

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15393 OF 2017
(The Divisional Controller and another Vs. Kishan s/o Madhavrao
Vaidya)

Mr.A.D.Wange, Advocate for the petitioners.
Mr.M.P.Ambekar, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/08/2018

PER COURT :

1. I have heard the learned Advocates for the respective sides at length. The issue that needs adjudication is whether this case needs to be remanded for conducting a *denovo* enquiry as the petitioner/Corporation has failed to conduct a *denovo* enquiry before the Industrial Court after the departmental enquiry was vitiated.

2. The respondent had preferred Complaint (ULP) No.21/2012 for challenging the enquiry and the recovery of an amount of Rs.1,73,388/- in 20 equal installments after holding the complainant responsible for the shortage of 3892 liters of diesel. There is no doubt that the misconduct is grave and serious and a maximum punishment could also be attracted.

3. By the Part-I judgment dated 27/10/2016, the Industrial Court concluded that the departmental enquiry was not conducted in a fair and proper manner and the findings are perverse. It is undisputed that the Corporation had reserved its right, in the written statement, to conduct a *denovo* enquiry if the domestic enquiry is vitiated.

4. Despite having been granted about 10 weeks time to conduct such an enquiry, the Corporation has failed to do so and the Industrial Court proceeded to conclude that the charges are not proved and the complainant cannot be punished in its judgment delivered on 21/02/2017.

5. Learned Advocate for the complainant submits that he has attained the age of superannuation in 2013, his gratuity is still not paid and his pension is also not released. Learned Advocate for the Corporation submits that if the matter is remanded to the Industrial Court, the pension and gratuity would be released. An amount of Rs.1,73,388/- would be reserved from the gratuity amount in the event the same has to be recovered, if the complaint is dismissed.

6. Learned Advocate for the complainant submits that though he is agreeable for the said proposal, the complaint be expedited keeping

in view the hardships suffered by the respondent/employee and costs be awarded.

7. In view of the above, this petition is partly allowed. The impugned judgment and order 27/10/2016 is quashed and set aside and Complaint (ULP) No.21/2012 is restored to the file of the Industrial Court, Jalna on the following conditions :-

[a] These litigating sides would appear before the Industrial Court on 27/08/2018.

[b] The petitioner shall deposit costs of Rs.10,000/- (Rs.Ten Thousand only) before the Industrial Court on the day of appearance, which can be withdrawn by the respondent/ original complainant without conditions.

[c] The petitioner shall produce all relevant documents that it so desires and shall commence recording of the oral evidence of it's witness on 07/09/2018.

[d] The complainant would also be at liberty to lead evidence to counter the *denovo* enquiry.

[e] The Industrial Court shall endeavour to decide the complaint on or before 28/02/2019.

[f] The petitioner shall release the gratuity and the retiral benefits of the respondent within 4 (four) weeks from today by withholding an amount of Rs.1,73,388/-, by consent of the parties and the said amount shall be deposited by the Corporation before the Industrial Court on or before 31/10/2018 which shall be invested in an Fixed Deposit

Receipt in a Nationalized Bank by the Industrial Court till
31/03/2019.

(Ravindra V.Ghuge, J.)

Kranti
Hansraj
Shekatkar

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