

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

14 WRIT PETITION NO.9272 OF 2014

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION, LATUR
VERSUS
CHANDRAKANT VENKATRAO SHALGAR

...

Advocate for Petitioner : Mr. D. S. Bagul
Advocate for Respondent : Mr. Kedar Jahagirdar

CORAM : RAVINDRA V. GHUGE, J.
DATE : 7th March, 2022

ORDER:

1. On 10th August, 2015, this Court had passed following order.

"1. Leave to file complete copy of the impugned judgment dated 2.4.2009 delivered by the Labour Court in Complaint (ULP) No.43 of 2003 is granted. Said judgment shall be placed on record within one week from today.

2. Shri Bagul submits that though the Labour Court framed an issue as regards perversity of the findings of the Enquiry Officer and the fairness of the enquiry, the said enquiry was set aside on the ground that the findings are perverse in the same judgment, by which the complaint was allowed.

3. The Industrial Court dismissed the Revision Petition No.103 of 2009 by the impugned judgment dated 28.6.2010 by itself framing the two preliminary issues and deciding them in the Revision Petition.

4. He submits that both the lower courts have failed to follow the law as is laid down by the Apex Court and which has been

followed by this Court in the case of Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam [2014 III CLR 547 = 2014 (4) Mah.L.J.687].

5. Issue notice to the sole respondent, returnable on 2.9.2015. In the event the respondent has crossed the age of superannuation, he shall not resort to coercive steps pursuant to the impugned judgment till the next date of hearing in the matter."

2. Since the respondent has been served through paper publication in Dainik Lokmat (Marathi) Latur Edition and no appearance was entered on his behalf, this Court has appointed Advocate Shri Kedar Jahagirdar as *amicus curiae* to represent the respondent.

3. I have considered the submissions of the learned Advocates for the respective parties and have gone through the petition paper book with their assistance.

4. It is well settled for at least six and half decades through the Judgment delivered by the Apex Court in the case of Indian Iron & Steel Co. Ltd. & Another Vs. Their Workmen, reported in 1958 SCR 667 that if departmental/domestic enquiry is challenged, the legality of the enquiry and the fairness of the findings of the Enquiry Officer has to be decided peremptorily. That judgment is followed in the case of Workmen Of Motipur Sugar Factory vs Motipur Sugar Factory (1965

AIR 1803) followed by catena of judgments. The Court dealing with such matters has to frame two issues to be decided before touching the merits of the matter.

5. In the instant case, the Labour Court did frame the two issues at Serial Nos. 1 and 2 below Exhibit O-1. However, the other issues which were framed and which had to be considered only after a decision on the first two issues was delivered, were taken up together and all the six issues were decided. Following are those six issues.

	ISSUES	FINDINGS
1.	Is the enquiry conducted fair, just and reasonable and in accordance with the principles of natural justice ?	In Negative
2.	Whether the finding report of enquiry officer is perverse ?	In affirmative
3.	Whether the proposed punishment is disproportionate ?	In affirmative
4	Does the complainant prove that unfair labour practice as alleged in complaint ?	In affirmative
5.	Is the complainant entitled for relief as prayed for ?	Yes, as per order.
6.	Order ?	As per final Order.

6. It is apparent from the record that none of the learned Advocates representing both the sides have assisted the Labour Court or the Industrial Court. The law applicable in such matters has not been cited. Since the correct position of law was not pointed out, it appears

that the Labour Court proceeded to decide all these issues together. The petitioner approached the Industrial Court in Revision (ULP) No. 103/2009. By Judgment dated 28.06.2010, the Industrial Court committed the same mistake that was committed by the Labour Court.

7. In view of above, this petition is partly allowed.

The Judgment of the Industrial Court dated 28.06.2010 is quashed and set aside. The Revision stands allowed.

The Judgment of the Labour Court dated 02.04.2009 to the extent of the conclusions below Issue Nos. 3 to 6 are quashed and set aside and Complaint (ULP) No.43/2003 is relegated to the Labour Court at the stage of the Judgment dated 02.04.2009, as a Part-I judgment on Issue Nos. 1 and 2.

8. In view of this situation, the petitioner has two options. Firstly, to conduct a *de novo* enquiry as such a right has been specifically reserved in it's written statement dated 13.07.2003 (Exh.C-4) in the light of the judgment of the Hon'ble Supreme Court in the case of Karnataka State Road Transport Corporation, reported in 2001 (1) SCR 487. Secondly, it may challenge the findings of the Labour Court to the extent of it's answer to issue Nos. 1 and 2 before the Industrial Court by preferring a revision petition under section 44 of the MRTU & PULP Act, 1971.

9. Since the Learned Advocate Shri Jahagirdar was appointed to represent the sole respondent, his fees are quantified at Rs.1500/- to be paid by the Legal Services Authorities, Aurangabad.

(RAVINDRA V. GHUGE, J.)

JPC