) recorded the need of compliance of certain requirements in a departmental enquiry at an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence on this state of law a simple question arises in the contextual facts: Has this being complied with? The answer however on the factual score is an emphatic "no".*

The sixty-five page Report has been sent to the Managing Director of the Nigam against the Petitioner recording therein that the charges against him stand proved what is the basis? Was the Inquiry Officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative: If the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish Report. But if one does not have it - Can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable

reason and in this context a decision of the Kings Bench Division in the case of *Denby (William) and Sons Limited v. Minister of Health* (1936 (1) K.B. 337) may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

"I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Ministers discretion, and I think what was said by Lord Halsbury in *Sharp v. Wakefield and others* (1891 A.C. 173, 179) is important to consider with reference to the exercise of such discretion. He there said: "Discretion means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : *Rooke's case* (1598 5 Rep. 99b, 100a; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."

23 This Court has laid down the law in *MSRTC, Beed v/s Syed Saheblal Syed Nijam*, **2014 (III) CLR 547 : 2014(4) Mh.L.J. 687** and *Vasant Ambadas Deshpande case (supra)* that a conclusion on the above said two issues by the Labour Court/ Tribunal would be the part-1

judgment/ award insofar as the said two issues are concerned. The said part-1 judgment/ award is not an interlocutory order, but is a final conclusion of the Labour Court on the fairness of the enquiry and the fairness of the findings of the Enquiry Officer. Unless challenged in a superior court, these conclusions cannot be revisited by the said court.

24 In so far as grant of ex-parte ad-interim relief as against the second show cause notice is concerned, the learned Division Bench of this Court in the matter of Ashok Vishnu Kate and others vs. Shri M.R.Bhope, Judge, Labour Court, Bombay and another (Hindustan Lever), 1992 (3) Bom. C.R. 352, held for the first time that though an employee/ delinquent cannot challenge the enquiry at various stages, he can challenge such an enquiry if a case can be made out at a penultimate stage that the proposed punishment of dismissal from service is shockingly disproportionate or that the enquiry was conducted in blatant violation of the principles of natural justice or the findings of the Enquiry Officer are perverse.

25 The above said case was taken to the Honourable Supreme Court which delivered its judgment in the matter of *Hindustan Lever v/s Ashok Vishnu Kate and others*, **1995(6) SCC 326**. While sustaining the view taken by the Bombay High Court, the Honourable Supreme Court has crystallized the law by cautioning the courts entertaining such

complaints. It would be apposite to reproduce paragraph 54 of the said judgment here under :-

"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."

(Emphasis is supplied)

26 In the above backdrop, the concerned Court dealing with a disciplinary case cannot grant ex-parte ad-interim or ad-interim relief in such matters at the mere askance. While granting some protection to the

delinquent, who had challenged the second show notice on an apprehension that he would be dismissed from service, the Trial Court has to primarily consider the gravity of the misconduct said to have been committed by the delinquent and has to assess whether, the proposed punishment is shockingly disproportionate. It is not enough that the punishment appears to be disproportionate for causing any interference by the Trial Court. Prima facie, the Trial Court must be convinced that the proposed punishment is shockingly disproportionate. (Read *Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain*, **2005 (104) FLR 291**).

27 The important aspect is that when a dismissed delinquent approaches the Labour Court/ Tribunal, the said Court must frame all the issues including the above mentioned two issues after the pleadings are complete. Thereafter, the first two issues can be taken up for adjudication. However, invariably the Labour Court/ Tribunal do not frame such two issues while dealing with the case wherein, the delinquent has challenged the second show cause notice, though he has assailed the manner of conducting the enquiry and also the fairness of the findings of the Enquiry Officer.

28 On the above count, in my view, the law applicable to cases wherein the delinquent has approached the Court post dismissal, would not be any different than the case in which the delinquent has approached the Court against the proposed punishment of dismissal. The Division

Bench of this Court and the Honourable Apex Court in the Hindustan Lever Case (supra) have crystallized this position that, while a delinquent would have a right to approach the Labour Court under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU and PULP Act"), the Labour Court will have to prima facie assess whether, the proposed action of the employer amounts to unfair labour practice under any of the sub-clauses of Item 1 of Schedule IV. No relief is to be granted by the Labour Court merely because the Complainant has approached the Court for challenging the second show cause notice.

29 Therefore, the law and procedure applicable to cases post dismissal would *mutatis mutandis* apply even to those cases, wherein, the employee has approached the Labour Court against the second show cause notice proposing the punishment of dismissal. While dealing with such cases and at the stage of issuing notice to the Employer, it is incumbent upon the Labour Court to consider whether, a strong prima facie case is made out by the delinquent for which he can be granted an ex-parte ad-interim protection pending appearance of the Employer, keeping in view the note of caution struck by the Honourable Supreme Court in paragraph 54 of the Hindustan Lever judgment (supra). It cannot be ignored that invariably the delinquent approaches the Labour Court at the last moment so as to practically compel the Court to grant ad-interim protection on the

plea that the complaint would become infructuous. The Labour Court should not get swayed by such circumstances.

30 After the Employer appears and the pleadings are complete, the Labour Court would have to frame the above mentioned two issues and decide them peremptorily by following the same procedure as is applicable to the cases wherein, the delinquent has approached the Court after dismissal. The employer in such cases is under a legal obligation to produce the entire record and proceedings of the enquiry so as to enable the Labour Court to scan through the said record while deciding the first two issues. No oral evidence is required to be adduced by any side when the Labour Court is dealing with the first two issues which are exclusively restricted to the record and proceedings of the enquiry.

31 In the instant case, the Labour Court neither framed the above stated two issues, nor did it set aside the enquiry either for being conducted in violation of the principles of natural justice or on account of the findings of the Enquiry Officer being rendered perverse. The Labour Court noted that though no oral evidence is adduced by either of the parties, (which in any case they were not entitled to lead), it has interfered with the findings of the Enquiry Officer by concluding that the charges are not proved against the delinquent. The second show cause notice was, therefore, set aside.

32 The Industrial Court could have rectified the situation while

dealing with the revision petition filed by the Petitioner Corporation under Section 44 of the MRTU & PULP Act. However, instead of doing so, though the Industrial Court has rightly concluded that the issues raised by the workman are to be decided/ determined only on the basis of the record of the enquiry, it failed to note that the said two issues mandatorily required to be framed, were not framed by the Labour Court. By expressing sympathy in favour of the delinquent in paragraph 11, the Industrial Court, despite its conclusion that the judgment of the Labour Court cannot be sustained, has passed a weird order which reads as under:-

- "I) *The revision is partly allowed.*
- II) *The order passed by learned Labour Court for reinstatement of complainant with back wages is hereby quashed and set aside.*
- III) *The respondent is directed to reinstate the complainant without continuity of service and back wages.*
- IV) *Parties to bear their respective costs.*
- V) *R and P be sent to the Labour Court."*

33 Considering the above, this Writ Petition is partly allowed in the following terms:-

- (a) The impugned judgments of the Labour Court dated 15.07.1993 and the Industrial Court dated 27.03.2003 are quashed and set aside. Revision (ULP) No.91/1993 filed by the Petitioner Corporation stands allowed. Complaint (ULP) No.17/1992 is remitted to the Labour Court at Latur.

- (b) The Petitioner shall appear before the Labour Court on 15.06.2018.
- (c) The Labour Court shall issue notice to the original Complainant.
- (d) The Petitioner Corporation would cooperate to have the notice served on the Complainant even by substituted service by publication of the notice in a Marathi newspaper having largest circulation in Latur district covering taluka Udgir, if there is any problem in serving the Complainant.
- (e) After appearance of the Complainant, the Labour Court would frame the above mentioned two issues and would decide the said issues purely on the basis of the record and proceedings of the domestic enquiry and the findings of the Enquiry Officer.
- (f) The Petitioner Corporation shall be duty bound to produce the record and proceedings of the said enquiry along with the findings of the Enquiry Officer before the Labour Court, if not already produced.

34 Rule is made partly absolute in the above terms.