

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

WRIT PETITION NO.5260 OF 2012

1. Chief Executive Officer,
Maharashtra State Khadi and Village
Industrial Board, 19/21,
Manohardas Road, Fort,
Mumbai-400021.
2. The District Khadi and Village
Industrial Officer, Maharashtra State
Khadi and Industrial Board,
District Office, Nanded.

...PETITIONERS

-VERSUS-

Kishan s/o Tukaram Davane,
Age : 60 years, Occupation : Pensioner,
R/o Samata Nagar, Pawadewadi,
Nanded, District Nanded.

Since deceased, his legal heirs are
brought on record as per order
dated 05.12.2014:-

- 1-A) Vijaymala w/o Kishanrao Davne
Age : 48 years, Occupation : Household.
- 1-B) Rajratna s/o Kishanrao Davne,
Age : 32 years, Occupation : Nil.
- 1-C) Harshwardhan s/o Kishanrao Davne,
Age : 30 years, Occupation : Nil.
- 1-D) Sudarshan s/o Kishanrao Davne,
Age : 28 years, Occupation : Nil.
- 1-E) Sheelanand s/o Kishanrao Davne,
Age : 26 years, Occupation : Nil.
- 1-F) Manjusha d/o Kishanrao Davne,

Age : 23 years, Occupation : Nil.

All R/o Samata Nagar, Pawdewadi,
Nanded, Tq. & District Nanded.

...RESPONDENTS

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Advocate for the Petitioners : Shri Sudhir K. Chavan

Advocate for the Respondents : Shri S.C. Bhosale

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. By this Writ Petition, the petitioners are aggrieved by the judgment and order dated 16.03.2009 delivered by the Industrial Court vide which, Complaint (ULP) No.105/2008 has been allowed and by declaring that the petitioners have engaged in unfair labour practices, the Industrial Court has granted the reliefs as were prayed for.
3. Having considered the strenuous submissions of the learned advocates for the respective sides, I am not adverting to their entire submissions considering the order that I intend to pass in view of the settled position of law in ***MSRTC vs. Syed Saheblal Syed Nijam, 2014 (4) Mh.L.J. 687.***
4. There is no dispute that the petitioner/ Management had

conducted the domestic enquiry with regard to the charges levelled upon the respondent pursuant to the charge sheet dated 30.04.2001. Since the Enquiry Officer held the respondent guilty of the charges levelled upon him, he submitted his report and based on the said report/ findings, the petitioners issued the second show cause notice dated 25.02.2005 to the respondent. The respondent replied to the show cause notice on 02.05.2005. He also submitted the request applications dated 30.03.2006 and 29.08.2006 praying for 42 installments to repay the amount of Rs.57165/- and interest amount of Rs.17920/-.

5. The respondent then filed an appeal before the Chairman of the petitioners for reducing the punishment of recovery, by his appeal dated 25.12.2007. By order dated 27.12.2007, the Chairman reduced the recovery from Rs.57165/- to Rs.56015/- and accepted the request for installments. This order dated 27.12.2007 granting 42 equal installments, was challenged before the Industrial Court vide Complaint (ULP) No.105/2008.

6. The learned advocate for the respondent has vehemently opposed this petition contending that he had agreed to the installments because he had no choice and was helpless. Therefore, he approached the Industrial Court and the Industrial Court has rightly concluded that he is not liable to pay because the person, who was liable to repay the said amount, is to be proceeded against before calling upon the respondent to

deposit the amount. He submits that an enquiry was conducted against him and the punishment awarded to him is on the basis of the said enquiry. He further stated that he has challenged the enquiry by contending that the enquiry was not conducted in proper manner and relevant documents, which were in the custody of the petitioner/ employer, were demanded by the respondent, but no such documents were supplied to him. The enquiry was, therefore, in violation of the principles of natural justice. He had specifically averred in the grounds in his complaint that there is no documentary evidence against him and therefore, the findings of the Enquiry Officer are perverse.

7. It is undisputed that the Industrial Court did not frame the following two issues, which are required to be framed in cases, wherein, domestic enquiries are conducted and the enquiry and findings are challenged :-

(a) Whether, the complainant proves that the enquiry is bad in law on account of violation of the principles of natural justice?

(b) Whether, the findings of the Enquiry Officer are perverse?

8. The law is well settled in such matters. In 1958, the Honourable Supreme Court delivered the judgment in ***Indian Iron & Steel Co. v. Their workmen, [1958] S.C.R. 667***, concluding that if the enquiry is vitiated for non observance of the principles of natural justice or on

account of the findings of the Enquiry Officer being perverse, a de-novo enquiry can be conducted by the employer before the Tribunal. Further judgments were delivered in 1959 and 1960 in *M/s Sasa Musa Sugar Works (P) Limited vs. Shobrat Khan, (1959) Supp. SCR 836* and *Phulbari Tea Estate vs. It's Workmen, 1960 (I) SCR 32*, which were all considered by the Honourable Supreme Court in *Workmen of the Motipur Sugar Factory Private Limited vs. The Motipur Sugar Factory Private Limited, AIR 1965 SC 1803*. This law is crystallized for almost six decades. In *MSRTC vs. Syed Saheblal Syed Nijam (supra)*, this Court considered the above stated law and concluded that if the enquiry is sustained and the findings of the Enquiry Officer are upheld, it would mean that the charges are proved against the delinquent. Thereafter, the only issue that remains to be adjudicated upon is the proportionality of the punishment.

9. In the instant case, the Industrial Court has neither framed the two issues nor has dealt with the enquiry. The Industrial Court has completely ignored the enquiry and by letting the parties lead evidence, has concluded that the charges are not proved as the petitioner can recover the amount from the person, who is bound to repay and that the conduct of the respondent/ original complainant should be ignored. It will also have to be recorded that none of the learned advocates conducting the matter before the Industrial Court have assisted the Court by citing the correct position of law.

10. In view of the above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 16.03.2009 is quashed and set aside and Complaint (ULP) No.105/2008 is restored to the file of the Industrial Court, Jalna on the following conditions :-

(a) The litigating parties to the complaint shall appear before the Industrial Court, Jalna at 11:00 AM on 31.03.2022.

(b) Since the pleadings of the parties are complete, the Industrial Court, in addition to the issues framed below exhibit O/1, shall add two more issues, which are formalized in paragraph 7 herein above.

(c) The petitioner shall produce the entire record and proceedings of the enquiry before the Industrial Court, on or before 20.04.2022.

(d) Since the above stated two issues are to be dealt with purely on the perusal of the departmental enquiry proceedings and the findings of the Enquiry Officer, fresh evidence on these two issues is not to be led by the parties. No new evidence is to be taken into account while considering the fairness of the enquiry and the findings of the Enquiry Officer, which is purely a revisional exercise based on the record and proceedings of the departmental enquiry.

(e) After perusal of the record and proceedings of the domestic enquiry, both the parties shall canvass their submissions on the above mentioned two issues till 30.06.2022.

(f) The Industrial Court shall deliver its reasoned order on the above stated two issues on or before 30.07.2022, as a part-I judgment.

(g) After the above mentioned part-1 judgment is delivered, the litigating parties are at liberty to avail of the remedies as are permissible in law.

11. Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)