

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3764 OF 2019

Ajit Laxman Mane] ... Petitioner

Vs.

MSRTC, Kolhapur Division, Through]
its Divisional Traffic Superintendent.] ... Respondents

...

Mr. Meelan Topkar for the petitioner.

Mr. Amit A. Gharte for the respondent.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 08TH FEBRUARY, 2022.

P.C. :-

1. By an order below Exh.U-2 dated 24/11/2017, the Labour Court, Kolhapur, refused interim relief to the original complainant. By judgment of the Industrial Court, Kolhapur, dated 07/02/2019, Revision (ULP) No.125 of 2017 filed by the original complainant, has been dismissed. By an order dated 27/03/2019, this court protected the original complainant.

2. I have heard the learned counsel for the respective sides.
3. To say the least, none of the litigating parties have assisted the Labour Court in pointing out the correct position of law, which is crystallized over the last 64 years, ever since the first judgment was delivered by the Hon'ble Apex Court in 1958 in **Indian Iron & Steel Co. v. Their Workmen**¹ and thereafter in **Workmen of Motipur Sugar Factory Private Limited v. The Motipur Sugar Factory Private Limited**².
4. It is thus settled that the following two issues, in case of a challenge to the proposed punishment pursuant to the conducting of a DE, have to be framed by the Labour Court; (a) Does the Complainant prove that the enquiry conducted against him is in violation of the principles of natural justice and, therefore, is vitiated? and (b) Does the Complainant prove that the findings of the enquiry officer are perverse?
5. It is an admitted position that these two issues were not framed by the Labour Court and, none of the lawyers representing the parties before the Labour Court cited the relevant judgments delivered by this court.
6. Unless the enquiry is vitiated, in the light of the crystallized

1 AIR 1958 SC 130

2 AIR 1972 SC 1031

position of law and especially considering the view taken by the Apex Court in the case of **State Bank of Patiala & Ors. v. S.K. Sharma**³, there is no reason for the parties to lead evidence. Only if the enquiry is vitiated, the employer can conduct a *de-nova* enquiry, considering the law laid down by the Hon'ble Apex Court in the case of **KSRTC v. Lakshmiddevamma & Anr.**⁴ (Five Judges Bench).

7. It is also settled by this court that the above two issues are required to be answered, only after perusing the entire record in the proceedings of the DE and considering the findings of the enquiry officer (See: **Divisional Controller, Maharashtra State Road Transport Corporation, Latur v. Bhushan Jagannathrao Bulbule**⁵). For these two issues, external evidence is not required to be adduced for the reason that the Labour Court is considering as to whether the enquiry was conducted in obedience to the principles of natural justice and whether there is any evidence on record, on the basis of which the enquiry officer has rightly arrived at his findings.

8. Keeping in view that the petitioner has been protected by this court and the final order of punishment is yet to be issued by the MSRTC, the said relief is continued upto 30/04/2022. The Labour Court is directed to frame the above mentioned two issues

3 (1996) 3 SCC 364

4 2001 (2) CLR 640

5 2018 (5) Mh.L.J. 936

on or before 15/02/2022. Thereafter, the litigating parties would study the entire record and proceedings and the findings of the enquiry officer and make their oral submissions in between 15/03/2022 and 31/03/2022. The Labour Court would deliver its order on 30/04/2022 and decide the said two issues.

9. Needless to state that, if the enquiry is vitiated, the Labour Court may then protect the petitioner, till the final disposal of the complaint, subject to the right of the MSRTC to challenge such findings and conduct a *de-novo* enquiry.

10. The petition is disposed off in the above terms.

[RAVINDRA V. GHUGE, J.]