

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

934 WRIT PETITION NO.3179 OF 2020

PANKAJ PRAKASH SARDESHPANDE
VERSUS
SUPERINTENDING ENGINEER AND COMPETENT AUTHORITY
MSEDCL

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Advocate for Petitioner : Mr. G. V. Wani h/f Mr. Randive S. S.
Advocate for Respondent No.1 : Mr. Malte Uday S.
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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 26.10.2021

PER COURT :-

1. We have briefly heard the learned advocates for the respective sides on the following issues :

- (a) The petitioner has been subjected to a full fledged departmental enquiry followed by the order of punishment of dismissal from service for his misconducts.
- (b) If the enquiry is vitiated or if the findings of the Enquiry Officer are held to be perverse, a de novo enquiry have to be conducted in the light of the judgments delivered by the Hon'ble Supreme Court in the matters of *Workmen of*

the Motipur Sugar Factory Pvt. Ltd. Vs. The Motipur Sugar Factory, AIR 1965 SC 1803, followed by *Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh, 1972 (1) SCC 595*, *Workmen of M/s Firestone Tyre & Rubber Company of India Vs. Management, AIR 1973 SC 1227 : 1973 SCR (3) 587*, *Shambhu Nath Goyal Vs. Bank of Baroda, 1984(4) SCC 491* and *Workmen of Firestone, Bharat Forge Company Ltd. Vs. A.B.Zodge, 1996 (73) FLR 1754 : AIR 1996 SC 1556*,

- (c) So also, the right of the employer to conduct a de novo enquiry is well recognized and the Hon'ble Supreme Court (Five Judges Bench) has held in *KSRTC Vs. Lakshmiddevamma, 2001 (2) CLR 640* that the employer can reserve the right to conduct a de novo enquiry in the written statement and proceed to conduct such enquiry before the Labour Court / Tribunal. Such enquiry cannot be conducted in the High Court.
- (d) The petitioner is an Upper Division Clerk and therefore, a workman under Section 2(s) of the Industrial Disputes Act, 1947 and the respondent is an industry under Section

2(j) of the Industrial Disputes Act.

(e) The First Appeal of the petitioner questioning his dismissal from service was considered by the Competent Authority and the person dealing with the First Appeal was Mr. Suresh Ganeshkar.

(f) His Second Statutory Appeal was considered by the Second Appellate Authority and the Officer deciding the same was again the same person, Mr. Suresh Ganeshkar.

2. Considering the above, we are entertaining this petition to a limited extent of Mr. Suresh Ganeshkar having dealt with the First Appeal of the petitioner as well as the Second Appeal.

3. In view of the above, this petition is partly allowed and the impugned order dated 09.01.2020 passed by the Second Appellate Authority, namely Mr. Suresh Ganeshkar, is quashed and set aside. Hence, we issue the following directions :-

(a) The said proceedings are remitted to the Regional Director and the Second Appellate Authority at Aurangabad.

(b) Since Mr. Ganeshkar has be replaced, the Second

Appeal of the petitioner shall be decided preferably within a period of three (3) months from today.

- (c) We, however, make it clear that in the event of an adverse order being passed against the petitioner, he would be at liberty to assail the said order and seek redressal of his grievance by approaching the Labour Court at Jalna or by taking recourse to the remedy of raising an industrial dispute under Section 2A of the Industrial Disputes Act, 1947. A Writ Petition on this count would not be entertained, for being untenable.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-