

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

**REVIEW APPLICATION NO. 175 OF 2019
IN
WRIT PETITION NO. 12708 OF 2018**

Vasant Kisanrao Deshpande	... Applicant
Versus	
Maharashtra State Electricity Board	
Through its Executive Engineer	
E.H.V.T. Division, Beed and others	... Respondents
....	
Mr. B. R. Kawre, Advocate for the applicant	
Mr. D. P. Palodkar, Advocate for respondent No.2	
....	

CORAM : R. G. AVACHAT, J.

**RESERVED ON : 23rd FEBRUARY, 2021
PRONOUNCED ON : 10th JUNE, 2021**

ORDER :-

. This is an application for review of the common judgment and order dated 19.06.2019 passed in Writ Petition No.12708 of 2018 and Writ Petition No.5514 of 2018.

2. The facts giving rise to the present application are as follows:-

The applicant was serving with the Maharashtra State Electricity Transmission Company Limited (for short 'the employer') as a Head Clerk. The employer, in December 1999, initiated a

domestic enquiry against the applicant (for short ‘ the employee’). The Inquiry Officer, after holding the inquiry, held the employee guilty of the charges framed against him. The employer accepted the inquiry report and dismissed the employee from service with effect from 26.06.2001. The employee, therefore, preferred Complaint (ULP) No.67 of 2013 before the Labour Court, Aurangabad challenging his dismissal. The Labour Court held the domestic inquiry to have not been conducted in fair and proper manner. The principles of natural justice were found to have not been observed. The Labour Court, therefore, set aside the dismissal of the employee from service and directed for his reinstatement with full backwages. The employer preferred revision application against the decision of the Labour Court. The Industrial Court, vide his judgment and order dated 09.02.2018, allowed the revision application. The Industrial Court, concurred with the findings recorded by the Labour Court to the effect that the inquiry conducted against the employee was not fair and proper. It remanded the matter back to the Labour Court with a direction to give the employer an opportunity to adduce evidence in proof of charge/delinquency of the employee. Both, the employee and employer took exception to the order of the Industrial Court by preferring the Writ Petition No.12708 of 2018 and Writ

Petition No.5514 of 2018. This Court, vide judgment and order dated 19.06.2019, dismissed both the writ petitions upholding the order passed by the Industrial Court in Revision ULP No.70 of 2015. The employee, therefore, preferred this review application.

3. Heard.

Shri B. R. Kawre, learned Advocate for the applicant would submit that before the Labour Court, both, the employee and employer filed *purshish*, requesting the Labour Court to decide all the issues at once. The employer in its written statement did not reserve its rights to adduce evidence in proof of the charge, in case the Labour Court holds the inquiry to have been vitiated or non-est for one or the other reason, nor did the employer move any application before the Labour Court seeking permission to offer it an opportunity to adduce evidence in proof of the delinquency of the employee. The employer, therefore, did not have right to adduce evidence before the Labour Court. The findings recorded by the Industrial Court were against the settled proposition of law in this regard. Before this Court, reliance was placed on the judgment of the Apex Court in ***Shambhu Nath Goyal vs. Bank of Baroda and Ors. - AIR 1984 SC 289.***

According to the learned Advocate, this Court erred in interpreting the judgment in Shambhu Nath's case. The view taken in Shambhu Nath's case has been reiterated in the Constitution Bench judgment of the Apex Court in case of ***Karnataka State Road Transport Corporation (KSRTC) vs. Lakshmiddevamma (Smt.) and Anr. - (2001) 5 SCC 433***. The learned Advocate, therefore, urged for reconsideration of the judgment and order dated 19.06.2019 passed in Writ Petition No.12708 of 2018 and Writ Petition No.5514 of 2018.

4. Shri D. P. Palodkar, learned Advocate appearing for the employer, would on the other hand, submit that after remand of the matter, recording of evidence has commenced. The learned Advocate relied on the reasons given by this Court for upholding the order passed by the Industrial Court in revision. According to the learned Advocate, two of the Hon'ble Judges in the case of KSRTC (supra) have recognised Labour Court/Tribunal's power under Section 11(3) of the Industrial Disputes Act, 1947 to seek production of evidence. The same view has been reiterated in case of ***Divyash Pandit vs. Management NCCBM – AIR 2006 SC 92***. The learned Advocate, ultimately, urged for rejection of the application.

5. While deciding the writ petitions, this Court observed :-

“19. In the present matter, as I noted herein above, the employer has admittedly not raised any such plea in the written statement filed by him before the Labour court, seeking leave to prove misconduct of the employee before the said court by adducing necessary evidence there for. As submitted by the learned counsel appearing for the employer, the application was, however, submitted by the employer before the Industrial court, praying for framing the preliminary issues and remand the matter for that purpose to the Labour Court. It was also contended by the learned counsel that a request was also made on behalf of the employer that he be permitted to prove the misconduct of the employee before the Labour court in the event the inquiry conducted against the said employee is vitiated by the said court. Though the Industrial Court has not specifically referred to the aforesaid contention allegedly made on behalf of the employer, from the observations made by the said court in para 17 of the impugned judgment it appears that possibly, such request was made on behalf of the employer and the same has been accepted by the said court.

20. I deem it appropriate to reproduce herein below the observations made by the said court in para 17 of the impugned judgment, which read thus, -

“I have perused the judgment Exh.O-4. The Labour Court has narrated in brief pleadings of the parties. The Issues are properly framed at Exh.O-3. It is mentioned that Issue No.1 and 2 be decided as a preliminary issue. But, both the parties have given pursis that all Issues should be decided at once. Therefore, Labour Court has decided all Issues in the judgment. Issue No.1 and 2 are in respect of enquiry and the Labour Court has declared that enquiry is not fair and proper and findings are perverse. In view of said finding in my view it is necessary to give opportunity to the respondent to prove the misconduct in the court. There are various

reported decisions wherein it is specifically mentioned that the issue in respect of enquiry and findings be treated as a preliminary Issue. Further, if the court hold that the enquiry is not fair and proper, findings are perverse, then it is necessary to give opportunity to the respondent to prove mis-conduct in the court. However, it appears that due to filing pursis by both the parties the learned Labour Court had decided all issues and allowed the complaint. In my view though the parties have given pursis to decide all issues at once, but the labour Court has to adjourn the judgment when he came to the conclusion that the enquiry is not fair and proper and finding are perverse. Therefore, the findings in respect of Issue No.3 & 4 given by Labour Court and accordingly passed following order for reinstatement is not legal and those findings are perverse. Considering said fact, according to me it is proper to remand the proceeding to the Labour Court to prove the misconduct.”

Considering the observations, as aforesaid, it is evident that the Industrial court, after having considered the material on record, has reached to a conclusion that it was necessary to give opportunity to the employer to adduce evidence to prove the charges against the employee before the labour court.

21. *As has been held by the Hon'ble Apex court in the case of **Karnataka State Road Transport Corpn. Vs. Lakshmiddevamma (Smt.) and Anr.** (cited supra), the Industrial Tribunals have the powers to exercise such discretion vested in them in appropriate matters and absence of specific plea by the management in the written statement itself filed before the Labour court to lead additional evidence to support its action, shall not be a fetter on the powers of the Tribunals in permitting the employer to adduce such evidence before the Labour Court in order to substantiate the misconduct alleged against the employee. Having regard to the law laid down as above by the Hon'ble Apex court, it does not appear to*

me that any error has been committed by the learned Industrial Court in permitting the employer to adduce evidence before the Labour Court in the event the inquiry held against the employee is vitiated by the said court on any count.

22.
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23. *For the reasons recorded above and more particularly in view of the law laid down by the Hon'ble Apex court in the case of Karnataka State Road Transport Corpn. Vs. Lakshmiddevamma (Smt.) and Anr. (cited supra) and Divyansh Pandit Vs. Management, NCCBM, (cited supra), it does not appear to me that any error has been committed by the Industrial Court in remanding the matter to the Labour court by permitting the employer to adduce necessary evidence before the said court to substantiate the charges levelled against its employee in the event the inquiry is held improper by the said court. Both the writ petitions, taking exception to the impugned order are thus devoid of any merit, and are, therefore, dismissed, however, without any order as to costs. Pending civil application, if any, stands disposed of.*

6. For deciding the present application, the applicant is required to make out a case of there being an error apparent on the face of record in deciding the writ petitions.

7. The Bench of three Hon'ble Judges of the Apex Court in the case of ***Shambhu Nath*** (supra), observed -

"It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action, before, the Tribunal by

leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held (see Indian Iron and Steel Co. v. Their Workmen – (1958 SCR 667) : (AIR 1958 SC 130); but also to satisfy itself on the fact adduced before it by the employer whether the dismissal or discharge was justified. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.”

In the second decision it is observed as follows (at P.1664 of AIR):-

“Earlier clear-cut pronouncement of the Court in R.K. Jain’s case (AIR 1972 SC 136) and Delhi Cloth and General Mills Co.’s case (AIR 1972 SC 1031) that this right to adduce additional evidence is a right of the management or the employer and it is to be availed of by a request at appropriate stage and there is no duty in law cast on the Industrial Tribunal or the Labour Court to give such an opportunity notwithstanding the fact that none was ever asked for are not even departed from. When we examine the matter on principle we would point out that a quasi-judicial Tribunal is under no such obligation to acquaint parties appearing before it about their rights more so in an adversary system which these quasi-judicial Tribunals have adopted. Therefore, it is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under Section 10 or Section 33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim

application or written statement, the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceedings are concluded the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceedings, there is no duty in law cast on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings.”

16. We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workmen referred to in the above passage is the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under Section 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under Section 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under Section 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in

the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.”

The aforesaid view has been upheld by the Constitution Bench of the Apex Court in the case of KSRTC (supra). As such, it is the settled proposition of law, that the Labour Court cannot allow the employer to lead evidence before it in proof of charge/delinquency of employee unless the employer in its/his written statement asks for the same or by a separate application makes a prayer in that regard.

The Industrial Court allowed the revision with the following reasons:-

“Issue No. 1 and 2 are in respect of enquiry and the Labour Court has declared that enquiry is not fair and proper and findings are perverse. In view of said finding in my view it is necessary to give opportunity to the respondent to prove the misconduct in the court. There are various reported decisions wherein it is specifically mentioned that the issues in respect of enquiry and findings be treated as a preliminary Issue. Further, if the court hold that the enquiry is not fair and proper, findings are perverse, then it is necessary to give opportunity to the respondent to prove mis-conduct in the court.”

The aforesaid reasoning is inconsistent with the observations of the Apex Court in the case of ***Shambhu Nath*** (supra). This Court has committed an error in upholding the decision of the Industrial Court. The employer also challenged the order of the Industrial Court passed in revision. The same suggests that the employer appears to have not urged the Industrial Court to remand the matter with a direction to the Labour Court to allow it to produce evidence in support of the charge. The Industrial Court did not refer to any such prayer, if any, made by the employer. The observation of this Court that the employer appears to have moved application before the Industrial Court, praying for framing of preliminary issue and remand the matter for that purpose to the Labour Court, appears to be factually incorrect.

8. True, two of the learned Judges of the Constitution Bench in ***KSRTC*** case (supra), observed thus:-

“But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.”

The aforesaid view is in the nature of obiter. Relying on these observations, a Bench of Hon'ble two Judges in the case of ***Divyash Pandit*** (supra), observed :-

“It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in Karnataka SRTC v. Lakshmiddevamma this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman.”

The aforesaid observations, namely, “Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman,” are obiter dicta. In case of ***Hiralal Ganeshmal Jain vs The State of Maharashtra and others – 1992 (2) Bom.C.R. 752***, the Division Bench of this Court has observed thus :

“It is undoubtedly true that even obiter dicta of the Supreme Court would be binding on High Courts. But when the High Court has a direct decision of the Supreme Court on the point at issue, as against two decisions of the

Supreme Court where observations to the contrary are in the nature of obiter dicta or general observations, the direct authority prevails over such obiter dicta or general observations.”

9. In view of the law of precedent, this Court should have decided the writ petitions relying on the observations of the Apex Court in ***Shambhu Nath's*** case (supra). The same has not been done. This Court has committed mistake or can be said to have erred in not following the judgment in ***Shambhu Nath's*** case (supra), which has been approved by the Constitution Bench judgment in case of ***KSRTS*** (supra), instead this Court went by passing observations made in case of ***Divyash Pandit*** (supra) and in ***KSRTS*** case (supra).

10. Since this Court has committed a mistake in deciding the writ petitions on the basis of the obiter dicta in preference to the ratio laid down in ***Shambhu Nath's*** case (supra), it is an error apparent on the face of record. In my view, therefore, the review application deserves to be allowed.

11. The review application is therefore allowed. The judgment and order dated 19.06.2019, passed by this Court in Writ Petition No.12708 of 2018 and Writ Petition No.5514 of 2018, is hereby recalled. Both the Writ Petitions i.e. Writ Petition No.12708

of 2018 and Writ Petition No.5514 of 2018, are therefore restored to the file of this Court for deciding the same on merit.

[R. G. AVACHAT, J.]

12. After pronouncement of the order, Mr. D. P. Palodkar, learned counsel for respondent No.2, prays for stay of this order. At his request, the operation of this order is stayed for a period of four weeks.

[R. G. AVACHAT, J.]

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