

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11958 OF 2018

State Transport Co-op. Credit Society Ltd.,]
Pune Division, S.T. Swargate Depot,]
Veer Savarkar Nagar, Pune - 411 037.]
(Through its Chairman Shri Sharad Khopade)] Petitioner

Versus

Rajendra Sudhakar Mahalpure,]
B-6/12, Sarita Vihar Apartment,]
Opp. P.L. Deshpande Garden,]
Sinhagad Road, Pune - 411 030.] Respondent

Mr. Nitin A. Kulkarni for the Petitioner.

Mr. Jaydeep Deo for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 24TH NOVEMBER, 2018.

PRONOUNCED ON : 7TH DECEMBER, 2018.

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Kulkarni, learned counsel for the Petitioner, and Mr. Deo, learned counsel for the Respondent.

2. This Writ Petition takes an exception to the 'Judgment and Order' dated 28th August 2018 passed by the Industrial Court, Maharashtra at

Pune, thereby allowing Revision Application (ULP) No.18 of 2017, which was preferred by the present Respondent, under Section 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971, (*hereinafter referred to as "MRTU & PULP Act"*), to challenge the order passed on 2nd January 2017 by the 3rd Labour Court, Pune, on the preliminary issue in Complaint (ULP) No.93 of 2012.

3. Facts leading to the filing of this Writ Petition can be stated in nut shell as follows :-

. Petitioner is a Co-operative Credit Society, registered under the Maharashtra Co-operative Societies Act, 1960, having its own 'Certified Standing Orders'. Respondent was in the employment of the Petitioner since 1st November 1998 as a 'Secretary' and was confirmed on 1st May 1999. The 'Charge-Sheet' dated 22nd May 2012 was issued against the Respondent by the Petitioner alleging the misconduct of misappropriation committed by the Respondent, while he was on duty. By the order dated 9th May 2012, the Respondent was suspended from the services. Thereafter, enquiry was initiated. The Enquiry Officer submitted his 'Report' on 16th August 2012, holding the Respondent guilty of the charges levelled against him. On the basis of the said findings, the Petitioner had issued 'Show Cause Notice' to the Respondent

and thereafter, by the order dated 24th August 2012, the Respondent was dismissed from the services.

4. Being aggrieved thereby, the Respondent has filed complaint before the Labour Court, under Section 28(1) of the MRTU & PULP Act, 1971, challenging the legality of the enquiry and perversity of the findings recorded by the Enquiry Officer and further seeking the relief of reinstatement in the service with full back-wages. The complaint came to be resisted by the Petitioner by its reply at 'Exhibit-13', denying all the adverse allegations made therein.

5. The Labour Court has then, as per settled position of law, framed two preliminary issues for its consideration as to;

(i) Whether the enquiry conducted against the complainant is legal, fair and proper ?

And

(ii) Whether the findings of the Enquiry Officer are perverse ?

6. In support of his complaint, Respondent has filed his evidence affidavit. He is also cross-examined on behalf of the Petitioner. As he has raised the contention that, during pendency of the enquiry, 'Subsistence Allowance' was not paid to him, Petitioner has examined its Manager Shri Anil Rasker and Bank Officer Shri Jaywant Kolekar.

7. On appreciation of this oral and documentary evidence on record, the Labour Court found that, the Respondent has not raised the contention, during the enquiry before the Enquiry Officer, that the 'Subsistence Allowance' was not paid to him during the period of enquiry and the Respondent has also not shown how prejudice was caused to him in the enquiry because of non-payment of the 'Subsistence Allowance'. The Labour Court, therefore, held that, non-payment of 'Subsistence Allowance' is not the ground for denial of reasonable opportunity and on that basis, the enquiry cannot be considered to be vitiated. The Labour Court has then entered into the detail assessment of the evidence produced on record by the Petitioner before the 'Enquiry Officer' and after considering the evidence led on record, came to the conclusion that all the charges levelled against the Respondent for misconduct committed by him were proved during the enquiry. Labour Court has, thus, concluded that the enquiry conducted against the Respondent was legal, fair and proper and the findings of the 'Enquiry Officer' are based on the material produced before him during the enquiry; they are reasonable and not perverse. After answering these two preliminary issues raised for its consideration, the Labour Court has directed the matter to be proceeded further for remaining issues.

8. These findings and the order of the Labour Court was challenged before the Industrial Court by the Respondent herein by preferring the

Revision Application (ULP) No.18 of 2017. The Industrial Court has, vide its impugned 'Judgment and Order', held that for deciding the preliminary issues regarding the fairness of the enquiry and perversity of the findings recorded by the 'Enquiry Officer', the Labour Court cannot permit the parties to lead fresh evidence. As in this case, such fresh evidence was allowed to be led and considered by the Labour Court, it was held that the findings recorded by the Labour Court are required to be quashed and set aside. In arriving at this conclusion, the Industrial Court has relied upon the Judgments of the Hon'ble Apex Court in the case of *K.S.R.T.C. Vs. Laxmidevamma, 2001 (2) CLR 640; Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh, 1972 (1) SCC 595*, and also of our own High Court in the case of *Maharashtra State Co-operative Cotton Growers Marketing Federation Limited Vs. Vasant Ambadas Deshpande, 2014 (3) Mh.L.J. 339*. The Industrial Court has, therefore, allowed the Revision Application, quashing the impugned order passed by the Labour Court and directed the Labour Court to decide the two preliminary issues afresh, as early as possible, within six months from the date of receipt of the 'Record and Proceedings'.

9. This 'Judgment and Order' of the Industrial Court is challenged in the present Writ Petition by learned counsel for the Petitioner. It is submitted that, in this case, the evidence was not led before the Labour Court to substantiate the findings recorded by the 'Enquiry Officer', but

only to negate the contention raised by the Respondent that he was not paid 'Subsistence Allowance' till the completion of the enquiry. It is submitted that, there is no such prohibition laid down either in the Judgments of the Hon'ble Supreme Court or in the Judgments of this Court, relied upon by the Industrial Court, creating bar for adducing the evidence before the Labour Court, to show that there was compliance of the 'Standing Orders' and also that of the principles of natural justice. According to learned counsel for the Petitioner, the restriction as regards leading of oral or fresh evidence before the Labour Court is only in respect of challenging or substantiating the findings on the merits of the charges decided by the 'Enquiry Officer'. However, as regards the first preliminary issue as to *'whether the enquiry was just, fair and legal'?*, unless the parties get an opportunity to prove the non-compliance of such principles of natural justice or non-compliance of the Standing Order, the said issue cannot be decided.

10. In the present case, it is submitted that the evidence was led by the Petitioner only to prove that the 'Subsistence Allowance' was paid to the Respondent during pendency of the enquiry and not to substantiate the findings recorded by the 'Enquiry Officer'. Moreover, in the present case, the Labour Court has not even relied upon, discussed or even touched the oral evidence led before it by the Petitioner to show that such 'Subsistence Allowance' was paid to the Respondent. The Labour Court

has decided the said issue only on the ground that the Respondent has not raised this contention about non-payment of 'Subsistence Allowance' before the 'Enquiry Officer' and, therefore, he is prohibited or estopped from raising the said contention before the Labour Court, while challenging the 'Enquiry Report'. Hence, according to learned counsel for the Petitioner, the Industrial Court has committed a grave error in setting aside the order of the Labour Court and remanding the matter back for fresh enquiry, only on the count that the Labour Court has recorded the fresh evidence of two witnesses and, therefore, the findings recorded by the Labour Court on two preliminary issues are vitiated. According to learned counsel for the Petitioner, this approach is adopted by the Industrial Court by misreading the Judgments of the Hon'ble Apex Court and this Court and it is resulting into the miscarriage of justice. It is submitted that, in the light of this order passed by the Industrial Court, several such orders are being passed by the Labour Court, Pune, prohibiting leading of oral evidence on these two preliminary issues. Hence, it is necessary for this Court to lay down or to clarify the legal position on this aspect.

11. Per contra, according to learned counsel for the Respondent, the law is already fairly well-settled that, for deciding the two preliminary issues as to '*whether the enquiry was legal, just and fair?*' and '*whether the findings recorded by the 'Enquiry Officer' are perverse?*', ordinarily,

no evidence should be led before the Labour Court. According to him, in the present case, as such evidence was led before the Labour Court, no fault can be found in the impugned order passed by the Industrial Court, holding that the findings on these two issues were vitiated and, therefore, remanding the matter back to the Labour Court for conducting the fresh enquiry.

12. In support of their respective contentions, learned counsel for both the parties have relied upon various Judgments of this Court and the Hon'ble Apex Court, which will be considered in the due course.

13. The law as to the detail procedure to be followed before the Labour Court, when the report of the Enquiry Officer is challenged and when the fresh evidence can be adduced before the Court is fairly well-settled in the decision of the Constitution Bench of the Hon'ble Apex Court in the case of *Laxmidevamma (Supra)*, wherein, the law laid down in the earlier decision of *Ludh Budh Singh (Supra)*, was approved, which has laid down seven broad principles. They can be stated as follows :-

(1) If no domestic enquiry had been held by the Management, or, if the Management makes it clear that it does not rely upon any domestic enquiry, that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal, justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a

case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry, as the employer himself does not rely on it.

- (2) If a domestic enquiry had been held, it is open to the Management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal, justifying its action. In such a case, no inference can be drawn, without anything more than the Management has given up the enquiry conducted by it.*
- (3) When the Management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the Management are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it, on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case, it has to consider the evidence adduced before it by the Management and decide the matter on the basis of such evidence.*
- (4) When a domestic enquiry has been held by the Management and the Management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue*

and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the Management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the Management, then no additional evidence need to be cited by the Management. But, if the finding on the preliminary issue is against the Management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the Management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the Management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be that the Management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the Management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the Management or to the workman that the Tribunal should refuse to take evidence and thereby ask the Management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

- (5) *The Management has got a right to attempt to sustain its*

order by adducing independent evidence before the tribunal. But the Management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of or asked for by the Management before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it, to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a 'Reference' under Section 10, or, by way of an application under Section 33 of the Act.

14. Relying upon these principles, the Division Bench of this Court has, in the case of *Vinod Vishnu Wani and Others Vs. Permanent Magnets, 2002 (3) Bom.C.R. 334*, summarized its conclusion in paragraph Nos.22 and 23 of its Judgment as follows :-

“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. Vs. A.B. Zodge, AIR 1996 SC 1556.

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.”

15. After considering both these Judgments, the learned Single Judge of this Court, (*Coram : Ravindra V. Ghuge, J.*), has, in the case of *Divisional Controller, M.S.R.T.C., Latur Vs. Bhushan Jagannathrao Bulbule (Writ Petition No.2730 of 2004, dated 7th May 2018)*, held that,

“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 and they have to be decided peremptorily :-

- (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 ?”*

16. In paragraph Nos.14 and 15 thereof, it was held that,

“14. 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.”*

17. The same Single Judge has, in the case of *Maharashtra State Co-operative Cotton Growers Marketing Federation Limited Vs. Vasant Ambadas Deshpande*, 2014 (1) CLR 878, held that,

“These two preliminary issues are to be dealt with strictly on the basis of the record and proceedings of the enquiry, without permitting the litigating sides to adduce fresh evidence.”

18. In this context, it would be also useful to reproduce paragraph No.17 of the Judgment of the learned Single Judge of this Court in the case of *Bhushan Jagannathrao Bulbule (Supra)*, which read as follows :-

“These two preliminary 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 such 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.”

19. While elaborating this aspect, the learned Single Judge has then relied upon the Judgment of the Division Bench of the Allahabad High Court in the case of *M/s. DCM Shri Ram Industries Limited Vs. State of U.P. and Others*, 1996 (72) FLR 713, wherein it was held that,

“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.”

20. The learned Single Judge has, in paragraph No.20 of the Judgment in the case of *Bhushan Jagannathrao Bulbule (Supra)*, further held that,

“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.”

21. By way of illustration, the learned Single Judge has considered two instances in the said Judgment;

“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 desire to lead more evidence in the enquiry.”

22. In paragraph No.22, the learned Single Judge has further held that,

“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 in such matters is restricted only to the contents of the record and proceedings.”

23. Thereafter, reliance was placed on the Judgment of the Hon'ble Supreme Court in the case of *Kumaon Mandal Vikas Nigam Limited Vs. Girja Shankar Pant and Others*, 2001 (1) CLR 12, wherein it was held 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.”

24. Thus, it is categorically held that, so far as the first two preliminary issues are concerned, the Court cannot allow the parties to lead oral evidence. Even the perversity in the findings of an Enquiry Officer would only be pointed out on the basis of the evidence placed before him and not on the basis of the evidence adduced before the Court.

25. This position is again clarified in the Judgment of the Single Judge Bench of this Court in the case of *M.S.R.T.C., Beed Vs. Syed Saheblal Syed Nijam*, 2014 (4) Mh.L.J. 687. In the light of this Judgment, the Industrial Court, in the present case, has held that, as for deciding these two preliminary issues and recording its findings, the Labour Court has allowed the oral evidence of the Petitioner's witnesses to be led before it, the said finding was vitiated and hence, set aside the said order.

26. The submission of learned counsel for the Petitioner is two fold. It is submitted that, in the case of *Vasant Ambadas Deshpande (Supra)*, in paragraph No.20 thereof, the learned Single Judge of this Court has held that,

“ 'Normally' there is no requirement of leading fresh evidence before the Labour Court on such preliminary issues; like fairness of an enquiry and the findings of an Enquiry Officer.”

27. It is urged that, the word 'normally' sufficiently and definitely indicates that, it is not a rule of thumb as such, barring the leading of oral evidence in each and every case, without adverting to the contentions raised by the parties and the facts of the case. It is submitted that, in some cases, such oral evidence may be necessary even to decide these two preliminary issues and therefore only, the word 'normally' is used in laying down this proposition that, these two preliminary issues are to be decided on the basis of the record and proceedings of the enquiry and there is no requirement of leading fresh evidence. According to him, for deciding the question as to whether the notice of the enquiry was duly served upon the Delinquent, leading of oral evidence may be necessary to prove that the Delinquent had gone out of station and the notice was served by affixing it on the door of his house. In such situation, even though the Enquiry Officer has held that the notice was duly served, the Delinquent may prove otherwise and he can do so, by only leading the evidence before the Court that, at the relevant time, he was out of station or on account of unavoidable circumstances, he could not get the knowledge about the affixing of the notice to the door of his house.

28. Further, he has submitted that, if during the course of enquiry, the Delinquent was sick and hence, unable to attend the enquiry, as a result, the enquiry has proceeded in his absence and, therefore, he challenges the same, the employer, however, disputes the fact that, he was sick and, therefore, could not attend the enquiry, then the Delinquent can prove this fact only by leading his oral evidence and the medical evidence of his Doctor. Therefore, according to learned counsel for the Petitioner, it would be too wide a proposition to lay down that, in no case, the oral evidence should be permitted to be led for deciding these two preliminary issues.

29. According to him, in order to arrive at the finding of the first preliminary issue as to *'whether the enquiry was fair or whether there was any violation of the principles of natural justice and, therefore, the enquiry is vitiated'*, the Court has to consider several angles and aspects; like in the present case, whether the 'Standing Order', which requires the payment of 'Subsistence Allowance' to the Respondent during the pendency of the enquiry, was complied with or not. Here in the case, the Respondent has challenged the enquiry on the ground that, there was no compliance of this 'Standing Order' and, therefore, the enquiry was vitiated. It is urged that, the Petitioner could have proved this fact only by leading oral evidence of the Bank Officer to show that such 'Subsistence Allowance' was deposited in the Bank Account of the

Respondent. Otherwise, the Court would have been constrained to hold that the enquiry was vitiated for non-compliance of the 'Standing Order'. According to him, therefore, no illegality as such can be said to be committed by the Labour Court, when in similar such situations, the Court permits either of the party to lead oral evidence.

30. It is his submission that, this aspect of the matter was not raised before the learned Single Judge of this Court in any of the above-said Judgments. Even otherwise, what is laid down is that, “normally”, there is no requirement of fresh evidence. Therefore, there is definitely a scope for leading fresh evidence, as and when the contingency requires in the particular facts of the case. Such observation cannot be read as a straight jacket formula to restrain the leading of oral evidence in any way, even if the fact situation demands. It is submitted that, not only in this case, but the Labour Court has adopted this approach of not permitting the leading of oral evidence on any of these two preliminary issues by observing simplicitor that, such evidence on preliminary issues cannot be permitted in the light of the Judgment of the Single Judge Bench of this Court in the case of *Bhushan Jagannathrao Bulbule (Supra)*.

31. Learned counsel for the Petitioner has produced on record various orders passed by the Labour Court in different proceedings observing that,

“In view of the observations made by this Court in Writ Petition No.2730 of 2004, decided on 7th May 2018 (Supra), the preliminary issues are required to be assessed on the basis of the evidence adduced before the Enquiry Officer. For that purpose, the evidence tendered before this Court need not be considered and hence, the matter be placed for argument.”

32. The submission of learned counsel for the Petitioner is that, such orders may result into miscarriage of justice, as the law laid down by this Court in the above-said Judgments cannot be applied, irrespective to the facts and circumstances of the case and that is not at all the purport or import or the interpretation of the said law, when clearly the word “normally” is used. According to learned counsel for the Petitioner, therefore, this Court needs to clarify this legal position.

33. In my considered opinion, there is some substance in the submissions advanced by learned counsel for the Petitioner. This Court has, on the basis of all the earlier decisions, categorically held that, as regards the first two issues, they are to be decided on the basis of the record and proceedings of the enquiry and, as stated in the Judgment of *Vasant Ambadas Deshpande (Supra)*, “normally”, there is no requirement of leading fresh evidence before the Court on such preliminary issues and what is necessary to be seen by the Labour Court

for deciding these two issues is, what has actually transpired in the domestic enquiry. However, the very use of the word 'normally' in this legal proposition makes it clear that, the necessity of leading of such evidence in certain cases is not ruled out.

34. What is necessary is the application of mind by the Court to the consideration whether oral evidence is necessary in the particular facts of that case, when, ordinarily, these two issues are to be decided on the basis of the record of the Enquiry Officer. It means, the oral evidence is not to be permitted as a matter of course, without application of mind. In very few exceptional cases, such evidence is to be permitted, after weighing and assessing its necessity. There cannot be blanket bar or blocking of oral evidence, but it cannot be permitted as a routine practice.

35. Even as regards the instances cited by the Petitioner; like the notice being not properly served on the Delinquent or his inability to remain present in the enquiry on account of his illness, the perusal of the enquiry papers and record & proceedings may be normally sufficient indication to that effect. Only when it is found that the record and proceedings is not disclosing what has actually transpired before the Enquiry Officer, leading to the inference of the likely prejudice to the Delinquent, as reasonable opportunity was not granted to him, the Court

may permit such leading of oral evidence, but it cannot be as a matter of course or as a routine practice. Otherwise, the legal position is clear that, “normally”, these two preliminary issues are required to be decided solely and exclusively on the basis of the record and proceedings of the enquiry, without permitting the litigating sides to adduce fresh evidence. This inference needs to be drawn, considering that the Labour Court or the Industrial Court, while scanning the record and proceedings of the enquiry, even for the purpose of deciding these two preliminary issues, is, in fact, exercising its revisional jurisdiction. Hence, only the said record is to be re-visited by the Court to test whether the contentions and challenges raised by the Delinquent can be substantiated by the oral and documentary evidence available in the record and proceedings.

36. Hence, as held by the Hon'ble Supreme Court in the case of *Debotosh Pal Choudhary Vs. Punjab National Bank and Others, 2002 AIR SCW 3803*;

“Unless prejudice or injustice is established by the Delinquent, any infraction of procedural law will not render the enquiry vitiated.”

37. As held by the learned Single Judge in the above-said Judgment of *Bhushan Jagannathrao Bulbule*, the scope of the judicial review of the Court in relation to the record and proceedings of the enquiry is

restricted only to the contents thereof. From such record only, it has to be gathered as to how the enquiry has been conducted and whether reasonable opportunity has been given to the Delinquent. None of the party can go beyond the record and proceedings of the Enquiry Officer. He also cannot be permitted to raise the contentions or to adduce the evidence in support of those contentions before the Court, which contentions he has not raised before the Enquiry Officer.

38. This legal position being very clear from the Judgments discussed above, in my considered opinion, there is no scope for confusion and hence, it is not necessary to give any general directions to the Labour Court on this aspect, as requested by learned counsel for the Petitioner. Both the Judgments of the learned Single Judge of this Court in the case of *Vasant Ambadas Deshpande (Supra)* and *Bhushan Jagannathrao Bulbule (Supra)*, are more than sufficiently clear on this aspect. However, it is clarified that this legal proposition can be read as iron jacket formula, as the very use of the word “normally” is sufficient to indicate that this is the general rule, which indirectly implies that, in exceptional circumstances, this rule may not apply. It is emphasized that, what is necessary is the application of mind and after recording such necessity of oral evidence, the Court may permit it in deserving or exceptional cases. There is no total ban on it.

39. As regards the present case, though learned counsel for the Petitioner has tried to justify leading of oral evidence on the ground that, payment of 'Subsistence Allowance' was required to be proved, it can be seen that the Respondent has not at all raised that contention before the Enquiry Officer. The Labour Court itself has, in paragraph No.19 of its Judgment, clearly observed that, this contention was not raised by the Respondent during the enquiry. Even Respondent has not shown how prejudice was caused to him in the enquiry because of such non-payment of 'Subsistence Allowance'. Hence, it was held that, the non-payment of 'Subsistence Allowance' is not a ground for holding that there was denial of reasonable opportunity to the Complainant. Therefore, from the own findings recorded by the Labour Court, it was clear that record of the Enquiry Officer was sufficient to decide this contention. Hence, there was no necessity of permitting oral evidence on this aspect.

40. Despite that, in the instant case, the Labour Court has permitted the Petitioner to lead evidence of two witnesses, including the Bank Officer, to prove that, during the pendency of the enquiry, the 'Subsistence Allowance' was paid to the Respondent. It is clear that the Labour Court has acted mechanically, and without consideration of the legal position in permitting the parties to lead oral evidence on these two preliminary issues, which are to be decided on the basis of record and proceedings of the Enquiry Officer. This act of recording of the oral

evidence, as a matter of course, when it was not warranted at all, has vitiated the finding of the Labour Court and in such situation, the Revisional Court was justified in interfering with the said finding and remanding the matter back to the Labour Court for deciding these two preliminary issues afresh.

41. In the facts and circumstances of the present case, therefore, no interference is warranted in the impugned order passed by the Revisional Court.

42. The Writ Petition hence, being without merits, stands dismissed, with the afore-said clarification.

[DR. SHALINI PHANSALKAR-JOSHI, J.]