

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5921 OF 2019

Maharashtra State Electricity

....Petitioner

V/s.

Shri Shivaji Rangrao Patil

....Respondent

Mrs. Anjali r. Shiledar Baxi, *for the Petitioner.*

Ms. Pavitra Manesh *i/b Meelan Topkar, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Date : 16 AUGUST 2024.

P.C. :

1) The challenge in the present Petition is to the order dated 23 January 2018 passed by Industrial Court No. II Kolhapur setting aside the order of the Labour Court dated 31 August 2017 on preliminary issue and holding that the enquiry conducted against the complainant is not fair and proper and that the findings of the Enquiry Officer are perverse.

2) I have heard Mrs. Baxi, the learned counsel appearing for the Petitioner and Ms. Manesh, the learned counsel for Respondent.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, there is no dispute to the position that in the Domestic Enquiry, the Petitioner – Employer did not lead evidence by examining the witnesses, whose statements were recorded by the Anti-Corruption Bureau during the course of investigations. The Enquiry Officer merely relied upon pre-recorded statements by the Investigating

Agency behind the back of the Respondent. Since the persons who give a statements were not examined in the enquiry, statements could not have been relied upon by the Enquiry Officer for basing his findings in the domestic enquiry.

4) Mrs. Baxi would submit that in the domestic enquiry it is permissible to prove charge without examining the witnesses and by relying upon the statements recorded during criminal investigations and that in the event of any objection being raised and demand being made by the delinquent employee, the concerned witness could have been produced for cross-examination. I find the submission to be contrary to the settled position of law. The burden of proving the charges is on the Petitioner – Employer. If Petitioner – Employer fails to produce witnesses during enquiry, it is not for the delinquent employee to demand their cross-examination. It is well-settled law that pre-recorded statements recorded during the course of preliminary enquiry or in criminal investigation cannot be relied upon even in domestic enquiry in absence of the person making such statement being examined in the enquiry and offered for cross-examination by the delinquent employee. Since the Petitioner – Employer has failed to examine various witnesses even in the domestic enquiry, in my view, the order passed by the Industrial Court answering the preliminary issues against the Petitioner does not warrant any interference. Even if Part-I Award has been answered against the Petitioner, it can always prove the charges before the Labour Court by leading evidence.

5) The Writ Petition is accordingly rejected.

[SANDEEP V. MARNE, J.]