

Subhashchandra Premnarayan Pathak Vs. Divisional Controller

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Court : Mumbai

Decided On : Jun-04-2007

Reported in : 2007(4)ALLMR605; 2007(5)BomCR411

Judge : Chaudhari A.B., J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33, 33(1) and 33(2)

Appeal No. : Writ Petition No. 419 of 1993

Appellant : Subhashchandra Premnarayan Pathak

Respondent : Divisional Controller

Advocate for Def. : V.G. Wankhede, Adv.

Advocate for Pet/Ap. : B.M. Khan, Adv.

Disposition : Petition allowed

Judgement :

Chaudhari A.B., J.

1. Dissatisfied with the award dated 31.10.1991 passed by the learned Labour Court, Chandrapur in Reference IDA No. 23/1990 answering the reference against the petitioner workman i.e. in negative, the petitioner-employee has preferred the

present writ petition in this Court.

FACTS

The petitioner, who was working as conductor with the Maharashtra State Road Transport Corporation, Chandrapur (MSRTC for short), was charge-sheeted for the misconduct of depositing the amount towards four tickets short with the depot and thus committing misappropriation of Rs. 15.15 ps. The charge-sheet was issued by Divisional Traffic Superintendent and a domestic enquiry was conducted against him. Thereafter, on 09.04.1979, a show cause was issued to him by Divisional Traffic Superintendent proposing punishment of dismissal along with the enquiry report. An application dated 24.04.1979 was moved by the MSRTC under Section 33(1)(b) of the [Industrial Disputes Act, 1947](#) which was registered as IDA 75/ Permission/SSG/79 before the Conciliation Officer, [Industrial Disputes Act, 1947](#), Nagpur for grant of permission to dismiss the petitioner from service. That application was decided by the said Conciliation Officer on 28.05.1980. The Conciliation Officer held that the Competent Authority which has issued charge-sheet to the petitioner for holding domestic enquiry was not the Divisional Traffic Superintendent but was the Depot Manager in accordance with Regulation 19 read with Schedule-C-B(IV)(b). Depots and sub-Depots. He also held that the original document namely certified copy of Conductor's Way bill Abstract (CWA) despite demand made by the petitioner was not supplied and, therefore, the enquiry was defective. As a sequel to the finding, he refused to grant the permission to dismiss the petitioner. This order was accepted by the MSRTC, the respondent. Thereafter on 12.8.1990, the respondent's Divisional Traffic Superintendent issued a communication to the petitioner stating therein that a true copy of the CWA as per the observations made by the Conciliation Officer in his order dated 28.05.1980 was being supplied to the petitioner and the petitioner should submit his written explanation within three days. It was further stated that the enquiry would be held on 28.8.1980 at 10:30 a.m. in the Divisional Office at Chandrapur. In response to the said letter, the petitioner filed his response dated 15.8.1980 to the said Officer denying the allegations levelled against him with a request that he was still not supplied the original document and hence at least the original should be shown to him. There is an endorsement below this letter dated

20.8.1980 under the signature of the petitioner that he saw the original and compared with the true copy supplied to him and that the same was correct. On 28.8.1980, he issued another communication to the Enquiry Officer, as stated therein that the Conciliation Officer had held that the Divisional Traffic Superintendent not being the Competent Authority, it was improper to hold enquiry contrary to the order of Conciliation Officer. It appears that thereafter the Enquiry Officer straightway put the petitioner into the witness box and he was cross-examined particularly with reference to the CWA and then abruptly closed the enquiry. Thereafter, the Enquiry Officer i.e. Divisional Traffic Superintendent issued a show cause notice dated 27.9.1980 to the petitioner with reference to the Charge-sheet dated 18.1.1979 and show cause dated 8.4.1979 stating therein that the Disciplinary Authority with reference to the earlier show cause notice dated 8.4.1979 decided to impose the punishment of the dismissal on the petitioner as was proposed in the show cause notice dated 8.4.1979 and hence the petitioner should furnish his explanation within three days. On 2.10.1980, it appears that the petitioner submitted the explanation and repeated his stance that Divisional Traffic Superintendent was not the Competent Authority as held by the Conciliation Officer and the same was binding on the MSRTC. The contents of the CWA were not at all proved by examining even a single witness from the Corporation muchless the Checking Officer and as a result the petitioner was deprived of the opportunity of cross examining the witnesses to bring out the truth. That no findings were drawn in respect of the enquiry that was reopened pursuant to the decision of the Conciliation Officer and still the petitioner was directed to submit the explanation on the old show cause notice dated 8.4.1979. Thereafter the Divisional Traffic Superintended issued an order of dismissal of services of the petitioner on 14.7.1983. In this dismissal order, he referred in Item 2 stating that no reply to the show cause notice was received by him. The petitioner stood dismissed with effect from 14.7.1983. The petitioner thereafter initiated the dispute for reference to the Labour Court which was duly referred and was registered as Reference IDA No. 170/85/23/90 before the 4th Labour Court, Nagpur. The petitioner filed his statement of claim while the respondent filed its written statement. The learned Labour Court thereafter took up the case for disposal and had also framed preliminary issue. He also framed issues on merit and by the

impugned award he decided the preliminary issue as well as issues on merits simultaneously and answered the same against the petitioner in negative. Hence this petition.

SUMMARY OF ARGUMENTS

2. Shri B.M. Khan, the learned Counsel appearing on behalf of the petitioner submitted as under -

(i) That, the Labour Court committed an error in answering the preliminary issues as well as issues on merit simultaneously and in terms of the law laid down by the Hon'ble Apex Court, the preliminary issue has to be decided first so that any party aggrieved by the decision on the preliminary issue can approach the Higher Court and it is only thereafter the issues on merits could be considered.

(ii) That, the order made by the Conciliation Officer on 28.5.1980 is binding in nature and MSRTC cannot ignore the same. Not only that even the Labour Court cannot ignore the same because the same had become final and conclusive between the parties. At the end of hearing of the writ petition, Shri B.M. Khan was convinced that non supply of certified copy of CWA would be of no consequence since the petitioner was allowed to take inspection of the original CWA and had no grievance thereafter. However, Shri B.M. Khan vehemently urged that the finding recorded by the Conciliation Officer that the Competent Authority was the Depot Manager and not the Divisional Traffic Superintendent has to be respected by the parties as well as the Labour Court and the said order is not without legal sanctity. Apart from that Shri B.M. Khan took me through the various provisions to show that it was the Depot Manager who was the Competent Authority.

(iii) The procedure that was adopted by the Enquiry Officer after the order dated 28.05.1980 by the Conciliation Officer after reopening the enquiry is wholly unknown to the domestic enquiries. The petitioner was called and questions were put to him by the Enquiry Officer as if he was the witness after reopening of the enquiry and no person from the MSRTC including the Checking Officer was at all brought as a witness to prove CWA and to afford an opportunity to the petitioner of cross examining the concerned Checking Officer. This has caused immense

prejudice to the petitioner. The petitioner could have put up his case to the Checking Officer on whose inspection the enquiry had commenced.

(iv) The Enquiry Officer has based all his conclusions on said document of CWA and the Labour Court has also relied upon the same stating that the petitioner was the author of the CWA and, therefore, there was nothing to cross examine any other person, which is wholly wrong.

(v) In support of his submissions, he relied upon the following decisions.

a) 2002 (1) C.L.R. 789 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Shri Ram Gopal Sharma and Ors.).

Paras- 7, 14, 16, 19.

In case under Section 33(1) no order of dismissal can be passed if permission is refused. In the case under Section 33(2)(b) the order of dismissal becomes invalid if approval is not granted.

b) 2002 (3) V.L.R. 993 (Indian Telephone Industries Ltd. and Anr. v. Prabhakar H. Manjare and Anr.).

Paras- 1, 5, 6, 7, 8, 9, 10

Unchallenging Order reaches finality. Enquiry proceedings could not have been carried further by the DTS.

c) 1995 DGLS 880 : 2002 (92) F.L.R. 555 (Tamil Nadu State Transport Corporation And Neethivilangan).

Paras-8, 9, 13, 15

The provisions under both the limbs of Section 33 are mandatory and binding.

d) : (2004)IILLJ192Mad (Madura Coats Ltd. rep by its Group Industrial Relations Manager, Ambasamudram And Presiding Officer, Principal Labour Court, Madurai and Anr.)

Paras- 3, 11, 13, 17, 19, 23

By not challenging the order passed by Conciliation Officer it is obvious that the Management has accepted the finding of the Conciliation Officer and therefore it was not open for the DTS to further act as Competent Authority.

e) 1987 (1) C.L.R. 105 (Suresh Sakharam Patil And Mahendra & Mahendra Ltd. and Ors.)

Paras- 1, 6 and 8 Even if challenge the order remains operative on issue of Rule but not granting stay.

f) 1995 SCC 1334 (S.R. Bhagwat and Ors. v. State of Mysore)

Paras 11, 12 and 18

Enactment of provisions nullifying judgments and orders of courts as had become final are ultra vires the powers State legislature. In the present case exercise of power of Competent Authority for reopening inquiry, is ultra vires.

g) 1998 DGLS 117 : 1998 SCC 1167 (K.B. Sharma and Anr. v. Union of India and Anr.)

Para 3

Judgment of Single Judge, not challenged has reached finality.

B) Legality and fairness of re-opened enquiry.

a) 2002 (3) C.L.R. 993 Indian Telephone Industries Ltd. and Anr. v. Prabhakar H. Manjare and Anr.

Para 9

Having not challenged the order dated 28.5.80 (53- 59) it was not open to the Respondent Corporation to reopen the enquiry through Divisional Traffic Superintendent (DFL).

b) : (2004)IILLJ192Mad Madura Coats Ltd. rep by its Group Industrial Relations Manager, Ambasamudram And. Presiding Officer, Principal Labour Court, Madurai and Anr.

Para 3 -

Application under Section 33(2)(b) rejected, order not challenged, denovo enquiry held. Fresh Order of dismissal passed.

Second application for approval under Section 33(2)(b) was filed.

Para 19

Second enquiry and dismissal on the same material not possible.

c) (Workman of Tanganagaon Teaestate And Management of Tanganagaon Tea Estate and Ors.).

Para 10

Evidence recorded in Departmental enquiry held not proper, can not be relied to support the dismissal order.

In the present case, no evidence was recorded in the denovo enquiry and no findings were supplied. Order of dismissal dated 14.7.83 (65-66) is based on earlier show cause dated 9.4.79 (47-52). Therefore, the Labour Court should not have relied upon the material which was part of enquiry held unfair. The Award dated 31.10.1991 based on such unfair enquiry is liable to be set aside.

d) : (1994)IIILLJ1077 Bom (Anand G. Joshi v. MSFC and Ors.),

Paras- 9, 10 In the denovo enquiry, the law laid down about domestic enquiry has not been followed.

e) : (1991)ILLJ29SC (Union of India v. Mohd. Ramzan Khan),

Paras 9, 15, 16

Copy of enquiry report and show cause notice as provided under Clause 5(L) of discipline and Appeal Procedure of the Respondent Corporation, has not been supplied.

3. Per contra, Shri V.G. Wankhede, the learned Counsel appearing on behalf of the respondent, submitted as under -

(i) The finding recorded by the Conciliation Officer in his order dated 28.5.1980 that the Depot Manager is competent to issue charge sheet and hold enquiry or act as disciplinary authority is per se wrong and the Labour Court has rightly found that the same being wrong would not bind him. Shri V.G. Wankhede, the learned Counsel urged that even this Court can find out who was Competent Authority and according to him it was the Divisional Traffic Superintendent who was the Competent Authority because the cause of action arose on Aheri-Sironcha Road where the petitioner had indulged in the act of misappropriation in question and, therefore, in accordance with the decision of R.S. Padhye, J., as then was, in Writ Petition No. 255 of 1982 and connected writ petitions decided on March 1, 2 and 3, 1982, as per following observations, the issue stood concluded,

The Corporation passed a Regulation No. 7967 on May 30, 1974 directing that necessary changes to the procedure should be introduced making the Divisional Traffic Superintendent, the Competent Authority for all cases to be dealt with by the Depot Manager excepting those of which the cause of action arises within or in the vicinity of depot and Bus Station premises proper.(ii) In the instant case, the incident in question had occurred on Aheri-Sironcha route when the petitioner had committed the misconduct in question and, therefore, the cause of action was outside the depot/sub depot and hence the Divisional Traffic Superintendent was the Competent Authority.

(iii) The petitioner was the author of CWA and, therefore, one wonders as to what cross-examination the petitioner could have made in respect of his own document. Therefore, the plea taken by the petitioner about the opportunity to cross examine is lame. That apart, if the petitioner really wanted to cross-examine any witness or checking inspectors/officers, he was not prevented from calling the witnesses for that purpose. Hence, according to him, there is nothing wrong with the procedure

that was adopted by the Enquiry Officer.

(iv) The misconduct or misappropriation of the public fund of the Corporation has been viewed by the Hon'ble Supreme Court very seriously and it has been held that the punishment from dismissal of service for the dishonest conduct of the conductor was the only appropriate punishment.

(v) The Labour Court answered both the issues simultaneously but then the petitioner ought to have raised an objection or made an application for decision of the preliminary issue first which was not done and now it is not open to the petitioner to make grievance. Finally, he prayed for the dismissal of the writ petition. He relied upon the following decisions.

(i) Workman of Tanganagaon Tea Estate And Management of Tanganagaon Tea Estate and Ors. reported in ;

(ii) Union of India and Ors. v. Mohd. Ramzan Khan : (1991)ILLJ29SC

(iii) (Shambhunath Goyal v. Bank of Baroda and Ors.) reported in 1983 L.I.C. 1697.

CONSIDERATION

4. Having heard the learned Counsel for the rival parties and having seen the entire record, at the outset, the first submission made by Shri B.M. Khan, the learned Counsel for the petitioner that the learned Labour Court should have decided the preliminary issue first so that the petitioner could have an opportunity to challenge the same before the Higher Court, since it has gone against the petitioner-workman, I feel that this submission is already answered by the Hon'ble Supreme Court of India in the case of (Cooper Engineering Limited v. P.P. Mundhe) reported in 1975 L.I.C. 1441 the Hon'ble Supreme Court has held as under.

We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred to industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the

principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

(emphasis supplied).

There is one more reason for holding that the proceedings before the Labour Court do not get vitiated merely because the preliminary issue as well as the issues on merits are decided together by the learned Labour Court. In the case in hand, the preliminary issue was answered against the petitioner workman, but then in these proceedings he still has the liberty to raise the grounds showing that the preliminary issue was not answered correctly or that the same should have been answered in his favour. I, therefore, hold that in the instant case challenge to the order of the learned Labour Court on the ground that the Labour Court should have decided the preliminary issue first at the instance of the petitioner workman is misconceived.

5. Now coming to the challenge raised by the learned Counsel for the petitioner about the competency of the Divisional Traffic Superintendent to issue charge sheet to the petitioner and also to hold enquiry and to pass the impugned order of dismissal, I find that the order dated 28.5.1980 made by the Conciliation Officer in terms held that the Competent Authority was the Depot Manager as the cause of action arose within the depot premises, in view of the Corporation's resolution dated 20th May, 1974. The learned Labour Court in the impugned order has

observed that the said finding recorded by the Conciliation Officer is not binding on him or the employer. The learned Counsel for the respondent had relied upon the unreported judgment in Writ Petition 255 of 1982. However, while holding that the Divisional Traffic Superintendent is the Competent Authority, the learned Labour Court has not assigned a single reason. I need not dwell upon the aspect as to whether the order of the Conciliation Officer about the Competent Authority for holding enquiry is binding on the Labour Court or not since with the assistance of the learned Counsel for the parties, I decide myself as to who would be the Competent Authority. Perusal of clause 19 of Discipline and Appeal Procedure for MSRTC Employees shows that certain category of officers are appointed as Competent Authority to deal with the acts of misconduct of 'different classes of employees'. Now the schedule under clause 19 provides category of employees and Category B(IV) deals with division. Now this Category (IV) division is subdivided into (a) and (b). Category (a) deals with the office of divisional headquarters, while Category (b) deals with depots and sub-depots. In the instant case, it is an admitted position that at the relevant time, the petitioner was attached to Aheri depot. The petitioner thus being attached to Aheri Depot in accordance with the provisions of Schedule-C Clause B(IV)(b) of the Discipline and Appeal Procedure for MSRTC Employees, Depot Manager incharge of the depot would be the Competent Authority. Now relying on the decision of Padhye, J., as he then was, Shri V.G. Wankhede, the learned Counsel for the respondent invited my attention to the following observations in the said judgment.

The Corporation passed a Regulation No. 7967 on May 30, 1974 directing that necessary changes to the procedure should be introduced making the Divisional Traffic Superintendent, the Competent Authority for all cases to be dealt with by the Depot Manager excepting those of which the cause of action arises within or in the vicinity of depot and Bus Station premises proper.

In the submission of Shri Wankhede, the learned Counsel, on 7.11.1978, the petitioner had shown sale of four tickets at Sironcha twice while he was on duty on Sironcha-Asarali route and, therefore, cause of action had arisen outside the depot. However, I find that it is not the case of the respondent management that there was any raid conducted by the Vigilance Department of the Corporation on

the bus on 7.11.1978 to find out the said act on the part of the petitioner. The case of the respondent-management is that after the petitioner deposited the tickets as well as the sale proceeds on 7.11.1978 with the depot, the Traffic Inspector concerned, who verified the CWA after about two months in the depot found the said discrepancy about the double sale of four tickets and that is why he made a report to the higher officers on 13.1.1979. It is on the basis of this report made by Shri Y.N. Chapale that the cognizance was taken by the Competent Authority and charge sheet was issued to the petitioner. On these facts, I do not think that it can be said that the cause of action arose outside the depot i.e. on Sironcha-Asarali route. I, therefore, find that the cause of action having occurred in the depot where necessary checking was made and as a sequel to the said checking made by Shri Chapale, the domestic enquiry proceedings were commenced. Therefore, it was Depot Manager who was the Competent Authority to issue charge-sheet and held enquiry and passed the termination order of the services of the petitioner. I really fail to understand as to why the respondent-Corporation adamantly proceeded to continue the enquiry by treating Divisional Traffic Superintendent as the Competent Authority despite an adverse finding recorded by the Conciliation Officer and accepted by the respondent- MSRTC which indulged in simply ignoring the order of the Conciliation Officer. It should have been borne in mind that the Conciliation Officer had passed the order acting as a Tribunal under the provisions of Section 33(l)(b) of the Industrial Disputes Act and an order made by the Tribunal cannot be shown the waste paper basket. This attitude of the respondent-MSRTC is deprecated. If the respondent-MSRTC was aggrieved by his order, it could have challenged the same but having suffered the order it was inappropriate for the respondent-MSRTC to persist in holding a re-enquiry by the same authority which was not found to be competent by the Conciliation Officer.

6. Now coming to the procedure that was adopted by the Enquiry Officer after passing of the order dated 28.5.1980 by the Conciliation Officer, I find that the same is strange. The Divisional Traffic Superintendent issued a letter dated 12.8.1980 to the petitioner. In this letter, he has stated that a true copy of the CWA was being supplied to the petitioner as observed by the Conciliation Officer in his order dated 28.5.1980 and that the petitioner should file written say within three days. It is further stated that the spot enquiry would be held on 20.8.1980 and he

should remain present. This appears to be an action to reopen the enquiry. This action to reopen the enquiry was taken pursuant to the order made by the Conciliation Officer and accordingly the copy of CWA was supplied to the petitioner, since the Conciliation Officer had observed that the said document was crucial and in absence of supply of the said document to the petitioner, the enquiry was not fair. In other words, the Enquiry Officer wanted to implement the order of Conciliation Officer and that is why the copy of CWA was supplied. The question, therefore, is, can a model employer like MSRTC be permitted to pick up one part of the order for implementation and ignore the other part of an order passed by the Tribunal. In my opinion, the answer has to be emphatic 'No'. Now in response to this letter, the petitioner filed his reply i.e. dated 28.8.1980 and he invited the attention of the Enquiry Officer that it was not lawful for him to discard the observation of the Conciliation Officer and to proceed to hold enquiry. Thereafter, the Enquiry Officer issued show cause notice dated 27.9.1980. The title of this show cause notice is findings' in relation to the enquiry against the petitioner. The body of the show cause notice shows that the petitioner had nothing to say in response to the communication dated 12.8.1980 nor had the petitioner raised any new point and, therefore, the punishment that was proposed in the earlier show cause notice dated 8.4.1979 was the only punishment which was just and proper and hence the petitioner was asked as to why the same should not be imposed on him. To this show cause notice, the petitioner replied on 2.10.1980 and specifically submitted that the Divisional Traffic Superintendent was not the Competent Authority as was found by the Conciliation Officer. None was examined by the employer to prove any document including CWA nor there was any opportunity to cross-examine the concerned. No findings were drawn by the Competent Authority after reopening of the enquiry nor the findings were communicated to the petitioner. The dismissal order was thereafter passed by the Competent Authority on 14.7.1983 and in reference to this, it is stated that the reply to show cause notice was not received, when, as earlier pointed out, the reply was already filed by the petitioner on 2.10.1980. It appears from the record that after reopening of the enquiry on 12.8.1980 as aforesaid, the respondent-employer did not examine a single witness to prove the CWA or the charge levelled against the petitioner in the enquiry. It further appears and in my opinion very strangely that the Enquiry

Officer put several questions to the petitioner and got the said document of CWA proved from the petitioner at the threshold of the re-enquiry. As earlier stated, no witness was examined by the employer at all. No list of witnesses was supplied to the petitioner nor was he made aware whether any witness will be examined by the Enquiry Officer or whether the petitioner would be put in the witness box as a witness for proving the document of the employer. As a result of this type of procedure followed by the Enquiry Officer, the petitioner was definitely prejudiced as the Enquiry Officer as well as the learned Labour Court relied upon the said document of CWA and took the same as an admitted position. It appears that the petitioner was caught by the Enquiry Officer by surprise. Now by not examining Shri Y.N. Chapale or any other concerned officer as a witness for the employer, the petitioner could not cross-examine anybody and bring out the truth nor could he put his defence to the witness. The Labour Court was totally unjustified in observing that since the petitioner was the author of the document CWA, there was no question of cross-examining in witness. This is absurd. It was for the employer to prove their own document from their witnesses even if the author of the document was the petitioner by bringing the concerned witnesses so that the employee would be able to put his defence to such witnesses and cross examine them to bring out the truth. In the case of (Associated Cement Companies Limited v. Their Workmen and Anr.) reported in : (1963)11LLJ396SC the Hon'ble Supreme Court observed as under.

It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings.

Relying on the said decision and the facts in the case in hand, I, therefore, hold that the procedure adopted by the Enquiry Officer was wholly improper and illegal and in fact the Enquiry Officer appears to have trapped the petitioner which was wholly unfair on his part.

7. It appears that the Enquiry Officer did not draw any findings of the enquiry though he titled the show cause notice as findings'. The show cause notice was not accompanied with any enquiry report. That apart, the reading of the show cause notice nowhere shows that the Enquiry Officer recorded any finding on the basis of evidence or otherwise about the complicity of the petitioner except relying on the earlier show cause notice and the contents thereof. When a fresh enquiry was conducted by the Enquiry Officer, he ought to have recorded proper findings so that the delinquent-employee could have replied them point-wise. In my opinion, therefore, the enquiry suffers from a clear error on this aspect also.

8. In the light of the view which I have taken that the entire enquiry is vitiated and is in violation of the principles of natural justice, the question of considering the alleged misconduct on merit does not arise.

9. It is reported at the bar that the petitioner has already attained the age of superannuation and in view of the same it would not be in the interest of justice to permit holding of domestic enquiry again.

10. For all these reasons, therefore, the impugned judgment and award dated 31.10.1991 passed by the learned Labour Court, Chandrapur in Reference (IDA) No. 23/1990 is quashed and set aside being illegal. The dismissal order dated 14.7.1983 of the petitioner from the services of the respondent as Conductor is set aside being illegal. The direction to reinstate the petitioner cannot be granted in view of the fact that he has attained the age of superannuation. In view of the fact that the Enquiry Officer has conducted the enquiry in most unfair manner and in defiance to the rule of law, I find that the entire action was by way of victimisation and was not bona fide. The inference of victimisation can be drawn from the fact that the Competent Authority wanted to pick and choose from the order of the Conciliation Officer which is a Tribunal and to show the waste paper basket to the part of the order holding that the Competent Authority was not Divisional Traffic

Superintendent. Under such circumstances, I do not think that the petitioner can be deprived of the wages which he would have earned otherwise while in employment. The termination thus being totally illegal, I would be justified in awarding full back wages to the petitioner right from the date of his dismissal till the date of his superannuation. I quote para 20 of the recent decision of the Hon'ble Supreme Court in the case of (J.K. Synthetics Ltd. v. K.P. Agrawal and Anr.) reported in : (2007)IILLJ128SC .

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination.

11. The writ petition is, therefore, allowed. The impugned order dated 31.10.1991 is quashed and set aside. Rule is made absolute in terms of prayer Clauses (b), (c) and (d). The costs of the petition is quantified at Rs. 10,000/- payable to the petitioner within a period of four weeks from today.

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