

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7626 OF 2017

Vijay Vitthalrao Gomase __ Vs. __ M.S.R.T.C

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.V.Jagdale, Advocate for the petitioners
Mr. S.R.Charpe, Advocate for the respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 03/04/2023

1] Heard Mr. Jagdale, learned counsel for the petitioner and Mr. Charpe, learned counsel for the respondent.

2] The petition challenges the order dated 8.10.2014 on the preliminary issue regarding fairness of inquiry, in accordance with the principles of natural justice and whether the findings drawn by the Enquiry Officer are perverse and which have been held to be in favour of the petitioner (pg. 37); the complaint thereafter has been dismissed by the judgment dated 6.2.2017 (pg.52) and so also the enquiry report dated 19.1.2010 (pg.13) finding the petitioner guilty.

3] The contention is that the findings are vitiated on account of the fact that there is no

material witness examined to prove the charge and therefore, the impugned report, finding on preliminary issue and judgment cannot be sustained.

4] Mr. Charpe, learned counsel for the respondent supports the impugned order and the judgment.

5] The facts of the case indicates that the petitioner was charged with negligence in his duties on account of the bus which he was driving on 11.9.2006 having met with an accident. Though the reporter was examined during the course of the enquiry, it is material to note that the reporter is admittedly not an eye-witness to the incident.

6] In **MSRTC vrs Rajendra Mohanlal Chhangani, 2019 (6) Mh.L.J. 515**, while considering the similar position, it has been held that for bringing home the plea of negligence and therefor the guilt of the employee, it was necessary that an independent witness who had witnessed the incident was necessary to have been examined. In the instant case, admittedly apart from the reporter, who was not the eye-witness, no body has been examined, and therefore, the issue regarding the perversity of the finding rendered by the Enquiry Officer which

was framed as a preliminary issue could not have been answered in the affirmative against the employee. It is material to note that in view of the recording of the finding on this ground in favour of the respondent, no opportunity was granted to the respondent to examine any independent witnesses before the learned Industrial Court in the complaint filed by the petitioner.

7] Since I have held that the finding of the Enquiry Officer is perverse, it would be necessary to set aside the finding on preliminary enquiry dated 8.10.2014 in this regard and also the consequent judgment dated 6.2.2017 and which is accordingly so done. The matter is remitted back to the learned Industrial Court so as to afford an opportunity to the respondent to examine witnesses to prove the guilt of the petitioner/complaint.

8] The petition is accordingly allowed in above terms. No cost.

9] The parties shall appear before the learned Industrial Court on 17.4.2023.