

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.6586 OF 2017**

Ganesh s/o Narayanrao Bhattalwar,  
Aged about 52 years, R/o Rashtrabhasha  
Road, Ram Nagar, Wardha.

**...PETITIONER**  
(Orig. Revision petitioner)

**---VERSUS---**

Maharashtra State Road Transport  
Corporation, through its Divisional  
Controller, Wardha.

**...RESPONDENT**  
(Orig. Revision Opponent)

-----  
Shri C.V. Jagdale, Advocate for the petitioner.  
Shri P.S. Gawai, Advocate for respondent.  
-----

**CORAM : AMIT BORKAR, J.**  
**DATE : AUGUST 19, 2022.**

**ORAL JUDGMENT :**

1. **Rule.** Rule is made returnable forthwith by consent of the parties.

2. By this petition under Article 227 of the Constitution of India, the petitioner is challenging the judgment and order passed by the Industrial Court, Nagpur, dated 12<sup>th</sup> September 2017 in Revision Application (ULP) No.244 of 2010 confirming the judgment and order passed by the learned Labour Court, Wardha dated 25<sup>th</sup> October 2009 in Complaint (ULP) No.3 of 2005. The limited issue involved in the present petition is whether the enquiry officer has acted as a person in his own cause by putting

questions in cross-examination of the petitioner while conducting the enquiry.

3. The facts and circumstances giving rise to the present petition are as under:

- (a) In the year 1987, the petitioner was appointed as a conductor. On 8<sup>th</sup> September 2004, while the petitioner was discharging his duty, he was found to be in possession of excess cash of ₹1,369/-. On 28<sup>th</sup> September 2004, the respondent issued a charge-sheet to the petitioner alleging that the petitioner misappropriated the amount of ₹1,369/-. After giving the opportunity of hearing to the petitioner, the enquiry was conducted. After completion of the enquiry, the punishment of dismissal from service was imposed on the petitioner, which was challenged by way of Complaint (ULP) No.3 of 2005. The learned Labour Court, by order dated 23<sup>rd</sup> September 2009, decided the preliminary issue regarding the fairness of enquiry and held that the enquiry was held to be proper. On 25<sup>th</sup> October 2008, the learned Labour Court dismissed the complaint on merit.
- (b) Aggrieved thereby, the petitioner filed Revision Application No.244 of 2010 before the Industrial Court, which was

dismissed on 12<sup>th</sup> September 2017. Petitioner has therefore challenged the order of Industrial Court by present writ petition.

4. Learned Advocate for the petitioner submitted that the enquiry officer acted as a person in his own cause by putting questions through cross-examination. He invited my attention to pages nos.36 to 42 to urge that questions asked were by cross-examination. He relied on the unreported judgment of this Court in **Writ Petition No.3863 of 2017** (Dadarao s/o Bapuraoji Ingole Vs. Maharashtra State Road Transport Corporation and another). He submitted that the facts situation of the present case is similar to the case decided in Writ Petition No.3863 of 2017. Therefore, similar order may be passed in the present writ petition.

5. *Per contra*, learned Advocate for respondent opposed the submissions made on behalf of the petitioner and submitted that the questions put to petitioner are not by way of cross-examination but were put as can be put by a judge to a witness. He relied on a judgment of the Apex Court in the case of **Pravin Kumar Vs. Union of India and others**<sup>1</sup>. He invited my attention to paragraph 31 of the judgment to urge that the Apex Court has held that even if an enquiry officer cross-examines the witness, the

---

1 (2020) 9 SCC 471

same will not make him to person judge of his own cause.

6. Having reflected on the submissions made by both parties, I have carefully scrutinized the material on record. Pages 29 to 42 of the petition demonstrate that the questions asked to the petitioner by the enquiry officer were in the nature of cross-examination. The enquiry officer asks 13 questions. Out of which, the majority of questions are in the nature of cross-examination of the petitioner. Therefore, I am satisfied that the enquiry officer himself cross-examined the petitioner. This Court in **Dadarao Bapuro Ingole** (supra) has relied upon by quoting paragraph 33 of the judgment of Apex Court in the case of **Union of India and others Vs. Ram Lakhan Sharma**<sup>1</sup>, which reads as under:

*“33. The Division Bench, after elaborately considering the issue summarised the principles in paragraph 16, which is to the following effect:*

*“16. We may summarise the principles thus :*

*(i) The Enquiry Officer, who is in the position of a Judge, shall*

*not act as a Presenting Officer, who is in the position of a prosecutor.*

*(ii) It is not necessary for the disciplinary authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.*

*(iii) The Enquiry Officer, with a view to arrive at the truth or*

---

1 (2018) 7 SCC 670

*to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.*

*(iv) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the inquiry.*

*(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.*

*Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”*

7. The Apex Court in the said judgment permitted the enquiry officer to put questions to the defence witnesses to elicit facts. However, in the facts of the present case, the enquiry officer himself cross-examined the delinquent.

8. The judgment in the case of **Pravin Kumar** (supra) relied upon by the respondent and, in particular in paragraph 31, refers to the appellant's submission that by cross-examining witnesses, the enquiry officer made himself judge of his own cause. In paragraph 31, the Apex Court has recorded a finding that the enquiry officer has not exceeded its jurisdiction. There is no ratio laid down by the Apex Court in paragraph 31, in any part, of the judgment that the enquiry officer can cross-examine the delinquent. *Per contra*, the Apex Court, in the case of **Ram Lakhan Sharma** (supra), has held that the enquiry officer cannot cross-examine the delinquent, and if he cross-examines the delinquent, he will make himself judge of his own cause. In that view of the matter, the enquiry proceeding has been vitiated by the cross-examination of the delinquent by the enquiry officer. Therefore, in my opinion, it would be in the interest of justice that the Labour Court, under Section 11A of the Industrial Disputes Act, can be directed to permit parties to lead evidence in relation to the misconduct alleged against the petitioner. After leading evidence, the matter can be adjudicated afresh. I, therefore, pass the following orders:

- i. The impugned judgment and order passed by the Industrial Court, Nagpur in Revision Application (ULP)

No.244 of 2010 dated 12<sup>th</sup> September 2017 confirming the judgment and order passed by the Labour Court, Wardha in Complaint (ULP) No.3 of 2005 dated 25<sup>th</sup> October 2009 are quashed and set aside.

ii. The proceedings are remanded back to the Labour Court, Wardha, for enquiring about the misconduct alleged against the petitioner.

iii. The parties are entitled to lead evidence in support of their case.

iv. On evidence been made by the parties, the learned Labour Court shall consider the evidence in accordance with law and, if satisfied, shall pass appropriate orders under Section 11A of the Industrial Disputes Act.

v. The parties shall appear before Labour Court on 29<sup>th</sup> August 2022.

vi. Since the complaint was filed in 2004, the learned Labour Court shall decide the complaint as expeditiously as possible and preferably within one year from today.

Rule is made absolute in the above terms. Pending civil application (s), if any, stand disposed of.

**JUDGE**

*Wagh*