
(2015) 06 BOM CK 0270

In the Bombay High Court

Case No : Writ Petition Nos. 239, 240 and 241 of 2015

The Divisional Controller, Maharashtra State Road Corporation	APPELLANT
Vs	
Ramdas Daulat Sadarao and Others	RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Citation : (2015) 06 BOM CK 0270

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

Bench : Single Bench

Advocate : Bagul D.S., for the Appellant; Patil Shrikant S. and Suryawanshi N.R., Advocates for the Respondent

Judgement

R.V. Ghuge, J—Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petitions are taken up for final disposal.

4. This Court, after hearing the respective sides for sometime on 21.1.2015 had passed the following order:-

"1. The petitioner has pointed out from the impugned judgment delivered by the Industrial Court that an issue as regards fairness of the enquiry and fairness of the findings of the Enquiry Officer were not cast. However, the conclusion of the Industrial Court is that the findings of the Enquiry Officer are perverse and there is no evidence to prove the charge levelled upon the respondent employee. The enquiry is therefore set aside.

2. Mr. Bagul has therefore placed reliance upon the judgment of this Court in the matter of Maharashtra State Road Transport Corporation Vs. Syed Saheblal Syed Nijam, (2014) 4 ABR 294 : (2014) 5 ALLMR 104 : (2014) 4 LLJ 267 : (2014) 4 MhLj 687 and an unreported judgment of this Court dated 10/12/2014 in the matter of M.S.R.T.C. Beed Vs. Shivaji Bhairuba Dhapate and another. According

to the contention of Mr. Bagul, the impugned judgment is unsustainable.

3. Mr. Patil, learned Advocate and Mr. Aade, learned Advocate appear on behalf of the respondent/employee and pray for time so as to be able to take instructions from the respective respondents.

4. Stand over to 06/02/2015 for further consideration.

5. Learned Advocates for the respondent employees submit that till the next date of hearing in these matters, they shall not resort to coercive steps pursuant to the impugned judgment."

5. I have heard the learned Advocates for both the sides at length. It is evident that the Industrial Court has dealt with the Complaints filed by the respondents/employees, wherein, punishment inflicted upon them was called in question. The domestic enquiry conducted was questioned. The workmen had contended that the charges levelled upon them were not proved in the enquiry.

6. The Industrial Court framed the following issues:-

"1. Does the complainant prove that the respondent engaged in unfair labour practices under items 5, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 as alleged in the complaint?

2. Is the complainant entitled to the reliefs prayed for in the complaint?

3. What order?"

7. It is further evident that the Industrial Court has concluded in the last paragraph of the judgment that the findings recorded by the Enquiry Officer are perverse and the charges are not proved in the enquiry. This conclusion tantamounts to branding the findings of the Enquiry Officer as being perverse which results in setting aside of the enquiry in the light of the crystallized law.

8. This Court in the case of MSRTC Beed Vs. Sayed Saheblal (supra) and MSRTC Beed Vs. Shri Shivaji Bhairuba Dhapate (supra) has relied upon catena of judgments delivered by the Apex Court as well as by this Court and has concluded that the Industrial Court, while dealing with the challenge to the domestic/departmental enquiry conducted and the findings of the Enquiry Officer, will have to frame two preliminary issues as regards the fairness of the enquiry as well as the fairness of the findings of the Enquiry Officer. Apparently, this has not been done by the Industrial Court.

9. The impugned judgments are, therefore, in opposition to the crystallized position in law. The impugned judgments are, therefore, rendered unsustainable. Issues that are required to be framed, having not been framed by the Industrial Court mandates the remand of these matters to the Industrial Court at the stage of framing preliminary issues in the light of the challenge posed by the respondent/workmen and for deciding the Complaints afresh.

10. In the light of the above, the impugned judgments delivered by the Industrial

Court dated 5.8.2014 in Complaint (ULP) Nos. 91 of 2012, dated 6.3.2014 in Complaint (ULP) No. 19 of 2013 and dated 3.12.2013 in Complaint (ULP) No. 94 of 2013 are quashed and set aside. These three Complaints are remitted to the Industrial Court for framing proper issues in the light of the pleadings set out in the Complaint and the Written Statement and in the light of the law as laid down in the MSRTC Beed Vs. Sayed Saheblal's case (supra). Since this Court has held in Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Registered Office, Cotton Complex and Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Zonal Office, Workshop Corner Vs. Vasant Ambadas Deshpande, (2014) 4 ABR 71 : (2014) 2 ALLMR 682 : (2014) 141 FLR 669 : (2014) 1 LLJ 604 : (2014) 3 MhLj 339 , that the preliminary issues can be decided only on the basis of the entire record and proceedings of the departmental/domestic enquiry, the litigating sides are at liberty to address the Industrial Court on these two preliminary issues.

11. In the event, if the domestic enquiry is set aside for any reason whatsoever, the employer can be permitted to conduct a de novo enquiry, only if a right to do so has been reserved in the Written Statement in the light of the judgment of the Apex Court (Five Judges) in the matter of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, AIR 2001 SC 2090 : (2001) 90 FLR 35 : (2001) 1 JT 461 Supp : (2001) LabIC 1777 : (2001) 2 LLJ 199 : (2001) 3 SCALE 600 : (2001) 5 SCC 433 : (2001) 3 SCR 284 : (2001) 2 SCT 1041 .

12. The litigating sides have assured cooperation in the expeditious disposal of these three complaints and as such, they shall be precluded from seeking adjournments on frivolous or unreasonable grounds.

Rule is accordingly made partly absolute in the above terms.