

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

WRIT PETITION NO.12302 OF 2021

Shri. Sandip Vasant Bhole,
Aged – 47, Occ – Service,
R/o-52, Gandhi Nagar,
Jilha Peth, Jalgaon Dist. Jalgaon

..Petitioner

Versus

1. Divisional Traffic Superintendent (Aparadh)
Maharashtra State Road Transport
Corporation, Jalgaon Division Jalgaon
Above new bus stand, Jalgaon, Dist. Jalgaon.

2. Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division Jalgaon
Above new bus stand, Jalgaon, Dist. Jalgaon.

..Respondents

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Mr. Abasaheb Shinde h/f Mr. V. A. Pawar, Advocate for the
Petitioner.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 29th NOVEMBER, 2022.**

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. By this petition petitioner challenges judgment and order dated 04.12.2019 passed by the Member, Industrial Court, Jalgaon rejecting the Revision preferred against the judgment and order dated 02.07.2019 passed by the Judge, Labour Court,

Jalgaon recording finding on the preliminary issue of enquiry being conducted in fair and legal manner and findings in the enquiry report being supported by the evidence.

3. Appearing for petitioner, Mr. Shinde, learned counsel would submit that the issue of the Disciplinary Authority himself acting as an Enquiry Officer was specifically raised in the complaint filed before the Labour Court which has been completely ignored by the Labour Court in its judgment and order dated 02.07.2019. He would further submit that in such a situation the Industrial Court ought to have remanded the matter back to the Labour Court, but instead the Industrial Court proceeded to decide that point itself. He would further submit that under the provisions of Rule 18 of the Maharashtra State Road Transport Corporation (Discipline and Appeal) Rules, the Disciplinary Authority initiating enquiry is not competent to act in capacity as Enquiry Officer. Mr. Shinde, would further contend that, the Disciplinary Authority not only acted as Enquiry Officer but committed further illegality in acting as Presenting Officer by putting questions to the witnesses. He would, therefore, submit that the same officer for multiple roles in the enquiry which is impermissible in law. In support of his contentions Mr. Shinde would rely upon the judgment of this Court in **Maharashtra State Road Transport Corporation, Wardha Vs. Rajendra Mohanlal Chhangani**, 2019 NearLaw (Bombay HC Nagpur) Online 3069.

4. Mr. Shinde would further submit that the disciplinary proceedings were initiated by an incompetent authority in that petitioner's appointing authority is Divisional Controller whereas

the disciplinary proceedings have been initiated by Divisional Traffic Superintendent. This according to him violates the provisions of Rule 18. Mr. Shinde would further question the findings recorded by the Labour Court and the Industrial Court with regard to the proof of charges.

5. After hearing the learned counsel for petitioner, in my view no case is made out for interference in the orders passed by the Labour Court and Industrial Court. The first point raised by Mr. Shinde about the same officer performing multiple roles in the disciplinary proceeding deserves outright rejection. Under Rule 18 of the Maharashtra State Road Transport Corporation (Discipline and Appeal) Rules, the Disciplinary Authority is competent to conduct an enquiry and to punish the employee. Therefore, under the Rules, the Disciplinary Authority is fully empowered to himself conduct an enquiry against the delinquent employee.

6. So far as the issue of Disciplinary Authority performing role of Presenting Officer by asking questions to the witnesses is concerned, this issue was not raised by petitioner either during the course of enquiry or in his complaint filed before the Labour Court. The petitioner is, therefore, estopped from raising this plea directly before this Court. Even otherwise, petitioner has not been able to show any prejudice being caused to him on account of Disciplinary Authority performing role of Presenting Officer. It is trite that, mere minor infraction of principles of natural justice would not render the enquiry invalid in absence of prejudice being caused to delinquent employee.

7. Coming to the next issue of initiation of disciplinary proceeding by an incompetent authority, again this issue is not raised either during the course of enquiry or in the complaint filed by petitioner before the Labour Court. Both the Labour Court and Industrial Court had no occasion to deal with this issue. Therefore, petitioner is estopped from raising this issue directly before this Court. Even otherwise, such an issue would require leading of evidence as to who is competent Appointing Authority for appointment of petitioner on the post of Conductor. Such evidence is not led. The point of initiation of disciplinary enquiry by an incompetent authority is casually sought to be raised without any supporting material. The contention, therefore, requires summary rejection.

8. I have already dealt with the similar case in *Namdeo Tukaram Mokashe vs. Maharashtra State Road Transport Corporation*, through its Divisional Controller, Writ Petition No.11502 Of 2022 decided on 22-11-2022, in which it is held as under:

7. Mr Shahane has placed on record copy of the Discipline and Appeal Rules formulated by the respondent-Corporation. Rule 18 provides that the appointing authority or authority above him is competent to initiate disciplinary enquiry, to conduct enquiry and to impose punishment. Thus, the Rules specifically permit the disciplinary authority to conduct enquiry against an employee. Therefore, no error is committed by the disciplinary authority by acting as an Enquiry Officer in the present case. Even otherwise, there is settled law that the disciplinary authority may delegate the power to hold disciplinary enquiry to an Enquiry Officer. However, this does not mean that the disciplinary authority cannot himself act as an Enquiry Officer. So far as the disciplinary authority acting in the capacity of Presenting Officer is concerned, no serious infirmity can be said to have been committed. No grievance was raised by petitioner during the course of enquiry in that regard. No prejudice is caused to him by that action.

8. *Coming to the issue of competency of disciplinary authority, Mr Shahane has sought to raise this issue for the first time before this Court after I called upon him to produce copy of the Discipline and Appeal Rules for examining whether the disciplinary authority could act as an Enquiry Officer. After noticing provisions of Rule 18 Mr Shahane sought to press into service the submissions that in the respondent-Corporation, the Divisional Controller is an appointing authority whereas the proceedings have been initiated by the Divisional Traffic Officer. He would therefore contend that the Divisional Traffic Officer was not competent to conduct the disciplinary enquiry against petitioner.*

9. *I have perused the statement of the claim filed by petitioner before the Labour Court and find that no contention with regard to the competency of disciplinary authority was raised therein. If petitioner was to make out the case of incompetency of the disciplinary authority to initiate disciplinary proceedings, he ought to have made specific averments in the statement of claim and demonstrate before the Labour Court as to how the Divisional Controller had appointed him and not the Divisional Traffic Officer. Neither any pleading was raised much less in evidence led. Petitioner therefore, cannot be permitted to raise the issue of competency of disciplinary authority directly before this Court in the present case. The contention is therefore rejected.*

9. What remains now is to deal with the judgment cited by Mr. Shinde in **Maharashtra State Road Transport Corporation, Wardha Vs. Rajendra Mohanlal Chhangani** (supra). The decision is rendered in the facts of that case. Furthermore, Rule 18 specifically permits the Disciplinary Authority to himself conduct disciplinary enquiry. Therefore, reliance of Mr. Shinde on the judgment of this Court in **Maharashtra State Road Transport Corporation, Wardha Vs. Rajendra Mohanlal Chhangani** (supra) would be of no avail.

10. The last point argued by Mr. Shinde is about correctness of findings recorded by the Labour Court and Industrial Court on adequacy of evidence. I have gone through the findings recorded by the Enquiry Officer. The findings are

fully supported by the evidence on record. Therefore, findings of Labour Court and Industrial Court in this regard would not warrant any interference.

11. In the ultimate analysis, no error can be traced in the orders passed by the Labour Court and Industrial Court.

12. The petition is devoid of merits and the same is dismissed without any orders as to cost. Rule discharged.

(SANDEEP V. MARNE)
JUDGE