



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

WRIT PETITION NO. 218 OF 2020

(MAHARASHTRA STATE ROAD TRANSPORT CORPORATION, GADCHIROLI ..VS.. GURDEEP
MITTHULAL MAJOKE)

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

Court's or Judge's orders

Shri R.S.Charpe, Advocate for Petitioner.
Shri C.V.Jagdale, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 04, 2023.

1. Heard.
2. The petitioner is a State Road Transport Corporation. The respondent is an employee of the petitioner and while he was working as a driver on the charge of absenteeism during the period from 17/08/2015 to 31/12/2015 without any permission and without leave application, the enquiry was conducted and consequently the respondent was dismissed from the service.
3. The said dismissal was the subject matter of Complaint (ULP) No.90 of 2015 filed before the Labour Court, Chandrapur.
4. The Labour Court vide order dated 13/12/2017, while answering the preliminary issue whether the departmental enquiry was conducted fairly, properly and in accordance with the principles of natural

justice and whether the finding recorded by the Enquiry Officer was perverse, held in favour of the respondent and thereby declared that the principles of natural justice were not followed in the enquiry and the findings of the Enquiry Officer are perverse.

5. The petitioner-Corporation was therefore, allowed to adduce evidence to prove the alleged misconduct, which the petitioner failed to prove by leading evidence before the Labour Court.

6. Thereupon, the learned Labour Court, vide impugned judgment and order dated 26/12/2017, allowed the complaint and thereby set aside the order of dismissal dated 27/07/2016 and directed the petitioner to reinstate the complainant with continuity of service along with back wages from the date of dismissal till the date of actual reinstatement.

7. The petitioner, feeling aggrieved by the said judgment and order dated 26/12/2017 carried the revision before the Industrial Court vide Revision (ULP) No.18 of 2018, which came to be dismissed vide judgment and order dated 12/02/2019. The same is under challenge in this writ petition.

8. Shri Charpe, learned counsel for the petitioner submits that both the Courts have committed error in

holding that the principles of natural justice were not followed in the enquiry and further that the findings recorded by the Enquiry Officer are perverse.

9. It is further submitted that the Corporation has established and proved the misconduct and the fact that without any permission or leave application the respondent was absent from duty during the period between 17/08/2015 and 31/12/2015 and therefore, the order of dismissal of the respondent is just and proper.

10. He further argues that despite the fact that the respondent failed to prove and establish the fact that he was not gainfully employed elsewhere during the period of termination, the full back-wages were granted. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Management of Regional Chief Engineer, Public Health and Engineering Department, Ranchi ..vs.. Their Workmen Represented by District Secretary*, reported in (2019) 18 SCC 814.

11. On the other hand, Shri Jagdale, learned counsel for the respondent argued that there is no error committed by both the Courts below in recording the finding on the preliminary issue in negative and further holding that the dismissal of the respondent is illegal. He, therefore, prays for dismissal of the present writ petition.

12. In light of the rival contentions of the parties, I have perused the record and the impugned orders.

13. After going through the record, it is evident that, in the present matter, the Enquiry Officer was the Depot Manager who had received the application submitted by the respondent to join the duties and on receiving such application he made an endorsement on the same permitting the respondent to join the duties and after joining the duties he issued the charge-sheet alleging misconduct on the ground of absenteeism. Thereafter, during the enquiry, as there was no Presenting Officer, he himself conducted the case on behalf of the petitioner and cross-examined the respondent.

14. Though the learned counsel for the petitioner submits that the questions put by the Enquiry Officer to the respondent were for the purpose of clarification, after going through the questions and answers, I have no hesitation to hold that the questions put to the respondent by the Enquiry Officer are in the form of cross-examination and not for certain clarification.

15. Thus, in this case, it can be said that the enquiry was held in contravention of the principle *Nemo judex in causa sua* i.e. no one is judge in his own case. The learned Labour Court, considering the said fact and also the fact

that the Enquiry Officer acted himself as a prosecutor, held that the enquiry was not conducted fairly, properly and according to the principles of natural justice.

16. From the above referred facts and circumstances, I do not find any error committed by the Labour Court in holding that the enquiry was not fairly conducted.

17. It has come on record that the defence of the respondent was totally ignored by the Enquiry Officer while recording the findings.

18. It has come on the record that the respondent was absent due to his illness and he was suffering from jaundice. The record shows that the respondent had filed medical documents including Fitness Certificate, which shows that the medical documents were available on record before the Enquiry Officer, despite the same, it was not considered by the Enquiry Officer and therefore, the learned Labour Court has rightly held that the findings recorded by the Enquiry Officer were perverse.

19. As far as back wages are concerned, though there are pleadings made by the complainant-respondent showing that he was not gainfully employed elsewhere, there was no specific denial to the said case of the respondent.

20. There is no dispute about the law laid down in the case of *Management of Regional Chief Engineer* (supra), however, in the present case, as there is no specific denial by the Management to the pleadings made by the complainant that he was not gainfully employed elsewhere, there is no question to enter into the witness box to lead any evidence by the complainant in this regard or there is no question to cross-examine by the respondent on this aspect. Furthermore, the Petitioner-Corporation has not brought on record any evidence to show that the respondent was gainfully employed elsewhere during the period of termination.

21. In the circumstances, I do not find any error committed by both the Courts below in allowing the complaint filed by the respondent challenging his dismissal.

Accordingly, the Writ Petition is **dismissed**. No order as to costs.

JUDGE