

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4227 OF 2018

MAHARASHTRA RAJYA MARG PARIVAHAN MAHAMANDAL
VERSUS
SUSHILA SAMBHAJI YADAV

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Advocate for Petitioners : Smt.Reddy Ranjana D.
Advocate for Respondent : Shri Ghute S.B.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 29, 2018
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PER COURT :-

1. The petitioner / MSRTC is aggrieved by the judgment and order passed by the Industrial Court dated 31.10.2017, by which, the Complaint (ULP) No.63 of 2015 was allowed vide an ex-parte judgment.

2. I have heard the learned Advocates for the respective sides. Learned counsel for the respondent has strenuously defended the impugned judgment.

3. The admitted factors, as they emerge from the record, are as under:-

(a) The original complainant / employee was charge sheeted on the following counts:-

7C. Not issuing tickets to passengers after taking travelling charges.

7H. To make fault in maintaining records in proper manner as prescribed by management.

12B. To make fraud, disloyalty, embezzlement regarding corporation's work or asset.

22. To violate any administrative order.

(b) He was awarded the punishment of stoppage of three increments for three years, as he was held guilty by the Enquiry Officer.

(c) The complainant preferred the ULP Complaint contending that the enquiry be vitiated and the findings of the Enquiry Officer are perverse.

(d) The Industrial Court did not frame a single issue, much less the two issues, which are mandatorily to be framed in view of the law crystallized by the Honourable Apex Court in the matters of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803], Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh - [1972 (1) SCC 595 = AIR 1972 SC 1031], Workmen of Firestone Rubber and Tyre Company Vs. the Management and others [(1973) 1 SCC 813], and Bharat Forge Company Ltd., Vs. A.B. Zodge and another [AIR 1996 SC 1556].

(e) It was expected that the Industrial Court would frame the following two issues:-

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

(B) Whether the complainant proves that the findings of the enquiry officer are perverse and deserve to be set aside?

4. It is settled law that without framing the aforesaid two issues, the Labour Court or the Industrial Court, as the case may be, cannot interfere with the enquiry and findings of the Enquiry Officer. If the enquiry and the findings are left untouched, the charges proved in the enquiry cannot be interfered with and the only issue that remains to be decided is the proportionality of the punishment in the light of the judgment delivered by the Honourable Apex Court in the matters of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [2000 AIR SCW 3439 = AIR 2000 SC 3129 = (2000) 7 SCC 517] and Damoh Panna Sagar Rural Regional Bank and another Vs. Munna Lal Jain [2005 (104) FLR 291], as well as the judgment of the learned Division Bench of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33].

5. I find that the learned Advocates appearing before the Industrial Court have not rendered any assistance to the Court, inasmuch as, the Industrial Court has failed to apply its mind to the above referred judgments and the law, which have been considered at length in the reported judgments of this Court in the matter of MSRTC Vs. Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam [2014 III CLR 547 = 2014 (4) Mah.L.J.687], and Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande [2014 (3) Mh.L.J. 339 : 2014 I CLR 878].

6. Nevertheless, though a remand of the matter is imminent and unavoidable, the petitioner deserves to be saddled with costs for having failed to participate in the proceedings before the Industrial Court.

7. As such, this petition is allowed. The impugned judgment dated 31.10.2017, delivered by the Industrial Court, Latur is quashed and set aside and Complaint (ULP) No. 63 of 2015 stands restored with the following directions:-

(A) The litigating sides shall appear before the Industrial Court on 15.10.2018.

(B) The petitioner shall deposit an amount of Rs.20,000/- before the Industrial Court on the same date and the original

complainant would be at liberty to withdraw the said amount as costs, without conditions.

(C) The petitioner shall file it's written statement and shall produce the record and proceedings of the departmental enquiry along with the written statement on/or before 31.10.2018.

(D) The Industrial Court shall first frame the above stated two issues along with the other issues and shall deal with the first two issues, peremptorily, considering the law laid down in the cases of Maharashtra State Roadways Transport Corporation and Maharashtra State Co-operative Cotton Growers Marketing Federation (supra).

(RAVINDRA V. GHUGE, J.)

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