

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

WRIT PETITION NO.6816/2016

Depot Manager, Maharashtra State Road Transport Corporation, Paratwada
and another

..V/s..

Vinay Shrirampant Mehare

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

Court's or Judge's orders

Shri A. S. Mehadia, Advocate for the petitioners.
Shri N.R. Saboo, Advocate for the respondent.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 6.1.2020.

1] The petitioner M.S.R.T.C. is aggrieved by the judgment and award dated 16.9.2015 delivered by the Labour Court vide which Reference (IDA) No.7/2005 has been partly answered in the affirmative and the second party workman, respondent herein, has been granted reinstatement with continuity and 50% back-wages from the date of his dismissal.

2] I have considered the strenuous submissions of the learned Advocates for the respective sides and I have gone through the petition paper book with their assistance.

3] It is undisputed that the Labour Court framed two issues as regards whether the workman proves that the enquiry was vitiated and whether he has proved that the findings of the Enquiry Officer are rendered perverse.

By the part I award dated 21.1.2015, the Labour Court concluded that the enquiry was vitiated on account of non-observance of the principles of natural justice and the findings of the Enquiry Officer are rendered perverse. This part I award has not been assailed. With this background, the Corporation was given liberty to conduct a *de novo* enquiry to prove the charges levelled against the employee. A *de novo* enquiry was admittedly not conducted and the Labour Court granted reinstatement with 50% back-wages.

4] The learned Advocate for the petitioner submits that after the respondent was dismissed from service on 23.2.1997, he raised an industrial dispute in 2005 after sleeping for almost 8 years. By the part II award he has been granted 50% back-wages even for the period of delay from March, 1997 till 2005.

5] The learned Advocate for the respondent submits that there cannot be an argument in so far as the law on back-wages is concerned. An employee cannot be rewarded with back-wages even for the period of delay. He, however, submits that the Labour Court has balanced the equities by granting 50% back-wages from the date of the dismissal. Even if it is taken into account that the reference was lodged in 2005, once the order of dismissal is rendered bad in law, the employee has to be granted full back-wages. He is therefore, willing to waive the back-wages for the period March, 1997 till the

date on which the industrial dispute was raised, provided he is paid full back-wages from the date on which the workman raised the industrial dispute under Section 2A of the I.D. Act, 1947 i.e. 4.6.2004. He adds that a grievance under Section 2A is deemed to be an industrial dispute and hence, has been referred to the Labour Court.

6] The law is now well settled that if an enquiry is vitiated for any reason whatsoever, *Bharat Forge Company Ltd. Vs. A.B. Zodge and another* [AIR 1996 SC 1556], an employer can conduct a *de novo* enquiry before the Labour Court or the Tribunal, as the case may be, provided a right to conduct a *de novo* enquiry is reserved in the written statement, *Karnataka Road Transport Corporation Vs. Lakshmiddevamma* [AIR 2001 SC 2090].

7] In this backdrop, when the employer fails to conduct a *de novo* enquiry and when the part I award vitiating the enquiry is not challenged and has attained finality, failure to conduct a *de novo* enquiry would be fatal to the proceedings. The charges levelled upon the respondent herein are, therefore, deemed to be not proved before the Labour Court. Consequently, such an employee would be entitled for back-wages with continuity in service.

8] I find that since the petitioner Corporation, for

reasons best known to itself, has failed to conduct a *de novo* enquiry before the Labour Court and considering that the part I award dated 21.1.2015 has not been challenged, it can be safely said that the charges are not proved against the respondent workman.

9] As such, I am inclined to accept the statement of the respondent / workman that though he may be deprived of the back-wages for the period from March, 1997 till the date of the raising of the industrial dispute which is 4.6.2004, he would be entitled for full back-wages as the employer has not proved the charges before the Labour Court and the workman, therefore, would not be held guilty of the charges levelled upon him. He would be entitled for full back-wages from the date of raising of the industrial dispute till the date of his superannuation which is 30.9.2017.

10] In view of the above, though this petition is **disposed off**, directions issued by the Labour Court of granting 50% back-wages inclusive of the period of delay in approaching the Labour Court, shall stand modified and the respondent employee shall stand deprived of back-wages from March, 1997 till 4.6.2004. He would be entitled for full back-wages from 4.6.2004 till 30.9.2017 i.e. till the date of his superannuation.

11] At this juncture, the learned Advocate for the respondent workman submits that since he has superannuated and is yet to receive his benefits, he had

moved a proceeding for seeking execution before the Labour Court. He would withdraw the said proceedings if the M.S.R.T.C. is directed to pay his legal dues as per the verdict of this Court within a stipulated period.

12] The learned Advocate for the Corporation submits that he cannot make any statement.

13] Considering the above, I find that the learned Advocate for the respondent has made a fair gesture and as such, the petitioner Corporation shall pay the benefits payable to the respondent in view of this order as expeditiously as possible and preferably on or before 29.2.2020. Once such legal dues are paid, the respondent would forthwith withdraw the pending execution proceedings.

(RAVINDRA V. GHUGE, J.)