



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

WRIT PETITION NO.5989/2023

The Divisional Controller,
The Maharashtra State Road
Transport, Amravati.

.....PETITIONER

...V E R S U S...

Devendra Baburao Khobragade,
aged 67 years, Occ. Retired,
r/o Frejarpura, Siddhartha Chowk,
Dist. Amravati.

...RESPONDENT

Mr. R. S. Charpe, Advocate for petitioner.
Mr. S. T. Harkare, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.
DATED :- 12.09.2024

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

Heard Mr. R. S. Charpe, learned counsel for the
petitioner and Mr. S. T. Harkare, learned counsel for respondent.

2. The petitioner – Corporation is aggrieved by order
dated 06.12.2018 so also judgment and order dated 08.03.2023
passed by Industrial Court, Amravati. The Industrial Court, vide
order dated 06.12.2018, declared that the inquiry conducted
against the respondent was fair and proper and despite such

finding, held that the finding drawn by the Inquiry Officer are perverse, not legal and proper. Accordingly, granted permission to the petitioner to prove the misconduct. Thereafter, vide judgment and order dated 08.03.2023, allowed the complaint filed by the respondent and set aside the order of punishment.

3. The respondent was working as driver. He faced charge of negligent driving. In an accident dated 21.07.2007, rider of motorcycle died and his wife was seriously injured. Departmental Inquiry was conducted. Charge of negligence and damage to the vehicle was proved. The punishment of reduction of basic pay by two stages permanently was imposed on 29.06.2012.

4. The respondent retired on 28.02.2014 on superannuation. Thereafter on 06.09.2014, he filed complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as the, "MRTU & PULP Act") alleging that the petitioner indulged in unfair labour practice. This complaint was filed after more than two years. Section 28 of the MRTU & PULP Act provides for limitation of 90 days to file complaint. The respondent did not seek to condone the delay nor did the petitioner point out before the Court below this aspect.

5. The Industrial Court, framed preliminary issue as to whether inquiry conducted against the complainant is fair and proper and whether the finding of inquiry officer is perverse.

6. The representative of the respondent, during the course of argument before the Industrial Court, contended that he is not disputing the fairness of the inquiry but the finding of the inquiry officer was perverse and not legal and proper.

7. Counsel for the petitioner submits that once fairness of inquiry is not disputed, the Industrial Court could not have gone into the finding recorded by the Industrial Court regarding misconduct committed by the respondent. In support, he has relied upon judgment of the Supreme Court in the case of **Uttar Pradesh State Road Transport Corporation Vs. Vinod Kumar, 2008(1) SCC 115**, wherein the Supreme Court in paragraph 10 held thus:

“10. As stated in the preceding paragraphs, the respondent had confirmed his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment. Therefore, since the respondent had not challenged the correctness, legality or validity of the enquiry conducted, it was not open to the Labour Court to go into the findings recorded by the Enquiry Officer regarding the misconduct committed by

the respondent. This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for perversity or misplaced sympathy in the part of the judicial forums and interfering with the quantum of punishment.....”
(Emphasis now)

8. As could be seen, the Supreme Court held that if the respondent therein had not challenged the correctness, legality or validity of the inquiry conducted, it was not open to the Labour Court to go into the finding recorded by the Inquiry Officer regarding misconduct committed by the respondent.

9. Similar is the case in hand. In the present case, the inquiry officer, in operative part has categorically held that the inquiry conducted against the complainant was fair and proper. Despite recording such a finding the Industrial Court proceeded to examine charge of misconduct and held that the finding drawn by the inquiry officer is perverse and not maintainable. This finding being contrary to the judgment passed by the Supreme Court, the same is liable to be quashed and set aside.

10. As against, the counsel for the respondent submits that the finding in Vinod Kumar's case is in context where the delinquent was found guilty of misappropriation of funds.

11. I do not find substance in the said argument inasmuch as the Supreme Court has categorically held that since the respondent had not challenged correctness, legality or validity of the inquiry conducted, it was not open to the Labour Court to go into the finding recorded by the inquiry officer regarding misconduct committed by the respondent. Thus, what has been held by the Supreme Court is that the finding of the inquiry officer regarding misconduct was not open for challenge once the delinquent failed to challenge or in a way admits the correctness, legality or validity of the inquiry. In the circumstance, what may be permissible for the Industrial Court is to only examine the aspect of proportionality of the punishment but it will be impermissible to reopen the finding recorded by the inquiry officer regarding misconduct committed by the delinquent. In the present case because of negligence of the respondent, one person expired in the accident. This charge has been proved. The punishment imposed is reduction of basic pay by two stages

permanently. Considering the seriousness of the charge, the punishment imposed cannot be said to be disproportionate.

12. So far as the point of limitation is concerned, admittedly, the respondent has not filed any application seeking to condone the delay. Counsel for the petitioner has, by relying upon the judgment of the Hon'ble Supreme Court in the case of *Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma & Ors., 2008 (12) SCC 577*, argued that the Limitation Act, 1963, casts a duty upon the Court to dismiss the suit or appeal or application if made after the prescribed period, although the limitation is not set up as defence. He submits that this being question of law, can be agitated at any stage including writ petition.

13. As against, counsel for the respondent has relied upon judgment of the Division Bench of this Court in the case of *M.S.R.T.C. and anr. Vs. Maharashtra State Transport Kamgar Sanghatana, 1983 SCC OnLine Bom 502*, to contend that the issue of limitation cannot be raised for the first time in the writ petition. I have gone through the judgment. It does not lay down a law that issue of limitation cannot be raised for the first time in writ petition. In the facts and circumstances of the case before it, the said view was taken. The Division Bench noted that the appellant

therein had impliedly admitted that the ULP Complaint was of continuous nature. It is so because respondent therein had specifically pleaded, “that the unfair labour practice which is of continuous nature and falls”, to which there was no denial by the appellant-Corporation. Accordingly, the Court held that the issue of limitation could not have been raised in the writ petition. The Court had then assigned other reasons also for not permitting to raise the issue of limitation.

14. Such are not the facts in the present case. There is no admission by the petitioner herein of continuous nature of alleged unfair labour practice. The cause of action arose when the order of punishment was passed. This cannot be said to be continuation of the unfair labour practice. The aforesaid judgment, therefore, will be of no assistance.

15. The counsel has then referred to judgment of the Supreme Court in the case of ***State of Punjab .Vs. Darshan Singh, (2004) 1 SCC 328.*** The Supreme Court noted that in the case before it, the issue of limitation was not framed though the Government had taken a specific plea in the written statement. The said plea was not taken in the first appeal or even in the second appeal. That being so, the Supreme Court declined to go

into the said question. This finding is fact based and cannot be said to be a ratio of the judgment to contend that plea of limitation cannot be raised in the writ petition. The judgment, therefore, is of no relevance in the present case.

16. For the reasons stated above, the writ petition is allowed. Order dated 06.12.2018 as also judgment dated 08.03.2023 passed by Industrial Court, Amravati in Complaint ULP No.65/2014 is quashed and set aside.

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

(Anil L. Pansare, J.)

kahale