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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1030 OF 2018

The Commissioner and anr ... Petitioners

V/s.

Ramdas Waman Bansode ... Respondent.

Mr. Rajesh S. Patil, for the Petitioner.

Mr. Nitin A. Kulkarni, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 6th DECEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondent.
- 2] Admit.
- 3] With the consent of learned counsel for both parties, petition is taken up for final hearing at the stage of admission itself.
- 4] This Writ Petition takes an exception to the order dated 31st October, 2017, passed by the Industrial Court, Pune, in Revision Application (ULP) No.32 of 2012, thereby remanding Complaint (ULP) No.12 of 2001, for rehearing and deciding the same, in accordance with law.

5] The remand of the complaint was found necessary as Labour Court has without giving any finding on the issue as to, “whether the findings recorded by the enquiry officer are perverse?”, has entered into the issue whether the misconduct of the respondent employee is proved before the enquiry officer. The Labour Court has not at all considered as to what were the charges in the charge sheet and what was the evidence before the enquiry officer and how the findings of the enquiry officer are supported or not by the evidence before him. It has also not considered the evidence given by the five witnesses examined by the petitioner. It is pertinent to note that if the findings of the enquiry officer are held to be perverse, then the petitioner employer gets an opportunity to prove the same before the Court. However, as the Labour Court has clubbed two issues as to whether the findings recorded by the enquiry officer are perverse and whether the charges of misconduct are proved or not, it has resulted into material irregularity.

6] As per settled position of law, first the issue as to whether the findings recorded by the enquiry officer are perverse has to be decided. Without recording finding on that issue, the Labour Court has directly entered into the question whether the charges of misconduct are proved or not.

7] The Industrial Court, therefore, was justified in

remanding the matter back to the Labour Court. Moreover, in the present case, there was one more question raised for consideration before the Labour Court as to whether the provisions of the Industrial Employment (Standing Orders) Act, 1946 or Maharashtra Civil Services Rules, 1981 are applicable. This issue was not at all decided or discussed by the Labour Court.

8] In view thereof, as in the revisional jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971, the Industrial Court cannot re-appreciate the entire evidence, there was no other option, but to remand the matter to the Labour Court, for fresh hearing and hence the Writ Petition being without merits stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]