

(2016) 08 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No. 9093 of 2016

Maharashtra State Electricity Distribution Company Ltd.

APPELLANT

Vs

Anil Soma Thakur

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 151 FLR 423

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : Mr. A.S. Bajaj, Advocate, for the Petitioners; Mr. V.A. Pawar, Advocate, for the Respondents; Mr. V.A. Pawar, Advocate, for the Petitioners; Mr. S.M. Godsai, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

R.V. Ghuge, J. (Oral) Learned Advocates, on instructions from the respective sides, submit that they have no objection if this Court hears this petition.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The petitioner is aggrieved by the judgment and order dated 02/03/2016 delivered by the Industrial Court in Complaint (ULP) No. 6/2014 by which the enquiry conducted by the petitioner against the respondent has been set aside on the ground that the Presenting Officer of the petitioner/Management has led oral evidence and there was no opportunity to the respondent to cross examine him.

4. Considering the order that I intend to pass, I am not required to advert to the extensive submissions put forth of Mr. Bajaj, learned Advocate for the petitioner and Mr. Pawar, learned Advocate for the respondent.

5. Having considered the submissions of the learned Advocates and having gone

through the impugned order, it appears that the Industrial Court has set aside the enquiry keeping in mind the Industrial Employment Standing Orders Act, 1946 and the Model Standing Orders framed therein.

6. The impugned order is based on the conclusion that the Management/Representative has led evidence and the respondent/employee had no opportunity to cross examine him. However, after going through the record, I find that the Management representative has not led oral evidence. He had merely presented the side of the petitioner by way of oral submissions. This aspect is nowhere provided under the Model Standing Orders. However, after considering Regulation 88 under Chapter VII of the M.S.E.D.C.L. Employees Service Regulations 2005, prima facie, I find that the delinquent/employee and the Management/Representative are permitted to make oral submissions in the form of oral arguments. Rule 88 needs to read in its entirety so as to arrive at a conclusion as to whether the manner in which the enquiry was conducted by the petitioner is supported by the said Rule 88.

7. I also find from the record that the Enquiry Officer had asked the respondent whether he would like to lead evidence through any witness and his answer was in the negative. A similar question was put to the Management/representative who is commonly known as the Presenting Officer. He also stated that he would not lead evidence through any witnesses but would rely exclusively on the documents to be produced in the enquiry. Since such statements were made, the Education Officer allowed the Management/representative to make his oral submissions. That was not recording of oral evidence of any witness on the part of the petitioner and more so because the Management/representative cannot be a witness for Management.

8. After recording the oral submissions of the Management/representative, the Enquiry Officer called upon the respondent and his defence representative to respond. On instructions from the respondent, his representative also put forth oral submissions.

9. The above aspect has been misconstrued by the Industrial Court to mean that evidence of the Management/representative was recorded and the respondent/employee was not allowed to cross examine him.

10. I find that this confusion has been created before the Industrial Court only because the petitioner/Management did not produce the Service Regulations of 2005 and need not apprise the Industrial Court of the entire scheme of conducting a departmental enquiry under Regulation 88. Had Regulation 88 been cited, the Industrial Court could have considered the submissions of the complainant and the respondent from the perspective of Regulation 88. It is on this laxity on the part of the Management that the Industrial Court was not properly assisted.

11. In the light of the above, the impugned order dated 02/03/2016 is quashed and set aside. This Writ Petition No. 9093/2016 is partly allowed by imposing

costs of Rs. 10,000/- (Rs. Ten thousand only) on the petitioner which shall be deposited with the Industrial Court within a period of 4 (four) weeks from today. On depositing the amount, the respondent shall withdraw the said amount as costs for the hardships suffered by him.

12. The petitioner shall forthwith produce a copy of the service regulation before the Industrial Court for its assistance and both the litigating sides would then address the mind of Industrial Court afresh by relying upon Regulation 88 and the manner of conducting an enquiry as provided thereunder. The Industrial Court shall decide preliminary issue Nos. 1 and 2 afresh by keeping in view the ratio laid down by this Court in the matter of Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd., and another v. Vasant Ambadas Deshpande, 2014(3) MH.L.J. 339 = 2014(1) CLR 878.

13. The Industrial Court shall note that this Court has taken the precaution of not deciding the rival contentions of the litigating sides on issue Nos. 1 and 2 on their merits so as to enable the Industrial Court to decide the said issue afresh after hearing all the sides in the light of Regulation 88.

14. Rule is made partly absolute in the above terms.

15. The second petition preferred by the petitioner workman was considered by this Court and the following order was passed on 04/08/2016 :-

"1. The Petitioners/Employees are aggrieved by the orders dated 12.04.2016 passed by the Industrial Court below applications Exhibits C-14 in Complaint (ULP) Nos. 83/2015 and 06/2014 by which the Industrial Court has permitted the Respondent/Management to conduct an enquiry for proving the misconduct alleged to have been committed by the Petitioners.

2. Shri Pawar, learned Advocate for the Petitioners, has strenuously criticized the impugned orders on the ground that, firstly, the orders dated 02.03.2016 thereby setting aside the summary enquiry under Regulation 90, have not been challenged by the Respondent- Management and secondly, that the Respondent could not have sought permission to conduct an enquiry unless it has reserved its right in the Written Statement to do so.

3. Shri Pawar has placed reliance upon the judgment of the Honourable Supreme Court (five judges Bench) in the matter of Karnataka State Road Transport Corporation v. Smt. Lakshmiddevamma, AIR 2001 SC 2090 : 2001(2) CLR 640. He has also placed reliance on the judgment of the Honourable Supreme Court (three judges Bench) in the matter of Balwant Rai Saluja v. AIR India Ltd., 2014 (III) CLR 751.

4. Notwithstanding the strenuous submissions of Shri Pawar and reliance placed on the above referred reports, the facts of this case need to be considered as they appear to be peculiar.

5. The Respondent is the Maharashtra State Electricity Distribution Company

Limited, Jalgaon. A summary proceeding under Regulation 90 ("ka" and "kha") of it's Regulations was conducted. It is not disputed that though it is termed as a summary enquiry, in fact it is neither a summary enquiry, nor a regular departmental enquiry. The Regulation 90 ("ka" and "kha") deals with a summary proceeding undertaken by the said Department. A regular departmental enquiry is provided under Regulation 88.

6. It is, therefore, apparent that by resorting to a summary proceeding which was preceded by a formal charge sheet without conducting an enquiry, Regulation 90 was relied upon by the Respondent and after concluding the summary proceedings in which the Employees were only heard and no oral and documentary evidence was recorded, the orders of punishment were passed against these Petitioners- Employees.

7. Sequence of events in these matters assume significance. In the first case, the charge sheet is dated 26.05.2011 and in the second case, it is 27.01.2011. The order of punishment in the first case is 11.08.2011 and in the second case it is 20.12.2012.

8. The learned Division Bench of this Court, in the matter of Sudhakar Shankar Chapke v. The Maharashtra State Electricity Distribution Company Limited, 2013(1) ALL MR 564, has concluded that Regulation 90 is invalid and the summary proceedings pursuant to the charge sheet under Regulation 90 are unsustainable.

9. Shri Pawar, therefore, submits that considering that the Respondent was relying upon the enquiry notwithstanding that it was not a regular enquiry under Regulation 88, but a summary proceeding under Regulation 90, it was required to reserve a right to conduct a de-novo enquiry in view of Lakshmiddevamma judgment (supra). He submits that reliance placed by the Respondent on the judgment of the Honourable Supreme Court in the matter of Divyash Pandit v. Management N.C.C.B.M., 2005(2) SCC 684 : AIR 2006 SC 92 concluding that the Labour Court can always give an opportunity to the Employer to conduct a de-novo enquiry without reserving a right in the Written Statement, has been wrongly followed by the Industrial Court.

10. Shri Pawar submits that as on date, the Petitioners have not received any notice with regard to any challenge posed by the Respondent/Management as against the orders dated 02.03.2016 passed by the Industrial Court by which the summary proceedings have been set aside.

11. In the light of the above, issue notice to the Respondents. Shri Godse, learned Advocate, appears and waives service on behalf of the Respondent-Management in both these petitions and prays for a short accommodation.

12. By consent of the parties, stand over to 11.08.2016 as part-heard. The matter to appear in the supplementary board.

13. Considering the above and the fact that the Petitioners have raised an

arguable point, until further orders in this matter, the Industrial Court, Jalgaon shall not proceed with Complaint (ULP) Nos. 83/2015 and 06/2014."

16. Considering the fact that the order of setting aside the enquiry in the first petition has been quashed and set aside and the preliminary issue Nos. 1 and 2, having been remitted to the Industrial Court for a fresh decision, the impugned order in the second petition dated 12/04/2016 below Exh.C-14 in Complaint (ULP) No. 6/2014 does not survive and stands set aside as a natural consequence. As such, the second petition is rendered infructuous and is therefore disposed of. Rule is discharged.