

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.186 OF 2018
(Avinash Shrikrishna Joshi Vs. The Divisional Controller and
another)

Mr.V.Y.Patil, Advocate for the applicant.
Mr.M.K.Goyanka, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/12/2018

PER COURT :

1. I have heard the learned Advocates for the respective sides. The learned Advocate for the MSRTC has strongly opposed this application and has contended that there is no error apparent on the face of the record.

2. I have perused the order dated 16/02/2017 that I had passed in WP No.3231/2015. My conclusions were drawn in paragraph Nos.4 to 10 of the said order which read as under :-

"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.”

3. Learned advocate for the review applicant/employee submits that recently the Hon'ble Apex Court has delivered an order on 09/07/2018 in Civil Appeal No.6171/2018 in the matter of Ku.Pushpa Ramdas Zatake Vs. The Divisional Controller, MSRTC wherein the Hon'ble Apex Court has held that since the employee is in employment by virtue of earlier orders of the Court, she can be deprived of entire back wages and the case can be given a 'quietus'. The order passed by the Hon'ble Supreme Court reads as under :-

“Leave granted.

Having heard learned counsel for the parties and having perused the record of the case, we are inclined to set aside that part of the order which gives direction to the labour court to decide the matter afresh on merits.

In our opinion, such direction to remand the case to the labour court in the facts of this case was not called for.

It is not in dispute that the appellant was reinstated in service pursuant to the original order of the labour court and she has been working on the post since last eighteen years.

In the light of these admitted factual scenario appearing in the case, we consider it just and proper to give quietus to the case.

In these circumstances, we direct that the appellant would not be entitled to claim any backwages from the respondents and nor the respondents would be entitled to pass any adverse order against the petitioner in so far as the charge in question is concerned.

With this modification in the impugned order, this appeal stands disposed of."

4. Learned Advocate for the review applicant submits that the applicant is present in the Court. He is explained the situation and he volunteers as under :-

[a] He is due to retire on 31/07/2023 as a Bus Conductor.

[b] He has suffered 4 punishments for the same misconduct of misappropriation.

[c] He will not claim the back wages for the period of

unemployment which is of 5 months.

[d] He would not claim gratuity for 1 year for the period of the year 2009 considering that he was terminated on 08/01/2009, his first department appeal was allowed on 30/05/2009 and he was reinstated on 08/06/2009.

5. After considering the above statement made to the Court by the learned Advocate in due consultation with the applicant present in the Court and after considering the submissions of the learned Advocate for the MSRTC, I find that the department appeal authorities of the MSRTC are casually entertaining first appeals. The Hon'ble Apex Court has laid down the Law in Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [(2000) 7 SCC 517 = 2000 AIR SCW 3439 = AIR 2000 SC 3129] and the learned Division Bench of this Court in P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33], that corruption has to be eradicated. Amount of corruption is not material and people having such tendency need to be removed from employment. Strict disciplinary action needs to be taken against corrupt employees. Yet, when the review applicant was awarded the punishment of dismissal from service for his act of proved corruption on 08/01/2009 in the backdrop of 4 punishments, the First Appellate Court appears to have casually passed an order

on 30/05/2009 setting aside the order of dismissal and imposing a meager punishment of stoppage of 3 increments permanently.

6. This tendency to allow appeals casually needs to be curbed by the MSRTC and they should initiate stringent measures to avoid such a situation because of which this applicant is now in employment from June 2009 for a period of about 9 years. He has only 4 ½ years for retirement. Because of such situations, the Hon'ble Apex Court has set aside the order of this Court remitting the matter to the Labour Court by considering that the delinquent is in employment under court orders and therefore such cases need to be given a quietus.

7. In view of the above, the statement of the review applicant is accepted as a statement made to the Court and he shall be precluded from moving any application or request for recalling the said statement. On account of the said statement and in view of the order of the Hon'ble Apex Court in the case of Ku.Pushpa (supra), this review application is allowed by condoning the delay of 181 days. The order passed by this Court on 16/02/2017 shall stand modified. The direction to the Labour Court to decide Complaint (ULP) No.23/2011 afresh, stands recalled and shall be replaced by the

following direction :-

- [a] The applicant/employee shall be deprived of the back wages and all consequential benefits for a period from 08/01/2009 till 07/06/2009.
- [b] He shall be deprived of the gratuity for the year 01/01/2009 till 31/12/2009.
- [c] Any misconduct, if proved against the applicant in future shall be dealt with an iron hand by the MSRTC.
- [d] Consequentially, Complaint (ULP) No.23/2011 pending before the Labour Court, stands disposed of.

(Ravindra V.Ghuge, J.)