

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

WRIT PETITION NO.7702 OF 2017

Maharashtra State Road
Transport Corporation,
Dhule Division, Dhule,
through its Divisional Controller.

... PETITIONER
(Org. Respondent)

VERSUS

Anil S/o Narayan Sonawane,
Age: 48 years, Occu: Service,
R/o. Municipal Colony, Nehrunagar,
Dhule, Tq. & Dist. Dhule.

... RESPONDENT
(Org. Complainant)

...

Advocate for Petitioner : Mr. D.S. Bagul
Advocate for Respondent : Mr. P.S. Paranjape

...

CORAM : MANGESH S. PATIL, J.
Reserved on : 08.12.2021
Pronounced on : 05.01.2022

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. Paranjape waives service for sole respondent. At the request of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner establishment is aggrieved by the judgment and order passed by the Member of the Industrial Court, Dhule dated 24.08.2016 in the respondent's Complaint ULP No.85/2012 by which the punishment imposed on him in a Disciplinary Inquiry dated 08.03.2011 is quashed and set aside.

3. The respondent is appointed and working as a Conductor in the petitioner's establishment. He was served with a charge sheet dated 27.08.2010 for unauthorized absenteeism for a period of 53 days. The inquiry concluded with a report dated 29.06.2011 holding the charge to have been proved. He was served with a notice to show cause before inflicting punishment. After he submitted a reply a punishment was imposed of reduction of basic pay by two stages, under the order dated 30.08.2011.

4. The respondent preferred a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (herein after the ULP Act) complaining of unfair labour practice as defined under Items 9 and 10 of Scheduled IV of the ULP Act. The Industrial Court by the judgment and order dated 12.08.2014 allowed the complaint partly. It held that the findings recorded by the Inquiry Officer were perverse and the charges were not proved.

5. The petitioner establishment challenge that judgment before this Court in Writ Petition No.5762/2015. By the judgment dated 20.10.2015 the Writ Petition was partly allowed. It was observed that the Industrial Court had erred in directly entertaining the complaint on merits in its entirety when it was obligatory on its part to, first of all, frame issues regarding observance of principles of natural justice and perversity of the findings recorded by the Inquiry Officer, by referring to catena of decisions of the Supreme Court and even this Court summed up in the matter of

Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. and Anr. Vs. Vasant Ambadas Deshpande; 2014 (1) CLR 878 and MSRTC, Beed Vs. Syed Saheblal Syed Nizam ; 2014 (3) CLR 514. This Court therefore allowed the petition partly and directed Industrial Court to frame those two issues and to try them as preliminary ones.

6. Pursuant to such direction the Industrial Court framed the two issues and decided the complaint once again by the order under challenge, whereby it allowed the complaint and quashed and set aside the punishment.

7. The learned advocate Mr. Bagul for the petitioner vehemently submitted that the respondent has been a chronic absentee. His previous conduct was required to be taken into consideration and was rightly taken into consideration while holding the charge to have been duly proved. He did not deny the fact of being absent without prior sanction of the leave or even without prior intimation. He had miserably failed to prove that he was required to remain absent because of his illness. A plausible view taken by the Inquiry Officer could not have been upset by the Industrial Court while deciding the complaint. It was not competent to sit in appeal and judge legality of the report submitted by the Inquiry Officer. It was not a case of no evidence. There was some evidence and based on that a conscious decision was taken by the Inquiry Officer and the punishment was inflicted by the competent authority. There was no perversity. Principles of natural justice were followed. The judgment of the Industrial Court is erroneous

and may be quashed and set aside.

8. The learned advocate Mr. Pranjape for the respondent supported the judgment of the Industrial Court. He submitted that the principles of natural justice were not followed while conducting the inquiry. The observations and conclusions drawn by the Inquiry Officer were perverse and erroneous. Keeping the applications for leave tendered by the respondent pending, he was sought to be punished. The applications were not even decided till date. The charge was not proved and consequently his previous conduct could not have been taken into consideration. No error is committed by the Industrial Court in allowing the complaint.

9. I have considered the rival submissions and perused the record. As can be appreciated, this is a second round of the litigation. Already the Industrial Court had quashed and set aside the punishment while allowing the complaint under Section 28 of the ULP Act. This Court had remanded the matter with a direction to the Industrial Court to first frame and decide the issues in respect of observance of principles of natural justice and perversity in the findings of the Inquiry Officer.

10. As can be seen from the observations in paragraph No.5 of the judgment under challenge, such issues were framed at Exhibit O-5 and those were decided on 23.03.2016. It has also been mentioned therein that the Member of the Industrial Court had found that the inquiry was not conducted fairly and properly and the findings of the Inquiry Officer were also perverse.

11. Once having reached such conclusion which goes to the root of the jurisdiction of the Industrial Court, in fact, no further decision on merits was expected on other issues. If it had already recorded a finding that the inquiry was not conducted fairly and properly and the findings were perverse, the matter had ended then and there as a legal and logical corollary. Once having recorded such findings there was no reason or occasion for the Industrial Court to go into the merits of the other issues and to find out as to if the charges were otherwise proved or not.

12. Precisely for this reason, when the petitioner establishment has not challenged the finding on the two preliminary issues recorded by the Industrial Court on 23.03.2016, independently or even in the present Writ Petition, the Writ Petition itself is not maintainable. The finding to the issues would clearly have the effect of washing away the inquiry.

13. Suffice for the purpose to note the observations of this Court from paragraph Nos.31 to 33 from the decision in the case of **MSRTC Beed** (supra):

“31. In the light of the observations of the Apex Court and this Court in the above referred cases, it is, therefore, settled that when a workman challenges the domestic enquiry as being unfair and vitiated and attempts to brand the findings of the EO as being perverse, there ought to be pleadings as well as prayers praying for such declaration in the memo of the complaint under the ULP Act, 1971 or in the statement of claim under the Industrial Disputes Act, 1947 (hereinafter referred to as “IDA, 1947”). The pleadings are complete with the filing of the written statement by the employer and by reserving the right to conduct a denovo enquiry. The Hon’ble Apex Court in the case of K.S.R.T.C. Vs. Lakshmiddevamma and another, 2001 (II) CLR 640 has held that when an employer reserve such right to conduct a denovo enquiry, it

does not amount to an admission on his part that the enquiry is bad in law or the findings are perverse.

32. *It is therefore crystallised that when the right to conduct a de novo enquiry is reserved in the written statement, and the Labour Court or Tribunal has framed the two issues referred above, in relation to the enquiry, the said issues are to be decided as preliminary issues, before taking up other issues. It is an anathema to decide the first two issues together with the other issues. Whenever, in proceedings under the MRTU & PULP Act, 1971 or the IDA, 1947, a domestic/departmental enquiry is under challenge with pleadings and substantive prayers seeking the quashing of the domestic enquiry on the ground of either non observance of the principles of natural justice or findings being perverse, the Court or Tribunal has to frame a preliminary issue and try the same pre-emptorily.*
33. *If the two issues are answered in the negative, by the Labour Court, the enquiry and the findings of the EO stand upheld. Thereafter, the issue as regards shockingly disproportionate punishment and other connected issues are to be taken up for adjudication. In the event, either of the first two issues are answered in the affirmative, the domestic enquiry is washed away and the situation is as like that of a case in which no enquiry has been conducted [Bharat Forge judgment (supra)].”*

The fact situation of the matter in hand discussed herein above is squarely covered by these observations.

14. To repeat, the findings recorded by the Industrial Court on the two preliminary issues set at naught the result of the inquiry. As the petitioner has not challenged those findings, there remained nothing for the Industrial Court to rule on rest of the issues. For this reason alone the Writ Petition is liable to be dismissed.

15. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)