



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5182 OF 2012

The Divisional Controller
Maharashtra State Road Transport
Corporation & another

.. Petitioners

versus

Madhukar s/o Vyankat Jawale

.. Respondent

Mr. D. S. Bagul, Advocate for the Petitioners.
Mr. D. V Tele, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.
DATE : 18th JUNE, 2024.

PER COURT :

1. A short question arises in this Petition as to whether the judgment impugned dated 16.12.2011 passed by the Industrial Court, Latur in complaint ULP No. 116/2010 can sustain when opportunity to prove the mis-conduct before the Court is not given to the Petitioners after recording findings that the enquiry conducted against the Respondent/employee is not fair and proper.

2. Learned counsel for the Petitioners submits that the Petitioners i.e. Respondents in complaint ULP No. 116/2010, while

filing written statement, has raised a specific plea to the effect that in case the Court comes to the conclusion that the enquiry is not fair and proper, Respondent may be allowed to lead further evidence before the Court and prove the charges levelled against the complainant. It is his further submission that an application was also moved to that effect which is not considered by the Court. In any case, according to him, when such plea is raised, in view of the settled position of law, the Petitioners ought to have been given an opportunity to prove the mis-conduct before the Court.

3. Learned counsel for the Respondent/Complainant in the original proceedings, strenuously opposed the said submission on the ground that the employer has failed to prove the mis-conduct in the departmental enquiry. He led much stress on the point that the accident in question has occurred on 22.04.1999 and that even the evidence collected by the Investigating Agency, would not be sufficient to prove mis-conduct against the Respondent. It is his submission that having regard to the long period lapsed in between, there would be no justification to allow Petitioner to prove mis-conduct by leading evidence before Industrial Court.

4. The position of law with regard to the opportunity being given to the employer to prove mis-conduct alleged against the employee before the Court is settled by now. In case of Karnataka State Road Transport Corporation vs. Laxmidevamma & another, **AIR 2001 Supreme Court 2090**, it is held by the Hon'ble Supreme Court that wherever the employer at first available opportunity seeks leave of the Court to prove mis-conduct in case the enquiry is held to be not fair and proper, the employer must be given such opportunity. Perusal of the impugned judgment indicates that the learned Industrial Court has recorded correct finding to the effect that the enquiry conducted against the Respondent is not fair and proper. However, since written statement indicates that the Petitioners/employer had sought leave of the Court to prove the charges levelled against the complainant/Respondent in case the Court was under obligation to allow employer to lead evidence to prove mis-conduct. Having regard to the settled position of law by the Hon'ble Supreme Court and the fact that a plea was raised for proving mis-conduct against the Respondent, in considered view of this Court, the judgment impugned cannot sustain and as such it deserves interference. Merely because considerable time has lapsed in between such opportunity to prove mis-conduct can not be denied.

5. This Court however cannot ignore the fact that the incident in question is of the year 1999, complaint was filed in the year 2010 and the impugned judgment is of the year 2011. Having regard to the time lapsed in between the learned Industrial Court is directed to decide complaint by giving opportunity to the Petitioners to adduce evidence within a period of three months. No adjournment on whatsoever ground should be granted to either side. The Industrial Court would be at liberty to pass appropriate order if the parties fail to proceed with matter within time frame.

6. In view of the above, the Petition is allowed. Impugned order dated 16.12.2011 is set aside. Complaint ULP No. 116/2010 is restored to the file of Industrial Court, Latur. Industrial Court, Latur is directed to permit the Petitioners/employer to prove mis-conduct against the Respondent on the basis of charge-sheet dated 12.06.2000. Both sides make a statement that the parties would appear before the Industrial Court on 01.07.2024. Complaint ULP No. 116/2010 to be decided finally within a period of three months from the date of appearance of the parties before the Industrial

Court. It is further clarified that no extension shall be granted for disposal of the complaint.

(R. M. JOSHI)
Judge

dyb