

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8089 OF 2022.

Pune Mahanagar Parivahan Mahamandal Ltd.

& Anr.

.. Petitioners

vs.

Dada Dattatray Kad & Ors.

.. Respondents

...

Ms. Madhavi Tavanandi, i/b. Paragg Dubey, for the Petitioners.

Mr. Vikas H. Shekdar, for Respondent Nos. 1 to 12.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 29 AUGUST 2023.

P. C.:

1. By this Petition, the Petitioner challenges award dated 28th September 2017 passed by the Industrial Court, Pune, by which the Punishment Order dated 29th November 2005 imposed by the Petitioner-Corporation has been set aside and the Petitioner has been directed to release the withheld increments to the complainants.

2. I have heard the learned counsel for the Petitioners and the learned counsel for the Respondents.

3. After considering the submissions canvassed by the learned counsels for the parties and on perusal the award dated 28th September 2017, it appears that the Petitioner-Corporation had initiated Disciplinary Proceedings against the Respondents for participation in strike which adversely affected operations of the Transport Corporation. The Respondents were held guilty in Departmental Enquiry and were imposed with punishments of stoppage of increment. The punishments were subject matter of challenge in various complaints filed by the Respondents before the Industrial Court. The Industrial Court framed preliminary issue as to whether the enquiry was held properly and after following the principles of natural justice. The Industrial Court rendered Part -I award on 15th March 2017, holding that the enquiry conducted by the Petitioners was not legal, fair and proper or in accordance with the principles of natural justice. Petitioners did not challenge Part I award dated 15th March 2017. Since Petitioners did not challenge Part I award, they had the option of leading evidence before the Tribunal to prove the misconduct alleged in the Disciplinary Proceedings. However, Petitioners did not avail that opportunity as

well.

5. It is well settled that once Part I award holding that the enquiry conducted is not legal, fair and proper attains finality and if the employer fails to lead evidence before the Tribunal, it is then precluded from relying on evidence led during enquiry. Petitioners did not avail opportunity of proving the misconduct before the Industrial Court by leading evidence.

6. In that view of the matter, the only conclusion that can be reached is that there is no evidence on record on the basis of which misconduct allegedly committed by the Respondents could be held to be proved. The findings are thus rendered perverse.

7. I, therefore, do not find any error in the award of the Tribunal. The Petition is devoid of merits and accordingly dismissed.

8. After the order was pronounced, the learned counsel for the Petitioners would make a request for continuation of interim

order granted by this Court on 22nd August 2022. The learned counsel for the Respondents would contend that most of the concerned employees have retired from service. Considering the fact that there is absolutely no evidence on record, the request for continuation of stay is rejected.

SANDEEP V. MARNE, J.