

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO. 4407 of 2019**

(Shri Hupendra Dulichand Dhamgaye -..VS.. Prabodhini Prasarak Bahudheshiya Shikshan  
Mandal and anr.)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri P.R. Puri, Adv. for the petitioner.

**CORAM : Z.A.HAQ, J.**  
**DATED : 25<sup>th</sup> July, 2019**

Heard.

After series of litigations, the petitioner succeeded in complaint filed by him under Section 28 read with Item 1 (a) (b) and (d) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By the order dated 19.09.2018, the Labour Court allowed the complaint filed by the petitioner and directed the respondent-employer to reinstate him with continuity of service and backwages. This order was challenged by the respondent-employer before the Industrial Court in revision which is allowed by the impugned order.

The Industrial Court has recorded that the Labour Court has committed an error of jurisdiction by deciding all the issues, including the issue on the point of legality of departmental enquiry, simultaneously. According to the Industrial Court, the Labour Court has recorded that the departmental enquiry conducted against the petitioner-complainant was not fair and proper but as all the issues are decided simultaneously, the employer is deprived of the

opportunity of proving the misconduct of the employee before the Labour Court.

According to the petitioner, his services were terminated on 03.08.2008 without conducting any enquiry. According to the respondent-employer, the employee had stopped reporting on duty from 03.08.2008 and then an enquiry was conducted against the petitioner-employee, which also he failed to attend and ultimately, the order dated 25.08.2008 was issued terminating the services of the petitioner-employee. The Industrial Court has recorded that the Labour Court should have tried the issue of legality of departmental enquiry as preliminary issue, so that in case of adjudication on the issue against the respondent-employer, the employer would have been in position to seek an opportunity to prove the misconduct of the petitioner-employee before the Labour Court.

The advocate for the petitioner submitted that the Industrial Court has dealt with the matter superficially and has remanded the matter to the Labour Court without examining whether the respondent-employer is entitled to seek an opportunity to prove the misconduct of the petitioner-employee before the Labour Court.

After considering the material placed on record, I find that the Labour Court has recorded that the respondent-employer has placed on record the envelopes at Exhibit 107 to Exhibit 113 to substantiate its claim that the petitioner-employee was absent from duty. The Industrial Court has also recorded that it has gone through the record and proceedings. I find that the Industrial Court has dealt with the matter

judiciously, and as it found that the Labour Court had committed material procedural irregularity which resulted in serious prejudice to the employer, it has rightly remanded the matter to the Labour Court.

In the above facts, I am of the view that the order passed by the Industrial Court remanding the matter to the Labour Court for fresh consideration in the light of the observations made by the Industrial Court, cannot be faulted with. The effect of the impugned order passed by the Industrial Court is that the Labour court will have to consider the issue Nos. 3(a) and 3(b) as preliminary issues and then after deciding the preliminary issues, proceed in the matter according to law.

Hence, I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

**JUDGE**

*Trupti*