



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7036 OF 2022

PETITIONER :- Divisional Controller, M.S.R.T.C. Akola
Division, S.T. Divisional Offices, Kaulkhed,
Akola.

..VERSUS..

RESPONDENT :- Avejkarni Ahmed Abdul Rahim,
Aged about 66 yrs. R/o Mangrulpir
Diwanpura, Tq. Mangrulpir, Dist. Washim.

Mr. Vijay P. Panpalia, Advocate for Petitioner.
Mr R.G. Kavimandan, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, JJ.

DATE : 23/09/2025

ORAL JUDGMENT :

1. Heard.

2. **Rule.** The Rule is made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

3. The respondent No.1 was working as 'Driver' with the petitioner-Corporation. The services of the respondent No.1 were

transferred vide order dated 23.07.2004. Relieving order was issued on 28.07.2004. However, the respondent No.1 did not join the services at the place of transfer. In that view of the matter, a chargesheet dated 10.01.2005, came to be issued for holding disciplinary enquiry against the respondent No.1. The respondent No.1 did not participate in the enquiry and subsequently, termination order dated 15.07.2005, came to be issued by the petitioner-Corporation. The respondent No.1 raised a dispute under Section 10 of the Industrial Disputes Act, 1947, in relation to this order of termination. The respondent No.1 made an application for Reference pursuant to which, the matter was referred to the learned Labour Court, Akola vide order dated 05.04.2006. The Reference was registered as Reference (IDA) No.23 of 2006. In this Reference, the respondent No.1 filed his statement of claim in the month of February, 2011. The Reference was dismissed for want of prosecution vide order dated 07.04.2014. The said order was challenged by the respondent No.1 before this Court in Writ Petition No.1553 of 2016, which was allowed vide order dated 19.04.2017. Accordingly, the Reference was disposed and thereafter parties contested the matter.

4. The learned Labour Court decided the preliminary issues regarding the fairness of the enquiry in favour of the respondent No.1. Thereafter, an opportunity was given to the petitioner to lead evidence to prove the charges against the respondent. However, the petitioner did not avail this opportunity and finally, the Reference was allowed vide judgment and award dated 31.12.2021. The learned Labour Court set aside the dismissal order dated 15.07.2005 and granted the relief of reinstatement in service with continuity and full backwages to the respondent No.1.

5. Perusal of the judgment will demonstrate that the learned Labour Court has found that during the course of the disciplinary proceedings, the respondent No.1 had deliberately avoided service of notice and did not participate in the inquiry proceedings. However, in view of the fact that the Divisional Traffic Officer acted as the Presenting Officer, Enquiry Officer and also Disciplinary Authority, the learned Court has found that this was in breach of the principles of natural justice, warranting a finding that the enquiry was vitiated. Subsequently, since the petitioner did not lead evidence in the matter, the learned trial Court has allowed the Reference as aforesaid.

6. Mr Panpalia, learned Advocate for the petitioner contends that under the service Regulations of the petitioner-Corporation, a disciplinary authority can function as an Enquiry Officer. He has placed reliance on the judgment of this Court in the matter of *Mahadeo Naik ..vs.. Maharashtra State Road Transport Corporation*, reported in **2017(5) Mh.L.J. 348**, in support of his contention. The said decision pertains to discipline and appeal regulations framed by the respondent-Corporation. The said judgment states that when the disciplinary authority itself inquires into the misconduct of a chargesheeted employee, the disciplinary enquiry cannot be said to suffer from any inherent infirmity. Referring to the relevant regulations of the petitioner-Corporation, it is also held that any Appointing Authority or any Authority higher than to Appointing Authority is competent to initiate departmental proceedings and to hold enquiry and also to impose punishment against any concerned employee under the Regulations framed by the petitioner-Corporation.

Mr. Panpalia, learned Advocate for the petitioner, therefore contends that the judgment by the learned Labour Court warrants interference, since the relevant services regulations and the

decision of this Court cited above are not taken into consideration.

7. As regards, the examination of the witnesses by the Enquiry Officer, Mr. Panpalia, learned Advocate for the petitioner-Corporation has placed reliance on the judgment of the Hon'ble Supreme Court of India in the matter of *Pravin Kumar ..vs.. Union of India and others*, reported in **(2020) 9 SCC 471** and particularly in Para-31 thereof wherein the Hon'ble Supreme Court has held that only because the Enquiry Officer records the examination-in-chief of prosecution witnesses or conducts the cross-examination of defence witnesses in a disciplinary enquiry, the enquiry cannot be said to be vitiated. The Court has drawn analogy from Section 165 of the Indian Evidence Act, 1872, in support of the ratio laid down. It is also held that when such acts are done by the Enquiry Officer and no objection is raised by the employee at that time, the objection should be discarded as an afterthought.

The learned Advocate for the petitioner therefore contends that the other observations by the learned Labour Court that the enquiry is vitiated because the Enquiry-cum-Disciplinary authority has acted as Presenting Officer in recording examination-

in-chief of the witnesses of the petitioner is not in accordance with the law laid down by the Hon'ble Supreme Court.

8. Mr. Kavimandan, learned Advocate for the respondent-employee, placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Roop Singh Negi ..vs.. Punjab National Bank and others*, reported in **2009(I) SCC (L & S) 398 (S.C.)**, to contend that in disciplinary enquiry, the material placed on record is required to be proved and that function of a disciplinary authority is *quasi judicial* in nature. He has placed reliance on *Shankar Gopal Pagire ..vs.. State Transport Co-op. Bank Ltd. & Others*, reported in **2004 (6) Bom.C.R. 217** to contend that when an enquiry officer acts as prosecutor, the enquiry deserved to be set aside and also judgment in the matter of *Neeta Kaplish ..vs.. Presiding Officer, Labour Court*, reported in **1999 AIR (SC) 698**, to contend that, when an enquiry held to be vitiated, the material forming part of the enquiry cannot be read as evidence during the course of proceedings before the learned Labour Court.

9. The learned Labour Court has recorded a clear finding that the respondent/employee did not participate in the enquiry

despite being duly served. It is obvious that, since he did not participate in the enquiry, he cannot raise any contention regarding prejudice in the manner in which the enquiry was conducted.

10. The Hon'ble Supreme Court has held in the matter of *Pravin kumar* (Supra), that the Enquiry Officer can record deposition of the prosecution witnesses. In that view of the matter, the finding by the learned Labour Court that enquiry is vitiated because the Enquiry Officer has recorded examination in chief of the witnesses of the petitioner-Corporation is unsustainable.

11. Likewise the other contention that the disciplinary authority could not have acted as enquiry officer is also liable to be rejected in view of judgment of this Court dealing with the same service regulations in the matter of *Mahadeo Naik* (Supra).

12. As regards the findings recorded by the learned Labour Court that apart from the reporter, the witnesses in whose presence the transfer order and relieving order were served on the respondent No.1 were not examined, it must be mentioned that the reporter was examined as witness. His testimony was not challenged since

the respondent did not participate in the enquiry. Therefore, there was no need for further corroboration of the evidence of the reporter that the respondent No.1 did not accept relieving order.

13. The judgments relied upon by the advocate for the respondent will not be of any assistance in the facts of the present case. The law laid down in the matter of *Roop Singh Negi* (Supra), is that the function of the Enquiry Officer is *quasi judicial* in nature and documents filed on record in disciplinary enquiry cannot be considered unless the same are proved. However, in the present case, refusal to accept the preliminary order was proved by examining the reporter during the disciplinary enquiry. The other judgment of the Hon'ble Supreme Court in the matter *Neeta Kaplish* (Supra), will also not be applicable in view of the findings of this Court that the enquiry is not vitiated. In the matter of *Shankar Gopal Pagire* (Supra), the delinquent employee had participated in the enquiry and had demonstrated prejudice. Admittedly, in the present case, the respondent No.1 has not participated in the enquiry, the learned Labour Court has categorically recorded findings that he did not participate in the enquiry despite being duly served. The judgment in the matter of *Shankar Gopal Pagire*

(Supra), is therefore, not helpful to the respondent No.1.

14. The next contention by the learned Advocate for the respondent No.1 is that the petitioner-Corporation ought to have awarded a lesser punishment. He contends that the punishment is grossly disproportionate as compared to that imposed on the other respondents. The said contention is also liable to be rejected in view of the conduct of the respondent No.1, which is apparent from the fact that initially he did not participate in the enquiry and thereafter, despite making a Reference, he failed to file his statement of claim for five years. Subsequently, he again failed to diligently prosecute the proceedings before the learned Labour Court, resulting in dismissal of the same in default. It is not in disputed that the respondent No.1 has attained the age of superannuation.

15. In the light of the reasons recorded above, the writ petition deserves to be allowed. Accordingly, I pass the following order :-

- i) The writ petition is **allowed**.

- ii) The Award dated 31.12.2021 passed by the Presiding Officer, Labour Court, Akola in Reference (IDA) No.23 of 2006 and order passed below Exh.1 dated 22.11.2019 passed by the Judge, Labour Court, Akola, in Reference IDA No.23 of 2006, are hereby quashed and set aside.

Rule is made absolute in above terms. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate