Rohidas Vs Nanded Waghala City Municipal Corporation Through Its Commissioner

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Aug. 8, 2019

Acts Referred: Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 â€" Section 44
Industrial Disputes Act, 1947 â€" Section 10, 11A, 33, 33(2)(b)
Constitution Of India, 1950 â€" Article 141

Hon'ble Judges: Ravindra V. Ghuge, J

Bench: Single Bench

Advocate: Manoj D. Shinde, R.K. Ingole Patil, P.V. Barde, A.S. Shelke, A.P. Bhandari

Final Decision: Allowed

Judgement

1. Rule. Rule made returnable forth-with and heard finally by the consent of the parties.

2. The petitioner-employee is aggrieved by the Judgment of the Industrial Court dated 21.7.2018, delivered in Revision (ULP) No.31/2016, by which

the Judgment of the Labour Court dated 20.6.2016, delivered in Complaint (ULP) No.27/2013, was quashed and set aside. The Complaint was

dismissed.

3. I have heard the learned advocates for the respective sides extensively and the submissions made by Shri Barde, Shri Shelke and Shri Bhandari.

4. The issue that once again calls for a decision is, as to whether it is necessary for an employer to reserve it's right to conduct a de-novo enquiry, in

the written statement itself.

5. The undisputed factors are as under:-

(a) The petitioner was appointed as a sweeper with the respondent Corporation on 5.6.1995.

(b) It was alleged that, he was absent for a period of six months.

(c) A charge sheet cum show cause notice was issued and after conducting a full-fledged domestic enquiry, he was dismissed by order dated

22.2.2013.

(d) He preferred a Complaint before the Labour Court under the MRTU & PULP Act, 1971.

(e) The petitioner had challenged the fairness of the enquiry, the findings of the Enquiry Officer and had prayed for reinstatement with continuity in

service and full back wages.

(f) The management filed its written statement on 20.8.2014, but did not reserve a right to conduct a de-novo enquiry in the event, the domestic

enquiry was vitiated for any reason.

(g) By the part-I order dated 30.10.2015, the Labour Court declared that, the enquiry was conducted in an unfair manner and the findings of the

Enquiry Officer are perverse. The enquiry, therefore, stood vitiated.

(h) Though the management had not reserved a right to conduct a de-novo enquiry and no application or request was made for conducting such

enquiry, the Labour Court permitted the management to examine one witness to support the decision of dismissal from service.

(i) By Judgment dated 20.6.2016, the Labour Court, after considering the evidence recorded in the enquiry, concluded that the charges are not proved.

The complaint was, therefore, allowed and by setting aside the order of dismissal, he was granted reinstatement with continuity and the punishment of

permanent stoppage of three years increments was ordered. The back wages were denied.

(j) The respondent Management filed Revision (ULP) No.31/2016 under section 44 for challenging the Judgment of the Labour Court.

(k) The Industrial Court went into the entire evidence in its revisional jurisdiction under section 44 and concluded that the charges are proved.

(l) The Industrial court did not consider the fact that, no right to conduct a de-novo enquiry was reserved by the employer and therefore, a de-novo

enquiry could not be permitted.

(m) The Industrial Court upheld the punishment and set aside the Judgment of the Labour Court by dismissing the complaint.

6. The petitioner contends that, a de-novo enquiry could not have been conducted by the Labour Court, in the absence of any right reserved by the

employer, in the written statement. Reliance is placed upon the Judgment of the Honourable Apex Court (5 Judges bench) in the matter of Karnataka

State Road Transport Corporation versus Lakshmidevamma (Smt.) & another (2001 (II) CLR 640.)It is strenuously contended that, unless the

employer reserves it's right, in the written statement, no permission to conduct a de-novo enquiry could be granted.

7. The learned advocate for the petitioner-employee, then relies upon the Judgment delivered by this Court in the matter of Arjun Shankar. Wagh

versus Maharashtra State Road Transport Corporation (2014 (5) BCR 399)to support his contention. This Court had considered the law laid down in

Lakshmi Devamma (supra) and several Judgments of the Honourable Apex Court includingD ivyash Pandit versus Management NCCBM (AIR 2006

SC 92.)

8. Learned advocate for the management corporation, also places reliance upon Divyash Pandit (supra) to contend that, the Honourable Apex Court

has held that, the inherent powers of the Labour Court to permit de-novo enquiry, without any right being reserved, have been held as being aimed at

doing justice.

9. Shri Barde, learned advocate points out from Shankar Chakravarti versus Britannia Biscuit Co. Ltd. & another (AIR 1979 SC 1652 t)hat, it was

held that, the labour Court does not have the right to suo motu permit recording of oral evidence by the management. He points out these observations

from paragraphs No.42, 43, and 44 set out in the recent Judgment delivered by the Honourable Apex Court in the matter of M.L. Singla Vs. Punjab

National Bank and another [2018 AIR (SC) 4668].

10. Paragraphs nos.42, 43 and 44 in M.L.Singla (supra) read as under:-

Ã¢â‚¬Å“42. All the aforementioned decisions were examined in detail by a Bench of Three Judges of this Court in Shankar Chakravarti vs. Britannia

Biscuit Co. Ltd. (1979) 3 SCC 371.

43. Though in Shankar Chakravarti's case (supra), the question was when the domestic enquiry is held illegal and improper by the Labour Court,

whether the Labour Court is duty bound to afford an opportunity to the employer to lead evidence to prove the charge against the workman on merits

before the Labour Court.

44. This Court while answering the aforesaid question held that it is for the employer to ask for such opportunity to lead evidence to prove the charge

of misconduct and once such prayer is made in any form, i.e., orally or by application or in the pleading, the same cannot be denied to the employer. It

has to be granted to enable him to prove the misconduct. This Court further held that no duty is cast upon the Court to offer such opportunity to the

employer suo motu, if he does not ask for it. In other words, he has to ask for from the court by any of the three modes mentioned above.Ã¢â‚¬â€‹

11. I find from the Judgment delivered in Lakshmidevamma (supra) that, four learned Judges of the Honourable Apex Court finally concluded that,

the right to conduct a de-novo enquiry should be reserved, in the written statement since, the employer is aware that the employee has challenged the

domestic enquiry, as well as the findings of the enquiry officer, in his pleadings and the prayers.

12. The relevant observations of the Honourable Apex Court in Karnataka SRTC v. Lakshmidevamma, (2001) 5 SCC 433, (supra) are found in

paragraphs No.1 to 20 which read as under:-

Ã¢â‚¬Å“1. This appeal is referred to a Bench of five Judges based on the following order made by a Bench of two Judges of this Court: Ã¢â‚¬Å“In view of the

conflict of decisions of this Court in Shambhu Nath Goyal v. Bank of Baroda and Rajendra Jha v. Presiding Officer, Labour Court we are referring

this matter to a larger Bench which has to be a Bench of more than three Judges. Mr Rao, learned counsel appearing for the respondents states that

there is no conflict in the decisions. According to us, that submission is not correct. Hence, we are referring this to a larger Bench.Ã¢â‚¬â€¹

2. It is seen from the above order that the learned counsel appearing for the respondents had contended that there is no conflict between the two

judgments referred to in the said order. However, the Bench thought otherwise. Since it is again contended now before us on behalf of the

respondents that there is no conflict between the said judgments, we will first examine that aspect of the case.

3. In Shambhu Nath Goyal v. Bank of Baroda1 this Court held: (SCR Headnote)

Ã¢â‚¬Å“The rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either

under Section 10 or Section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the

employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either

permission to take certain action or seeking approval of the action taken by it.Ã¢â‚¬â€¹

(emphasis supplied)

4. This decision was rendered by the Court while deciding the stage at which the management is entitled to seek permission to adduce evidence in

justification of its decision taken on the basis of a domestic enquiry.

5. In Rajendra Jha v. Presiding Officer, Labour Court, Bokaro Steel City though this Court was considering a similar question, we find the Court did

not lay down any law contrary to the judgment in Shambhu Nath Goyal case. A perusal of the judgment of this Court in Rajendra Jha case shows that

the Court decided the said case on the facts of that case only. This is clear from the following observations of the Court in Rajendra Jha case: (SCC

pp. 525-26, para 12) Ã¢â‚¬Å“12. Thus, the order passed by the Labour Court allowing the employers to lead evidence has been accepted and acted upon

by the appellant. He has already given a list of his own witnesses and has cross-examined the witnesses whose evidence was led by the employers. It

would be wrong, at this stage, to undo what has been done in pursuance of the order of the Labour Court. Besides, the challenge made by the

appellant to the order of the Labour Court has failed and the order of the Patna High Court dismissing the appellantÃ¢â‚¬â„¢s writ petition has become

final.Ã¢â‚¬â€¹

6. Thus it is seen from the above observations of the Court in Rajendra Jha case that the same is decided on the facts of the said case without laying

down any principle of law nor has the Court taken any view opposed to Shambhu Nath Goyal case. Therefore, having considered the two judgments,

we are of the opinion that there is no conflict in the judgments of this Court in the cases of Shambhu Nath Goyal and Rajendra Jha.

7. This, however, does not conclude our consideration of this appeal, because on behalf of the appellant reliance is placed on some other earlier

judgments of this Court which, according to the appellant, have taken a view contrary to that of Shambhu Nath Goyal case 1. Therefore, we consider

it appropriate to decide this question with the hope of putting a quietus to the same.

8. Before we proceed to examine this question any further, it will be useful to bear in mind that the right of a management to lead evidence before the

Labour Court or the Industrial Tribunal in justification of its decision under consideration by such tribunal or court is not a statutory right. This is

actually a procedure laid down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the

workman. The genesis of this procedure can be traced by noticing the following observations of this Court in Workmen v. Motipur Sugar Factory (P)

Ltd.: (SCR pp. 597 G-H and 598 A)

Ã¢â‚¬Å“If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial

Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the

employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had

held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic

enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee

has the advantage of having the merits of his case being considered by the Tribunal for itself and that clearly would be to the benefit of the employee.

That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the Tribunal may give an opportunity to the

employer to prove his case and in doing so the Tribunal tries the merits itself.....Ã¢â‚¬â€‹

9. Bearing in mind the above observations if we examine the various decisions of this Court on this question it is seen that in all the judgments this

Court have agreed on the conferment of this right on the management but there seem to be some differences of opinion in regard to the timings of

making such application. While some judgments hold that such a right can be availed of by the management at any stage of the proceedings right up to

the stage of pronouncement of the order on the original application filed either under Section 10 or Section 33(2)(b) of the Industrial Disputes Act,

some other judgments hold that the said right can be invoked only at the threshold.

10. There are a number of judgments of this Court considering the above question but we think it sufficient to refer to the following cases only since

these cases have considered almost all the earlier judgments on the question involved in this appeal.

11. In Delhi Cloth & General Mills Co. v. Ludh Budh Singh4 this Court after referring to most of the earlier cases on the point laid down the following

principle: (SCC pp. 616-17, para 61)

Ã¢â‚¬Å“When a domestic enquiry has been held by the management and the management relies on it, the management may request the Tribunal to try the

validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal if the finding on the

preliminary issue is against the management. In such a case if the finding on the preliminary issue is against the management, the Tribunal will have to

give the employer an opportunity to adduce additional evidence and also give a similar opportunity to the employee to lead evidence contra. Ã¢â‚¬Â¦ But the

management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such

opportunity has been availed of before the proceedings were closed, the employer can make no grievance that the Tribunal did not provide for such an

opportunity.Ã¢â‚¬â€‹

12. The words Ã¢â‚¬Å“before the proceedings are closedÃ¢â‚¬ gave rise to some doubts as to whether it is open to the management to seek this right of

leading fresh evidence at any stage, including at a stage where the Tribunal/Labour Court had concluded the proceedings and reserved its judgment on

the main issue.

13. The above judgment in DCM case came to be considered again by this Court in the case of Cooper Engg. Ltd. v. P.P. Mundhe wherein this Court

held: (SCC p. 667, para 22)

Ã¢â‚¬Å“22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for 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.Ã¢â‚¬‹

14. As is seen from the above, this Court in Cooper Engg. case held that when the Tribunal/Labour Court was called upon to decide the validity of the

domestic enquiry the same had to be tried as a preliminary issue and thereafter, if necessary, the management was to be given an option to adduce

fresh evidence. But the problem did not stop at that.

15. The question again arose in the case of Shambhu Nath Goyal case as to the propriety of waiting till the preliminary issue was decided to give an

opportunity to the management to adduce evidence, because after the decision in the preliminary issue on the validity of the domestic enquiry, either

way, there was nothing much left to be decided thereafter. Therefore, in Shambhu Nath Goyal case this Court once again considered the said question

in a different perspective. In this judgment, the Court after discussing the earlier cases including that of Shankar Chakravarti v. Britannia Biscuit Co.

Ltd. which was a judgment of this Court subsequent to that of Cooper Engg. laid down the following principles: (SCC p. 506, para 16)

Ã¢â‚¬Å“16. We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to

adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage is the application which

may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission

under Section 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made

aware of the workmanÃ¢â‚¬â„¢s contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the

application filed by the management under Section 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the

earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under Section 10 of

the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the

management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the

defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the

reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the

enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not

choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may

result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.Ã¢â‚¬â€‹

16. While considering the decision in Shambhu Nath Goyal case we should bear in mind that the judgment of Varadarajan, J. therein does not refer to

the case of Cooper Engg. However, the concurring judgment of D.A. Desai, J. specifically considers this case. By the judgment in Goyal case the

management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it

under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of

the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time

thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the

opinion that the directions issued by this Court in Shambhu Nath Goyal case 1 need not be varied, being just and fair. There can be no complaint from

the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea

and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to

notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure

also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal

could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal case. It is to be noted that this

judgment was delivered on 27-9-1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for

exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the

Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said judgment to see

that a long-standing decision is not unsettled without a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal v. Bank of Baroda is

the correct law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry

was vitiated. Applying the aforestated principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the

appellant, hence, this appeal has to fail. The same is dismissed with costs.Ã¢â‚¬â€‹

{Emphasis supplied}

13. The above stated conclusions were expressed by His Lordship Justice Santosh Hegde and His Lordship Justice S.P. Bharucha. The two other

learned Judges of the Honourable Apex Court, His Lordship Justice Shivraj V. Patil and His Lordship Justice V.N. Khare, accepted the above

reproduced conclusions and only observed in paragraphs 45 as under:-

Ã¢â‚¬Å“ 45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before Labour Court/Tribunal but

essentially the rules of natural justice are to be observed in such proceedings. Labour Courts /Tribunals have power to call for any evidence at any

stage of the proceedings, if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterated

that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court / Tribunal in the written

statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not

be understood as placing fetters on the powers of the Court / Tribunal requiring or directing parties to lead additional evidence including production of

documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case, it is deemed just and necessary in the

interest of justiceÃ¢â‚¬â€‹

{Emphasis supplied}

14. As such, the reference made to the bench of the five learned Judges of the Apex Court, led to the answer that, the law laid down in Shambhu

Nath Goyal Versus Bank of Baroda and others (AIR 1984 SC 289) was the correct law. In paragraph

20. reproduced above, the Honourable Apex Court held that, the employer had not sought permission to lead evidence until the Labour Court vitiated

the enquiry and the High Court dismissed the writ petition filed by the Corporation, refusing leave to conduct a de-novo enquiry. This view of the

Karnataka High Court was sustained by the Honourable Apex Court, in Lakshmidevamma.

15. It requires no debate that, when there are specific pleadings in a ULP complaint and the respondent does not counter a specific prayer or relief

sought, it could lead to a conclusion that, the respondent does not oppose such a prayer. In a ULP complaint, when the workman has specifically

prayed for quashing of the enquiry and the findings of the Enquiry Officer and if the employer does not reserve a right in the written statement to

conduct a de-novo enquiry, it virtually means that the employer has acquiesced it's right to conduct a de-novo enquiry.

16. In Shambhu Nath Goyal supra, it was held, for the first time, that when the legality of the enquiry is questioned, the employer must make a proper

request, at the time when it files its written statement. In Kurukshetra University versus Prithvi Singh (AIR 2018 SC 973), the Honourable Apex Court

held in paragraphs No.13 to 24 as under:-

Ã¢â‚¬Å“ 13. In our considered opinion, neither the Judge of the Labour Court and nor the Judges of the High Court applied their judicial mind while

deciding the issues arising in the case and completely ignored the settled legal principles which are applicable to the case at hand and proceeded to

decide the case contrary to the principles laid down by this Court. Due to this reason, we are compelled to interfere in the impugned judgment and

remand the case to the Labour Court for deciding it afresh.

14. The question as to what are the powers of the Labour Court and how it should proceed to decide the legality and correctness of the termination

order of a workman under the Labour Laws in reference proceedings and what are the rights of the employer while defending the termination order in

the Labour Court remains no more res integra and is settled by series of decisions of this Court beginning from AIR 1958 SC 130 (Indian Iron and

Steel Co. Ltd. and Anr. v. Their Worken) till AIR 1979 SC 1652 (Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and Anr.)and also thereafter in

several decisions as mentioned below.

15. In between this period, this Court in several leading cases examined the aforesaid questions. However, in Shankar's case (AIR 1979 SC 1652)

(supra), this Court took note of entire case law laid down by this Court in all previous cases and reiterated the legal position in detail.

16. The legal position, in our view, is succinctly explained by this Court (two-Judge Bench) in the case of Delhi Cloth and General Mills Co. v. Ludh

Budh Singh, 1972 (3) SCR 29 : 1972 (Lab IC) 573 in Propositions 4, 5 and 6 in the following words:

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal

to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding

on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open

to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour

of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the

management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee

to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings

and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the

Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal

being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence,

that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the

workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper

enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of

the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should

avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been

availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide

such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held

properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the

pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the

finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to

invite suo motu the employer to adduce evidence before it to justify the action taken by it.

17. The aforesaid principle of law was quoted with approval in Shankar's case (AIR 1979 SC 1652) (supra) by a Bench of three Judges in Para 23

observing,

.....After an exhaustive review of the decisions bearing on the question and affirming the ratio in R.K. Jain's case (1972 Lab IC 13) this Court

extracted the emerging principles from the review of decisions. Propositions 4, 5 and 6 would be relevant for the present discussion.

18. The aforementioned decisions were extensively discussed by the Constitution Bench in the case of Karnataka State Road Transport Corpn. v.

Lakshmidevamma(Smt.) and Anr., 2001 (5) SCC 433 : (AIR 2001 SC 2090)wherein the law laid down in the aforementioned two cases was

approved.

19. When we examine the facts of this case in the light of the aforementioned principles of law, we find that the termination of the respondent was by

way of punishment because it was based on the adverse findings recorded against the respondent in the domestic enquiry.

20. So the question, which the Labour Court was expected to decide in the first instance as a ""preliminary issue"", was whether the domestic enquiry

held by the appellant (employer) was legal and proper. In other words, the question to be decided by the Labour Court was whether the domestic

enquiry held by the appellant was conducted following the principles of natural justice or not.

21. If the domestic enquiry was held legal and proper then the next question which arose for consideration was whether the punishment imposed on

the respondent (delinquent employee) was proportionate to the gravity of the charge levelled against him or it called for any interference to award any

lesser punishment by exercising the powers under Section 11-A of the I.D. Act.

22. If the domestic inquiry was held illegal and improper then the next question, which arose for consideration, was whether to allow the appellant

(employer) to prove the misconduct/charge before the Labour Court on merits by adducing independent evidence against the respondent (employee).

The appellant was entitled to do so after praying for an opportunity to allow them to lead evidence and pleading the misconduct in the written

statement. (see-also Para 33 at page 1665/66 of Shankar's case (AIR 1979 SC 1652) (supra).

23. Once the appellant (employer) was able to prove the misconduct/charge before the Labour Court, then it was for the Labour Court to decide as to

whether the termination should be upheld or interfered by exercising the powers under Section 11-A of the ID Act by awarding lesser punishment

provided a case to that effect on facts is made out by the respondent (employee).

24. We are constrained to observe that first, the Labour Court committed an error in not framing a ""preliminary issue"" for deciding the legality of

domestic enquiry and second, having found fault in the domestic inquiry committed another error when it did not allow the appellant to lead

independent evidence to prove the misconduct/charge on merits and straightaway proceeded to hold that it was a case of illegal retrenchment and

hence the respondents' termination is bad in law.

{Emphasis supplied}

17. The learned advocate for the management Corporation has raised an issue that, as the Supreme Court has delivered its Judgment in Divyash

Pandit (supra), the last Judgment of the Honourable Apex Court should be followed.

18. The above stated submission is not well placed in view of the judgment delivered by this Court in the matter of Shashikant. Rameshpant.

Kavishwar. versus. Managing Director, Maharashtra State Co-operative Agriculture and Rural Development Bank Ltd. & others 2007 (4) Mh.L.J.

290, wherein the law laid down in Shankar Chakaravarti (supra), Shambhunath Goyal (supra), Lakshmidevamma (supra) and Divyash Pandit (supra),

besides other Judgments as well, were considered. A similar argument that, the law laid down in Divyash Pandit, is the last word of the Honourable

Apex Court, was dealt with. This court concluded in paragraphs No.12 to 16 as under:-

Ã¢â‚¬Å“ 12. The Constitutional Bench of the Apex Court has thus clearly held that the decision in Shambhu Nath GoyalÃ¢â‚¬â„¢s case (supra) lays down the

correct proposition of law on the matter in issue and has further clarified that the same related to the stage at which the management should seek

leave of the Labour Court or the Tribunal to lead evidence to justify its action and decision. Being so, it is abundantly clear that such a request to seek

leave for adducing additional evidence should be obviously at the time of filing of the pleadings in the form of written statement by the management.

But, at the same time, it has also been clarified that it should not be understood as placing fetters on the powers of the Court/Tribunal requiring or

directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if, on facts

and circumstances of the case, it is deemed just and necessary in the interest of justice.

13. Obviously, therefore, the powers of the Labour Court or Tribunal, as submitted on behalf of the management, are not curtailed to direct the parties

or to allow the parties to lead additional evidence at any stage of the proceedings. However, there are two riders provided by the Apex Court while

recognizing such power of the Labour Court or Tribunal and they are; (i) the facts and circumstances of the case should warrant such exercise of

powers by the Court or Tribunal and (ii) it should be deemed just and necessary in the interest of justice to allow the parties to lead such additional

evidence. In other words, before the Labour Court or Industrial Tribunal exercises the powers under section 11A to permit or to allow the parties or

even to direct the parties to lead additional evidence, the Court or Tribunal has to arrive at a specific finding based on the facts and circumstances of

the case that such an exercise is warranted and secondly that it is just and necessary in the interest of justice to allow the parties to lead such

additional evidence. The power is not to be exercised as a matter of course merely because the Court or Tribunal finds that the inquiry is said to have

been vitiated. In order to exercise such power, this preliminary exercise by the concerned Court or Tribunal is absolutely necessary, and that is the

decision of the Constitutional Bench of the Apex Court in K.S.R.T.C.Ã¢â‚¬â„¢s case (supra).

14. The impugned award is solely on the basis of the decision of the Apex Court in Divyash PanditÃ¢â‚¬â„¢s case (supra). The Apex Court in Divyash

PanditÃ¢â‚¬â„¢s case (supra), after considering the facts of that case held that:Ã¢â‚¬

Ã¢â‚¬Å“We are of the view that the order of the High Court dated 2-12-2002 as clarified on 3-3-2003 does not need any interference. It is true no doubt

that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in

Karnataka SRTC vs. Laxmidevamma this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional

evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the

enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the

charges before passing an award in favour of the workman.Ã¢â‚¬â€‹ (Emphasis supplied.)

15. The decision in Divyash PanditÃ¢â‚¬â„¢s case (supra) is apparently in the facts of that case. The Apex Court therein before upholding the decision of

the High Court dated 2nd December, 2002 as clarified on 3rd March, 2003, has referred to the facts of that case. Therein, the Apex Court has

observed that the Issue No. 4, which was required to be decided by the Labour Court, was whether the domestic enquiry held by the management

was improper and invalid and whether the finding was perverse? It was further observed that according to the award, the respondent had given up all

other issues. The paragraph (2) of the said decision discloses that the matter involved three other issues. It was further observed that the enquiry was

improperly held and the conclusion reached by the enquiry officer was perverse. The order of the enquiry officer was set aside and the appellant was

directed to be reinstated with continuity of service and full back wages. The Apex Court taking specific note of the concluding portion of the Labour

CourtÃ¢â‚¬â„¢s award wherein it was held that Ã¢â‚¬Å“there was no request till today of the management to lead evidence in support of charges and

.....Ã¢â‚¬, and further the Labour Court despite holding that the enquiry conducted by the management was Ã¢â‚¬Å“non est in the eye of the lawÃ¢â‚¬, did

not allow the management to lead additional evidence to establish the charges against the appellant, observed that : Ã¢â‚¬

Ã¢â‚¬Å“Be that as it may, immediately after the award was passed an application was made by the respondent for review of the award. In the application

the employer stated (1) that it had not foregone the other issues, and (2) that an opportunity should be granted to the management to establish its case.

The review application was dismissed by the Labour Court rejecting the first submission. However, the Labour Court did not apply its mind to the

prayer of the management that it should have been granted an opportunity of leading evidence.Ã¢â‚¬ (Emphasis supplied) The Apex Court has further

observed that the respondent therein had filed a writ petition before the High Court challenging the award of the Labour Court. The writ petition was

allowed and the award was set aside. The High Court was of the view that the Labour Court should adjudicate all the issues afresh. The matter was

accordingly remanded back to the Labour Court for deciding all the issues afresh and the said order was passed on 2nd December, 2002. The

respondent made an application for clarification of the said order dated 2nd December, 2002 and by an order dated 3rd March, 2003, the High Court

clarified the order dated 2nd December, 2002 and held that it had in fact directed all four issues to be redecided and also directed the Labour Court to

give only one opportunity to the management to lead evidence on Issue No. 4. Against the said orders of the High Court, the matter was carried

before the Apex Court and therein the above quoted order was passed by the Apex Court.

16. The decision in Divyash PanditÃ¢â‚¬â„¢s case (supra), therefore, discloses that, following the decision of the Constitutional Bench of the Apex Court

in K.S.R.T.C.Ã¢â‚¬â„¢s case (supra), in the peculiar facts and circumstances of Divyash PanditÃ¢â‚¬â„¢s case (supra), the Apex Court held that that was a

fit case for grant of one opportunity to the management to lead evidence in support of the charges of misconduct by the employee. The decision in

Divyash PanditÃ¢â‚¬â„¢s case (supra) does not lay down any law independently or something different from what has been laid down by the

Constitutional Bench of the Apex Court in K.S.R.T.C.Ã¢â‚¬â„¢s case (supra). It rather follows the said decision in the facts and circumstances of the

case of Divyash Pandit. To that extent, the learned advocate appearing for the petitioner is justified in contending that the Industrial Court did not

apply its mind to consider whether the decision in Divyash PanditÃ¢â‚¬â„¢s case (supra) lays down a law different from the one laid down by the

Constitutional Bench of the Apex Court in K.S.R.T.C.Ã¢â‚¬â„¢s case (supra).Ã¢â‚¬â€‹

{Emphasis supplied}

19. It was thus held that, in Shambhu Nath Goyal (supra), it was accepted that, the employer has to reserve it's right in the written statement, since it

is a specific response to the pleadings and the prayers put-forth by the workman. The law permitting the employer to conduct a de-novo enquiry

before the Labour Court has been crystallized for more than five decades and can be said to be a well settled proposition of law. A settled position of

law over five decades, cannot be unsettled (Stare Decisis). This Court, therefore, concluded that the view of the Honourable Apex Court in

Laxmidevamma, on a reference to the larger bench, confirms that Shambhu Nath Goyal (supra) lays down the correct law. Divyash Pandit (supra)

was considered by this Court and it was concluded that, it does not lay down a different law, rather it follows the law laid down in Laxmidevamma.

20. In Amar Chakravarty & others v. Maruti Suzuki India Ltd., 2010 (14) SCC 47,1 the Honourable Apex Court considered the above Judgments and

reiterated in paragraphs 17 as under:-

Ã¢â‚¬Å“ 17. In view of the aforesaid position in law, the inevitable conclusion is that when no enquiry is conducted before the service of a workman is

terminated, the onus to prove that it was not possible to conduct the enquiry and that the termination was justified because of misconduct by the

employee, lies on the management. It bears repetition that it is for the management to prove, by adducing evidence, that the workman is guilty of

misconduct and that the action taken by it is proper. In the present case, the services of the appellant workmen having been terminated on the ground

of misconduct, without holding a domestic enquiry, it would be for the management to adduce evidence to justify its action. It will be open to the

appellant workmen to adduce evidence in rebuttal. Therefore, the order passed by the Labour Court, shifting the burden to prove Issue 1 on the

workmen is fallacious and the High Court should have quashed it. Ã¢â‚¬â€‹

21. As the law stood then, in view of Shambhu Nath Goyal (supra), in the backdrop of no domestic enquiry having been conducted by Maruti Suzuki

India Limited, it was observed in paragraphs No.13 to 15 as under:-

Ã¢â‚¬Å“ 13.In Karnataka SRTC relied upon by the learned counsel for the appellant, a Constitution Bench of this Court affirmed the decision of this Court

in Shambhu Nath Goyal v. Bank of Baroda, wherein the issue for consideration was as to at what stage, the management is entitled to seek

permission to adduce evidence in justification of its decision to terminate the services of an employee. It was held that the right of the employer to

adduce additional evidence, in a proceeding before the Labour Court under Section 10 of the Act, questioning the legality of the order terminating the

service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement.

14. It was observed that: (Karnataka SRTC case1, SCC p. 441, para 15)

Ã¢â‚¬Å“15. Ã¢â‚¬Â¦ Ã¢â‚¬Ëœ16. Ã¢â‚¬Â¦ The management is made aware of the workmanÃ¢â‚¬â„¢s contention regarding the defect in the domestic enquiry by the written

statement of defence filed by him in the application filed by the management under Section 33 of the Act. Then, if the management chooses to

exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay.Ã¢â‚¬â„¢*Ã¢â‚¬â€‹

15. Similarly, in Firestone Tyre & Rubber Co.2 this Court observed that: (SCC p. 828, para 32)

Ã¢â‚¬Å“32. (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself

about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the

employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.Ã¢â‚¬â€‹

22. In M.L. Singla (supra), the Judgment delivered in Laxmidevamma and Amar Chakravarty (supra), were not cited before the Honourable Apex

Court which concluded that an employer may make a request orally or by a separate application or in the pleadings itself to conduct a de-novo

enquiry. No duty is cast upon the Court to offer such an opportunity suo motu to the employer if he does not ask for. I find that the view taken by the

Honourable Court that, the court should not suo motu offer such an opportunity to the employer, is in the light of the law laid down in Shankar

Chakravarty (supra).

23. This Court had an occasion to deal with a similar issue in the matter of Deepak Ganpat Tari versus New Excelsior Theatre Pvt Ltd. & Others

2009 (1) Mh.L.J. 547. Divyash Pandit (supra) was cited along with Shambhu Nath Goyal (supra), Laxmidevamma and Shankar Chakaravarti (supra).

This Court held that a prayer in the written statement has to be set out to conduct a de-novo enquiry. No such permission was sought by the

management and as such, it was concluded that Divyash Pandit would not vest the power in the Court to allow the employer to conduct a de-novo

enquiry.

24. It needs to be recorded that, a right being reserved to conduct a de-novo enquiry in the written statement, by way of an abundant precaution in the

event the enquiry is vitiated for any reason, would not mean in any manner whatsoever that the employer has admitted that the enquiry is vitiated. This

appears to be the fear in the minds of employers that it might appear as an admission that, the enquiry is vitiated or is conducted in an unfair manner.

In my view, considering the passage of 40 years, since Shankar Chakravarti (supra) was decided and 35 years since Shambhu Nath Goyal was

decided, reserving a right to conduct a de-novo enquiry in the written statement, in the event of the probable vitiation of the domestic enquiry, would

never be interpreted to mean that the employer has conceded that the enquiry is vitiated.

25. Shri Shelke and Shri Bhandari, learned advocates have submitted that a Judgment of the Honourable Apex Court can always be read, keeping in

view the proposition of law settled in such judgment, by the High Court and such proposition can be made applicable to a case, in the event the facts

are not distinguishable. Reliance is placed on State of Maharashtra & others versus Murarao Malojirao Ghorpade and others (2010 (1) AIR Bom.R.

265) (five judges), wherein, the aspect of the binding value of Judgments and the doctrine of precedent was considered. It was observed in paragraphs

No.8 to 13 as under:-

Ã¢â‚¬Å“ 8. From paragraph 4 of our order dated 26th August, 2009, it necessarily follows that the first and foremost question to be considered by us relate

to the law of precedents and judicial propriety.

9. Salmond on Jurisprudence discusses in some detail the origin and significance of judicial precedents. In the 12th Edition of Salmond on

Jurisprudence, it has been recorded that the importance of judicial precedents has always been a distinguishing characteristic of English law. In recent

years, the value of doctrine of precedent has been much debated. It has two meanings. The first, which may be called the loose meaning, and the

second, the strict meaning. Under the first meaning, precedents are reported, may be cited, and will probably be followed by the courts. Whilst in the

second meaning, precedents not only have great authority but must in certain circumstances be followed. It is said that the practice is necessary to

secure the certainty of the law, predictability of decisions being more important than approximation to an ideal, any very unsatisfactory decision can be

reversed for the future by statute. Judicial decisions may be distinguished as authoritative and persuasive. An authoritative precedent is one which

judges must follow whether they approve of it or not. A persuasive precedent is one which the judges are under no obligation to follow, but which they

will take into consideration, and to which they will attach such weight as it seems to them to deserve. In other words, authoritative precedents are

legal sources of law, while persuasive precedents are merely historical.

(Ref : Salmond on Jurisprudence, 12th Edition, by P.J. Fitzgerald.)

10. A Full Bench of this Court in the case of (M/s. Emkay Exports & anr. Vs. Madhusudan Shrikrishna)5, 2008(4) Bom.C.R. (F.B.)(O.S.)522 :

2008(4) Mh.L.J. 843, while dealing with the concept of precedent and significance in judicial decision making process, held as under:-

6. The concept of precedent has attained important role in administration of justice in the modern times. The case before the Court should be decided

in accordance with law and the doctrines. The mind of the Court should be clearly reflecting on the material in issue with regard to the facts of the

case. The reason and spirit of case make law and not the letter of a particular precedent. Halsburys The Laws of England, explained the word ratio

decidendi as It may be laid down as a general rule that that part alone of a decision by a Court of Law is binding upon courts of coordinate jurisdiction

and inferior courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined.

This underlying principle which forms the only authoritative element of a precedent is often termed the ratio decidendi. It is by the choice of material

facts that the Court create law.

The law so created would be a good precedent for similar subsequent cases unless it falls within the exceptions hereinafter indicated.

7. The doctrine of precedent relates to following of previous decisions within its limitations. It introduces the concept of finality and adherence to the

previous decisions and while attaining it, it creates consistency in application of law. The later judgment should be similar to the earlier judgment, which

on material facts are the same. Finding ratio decidendi is not a mechanical process but an art which one gradually acquires through practice. What is

really involved in finding the ratio decidendi of a case is the process of abstraction. Ratio decidendi is a term used in contrast to obiter dictum which is

not necessariloy binding in law. According to Sir John Salmond, a precedent is a judicial decision, which contains in itself a principle. The only principle

which forms its authoritative element is often termed the ratio decidendi. The concrete decision is binding between the parties to it, but it is the

abstract ratio decidendi which alone has the force of law as regards the world at large. According to Austin, the general reasons or principles of

judicial decision abstracted from peculiarities of the case are commonly styled by writers on jurisprudence as ratio decidendi.

8. Amongst the principles of law governing the binding value of judgments, doctrine of precedent is not only a well accepted principle but is one fo the

most pertinent facets of judicial interpretation. A ruling of Bench of higher Court is considered to be binding on the lower courts and the courts having

a smaller Bench structure. Earlier judgments are even taken to be binding on subsequent equi Bench unless and until reasons compelling for taking a

divergent view are stated. To apply this principle, the Court must examine by process of appropriate reasoning as to the applicability of the precedent

cited before the Court or even which of the views expressed by a higher Court or even a larger Bench or even a Bench of equi strength is more aptly

applicable to the facts and circumstances of the case in hand. The essence of law of precedent is its applicability on the basis of ratio decidendi. The

importance and significance of adherence to alw of precedent was emphasized by the Supreme Court in the case of (S.I. Rooplal and another Vs. Lt.

Governor through Chief Secretary, Delhi and others)6, 1999 DGLS (soft) 1395 : A.I.R. 2000 S.C. 594.

11. With the development of law, the doctrine of precedents has become an integral part of judicial discipline. The doctrine of precedent is a habit of

following previous decisions within more or less well-defined limits. What the doctrine of precedent declares is that cases must be decided the same

way when their material facts are the same. The part of a case that is said to possess authority is the ratio decidendi. Finding ratio decidendi is not a

mechanical process but is an art that one gradually acquires through practice and study. What is really involved in finding the ratio decidendi of a case

is a process of abstraction. The ascertainment of the ratio decidendi of a case depends upon a process of abstraction from the totality of facts that

occured in it. The higher the abstraction, the wider the ratio decidendi. In contrast with the ratio decidendi is the obiter dictum. Obiter dictum is a mere

saying by the way, a chance remark, which is not binding on the future courts, though it may be respected according to reputation of the Judge, the

eminence of the Court and the circumstances in which it came to be pronounced. The reason for not regarding an obiter dictum as inding is that it was

probably made without a full consideration of the case on the point, and that, if very broad in its terms, it was probably made without a full

consideration of all the consequences that may follow from it; or the Judge may not have expressed a concluded opinion. Ref : Paper submitted in

Third Workshop of 2005 on the Subject of Law of Precedents and appropriate use of case law in Court working by U.B. Shukla.

12. In light of the above, now let us examine some judgments of the Supreme Court which have some bearing on the issue before us. In the case of

Tribhovandas Purshottamdas Thakkar Vs. Ratilal Motilal Patel & ors., 1967 DGLS (soft) 249 : A.I.R. 1968 S.C. 37, 2the Supreme Court examined

the question as to when a reference can be made to a Full Bench and whether mere irregularity in the constitution of Full Bench would nullify the law

laid down by the so constituted larger Bench. The Supreme Court held as under:-

10. The effect of a precedent of the Gujarat High Court fell to be considered indirectly in this case. Before Raju, J., it was urged for the first time in

the course of this litigation that in the absence of the sanction of the Charity Commissioner the Court sale was invalid. Counsel for the auction

purchaser contended that this question was not raised before the District Court and that Court cannot be said to have acted illegally or with material

irregularity in not deciding the question. Counsel for the auction purchaser relied upon two decisions in support of that proposition : (Pinjare Karimbhai

Vs. Shukla Hariprasad)7, 1962(3) Guj.L.R. 529 and(Haridas Vs. Ratansey)8, 1923 Bom.L.R. 802 : A.I.R. 1922 Bom. 14.9 He urged that under the

Bombay Reorganization Act, 1960, the jurisdiction of the which originally extended over the territory now forming part of the State of Gujarat, ceased

when a new High Court was set up in the State of Gujarat, but it was held by a Full Bench of the High Court of Gujarat in (State of Gujarat Vs.

Gordhandas)9, 3 Guj.L.R. 269 : A.I.R. 1962 Guj. 128(F.B.) that the decision of the will be regarded as binding since the Gujarat High Court had

inherited the jurisdiction, power and authority in respect of the territory of Gujarat. When pressed with the observations made in the two cases cited at

the Bar, Raju, J., found an easy way out. He observed that the judgment of the Full Bench of the Gujarat High Court had no existence in law, for in

the absence of a provision in the Constitution and the Charter Act of 1861, a Judge of a High Court had no power to refer a case to a Full Bench for

determination of a question of law arising before him, and a decision given on a reference had no existence n law. The learned Judge also thought that

if a Judge or a Division Bench of a Court makes a reference on a question of law to a Full Bench for decision, it would in effect be assuming the

jurisdiction which is vested by the Charter of the Court in the Chief Justice of the High Court. In so observing the learned Judge completely

misconceived the nature of a reference made by a Judge or a Bench of Judges to a large Bench. When it appears as a Single Judge or a Division

Bench that there are conflicting decisions of the same Court, or there are decisions of other High Courts in India which are strongly persuasive and

take a different view from the view which prevails in his or their High Court, or that a question of law of importance arises in the trial of a case, the

Judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with a request to form a special or Full

Bench to hear and dispose of the case or the questions raised in the case. For making such a request to the Chief Justice, no authority of the

Constitution or of the Charter of the High Court is needed, and by making such a request a Judge does not assume to himself the powers of the Chief

Justice. A Single Judge does not by himself refer the matter to the Full Bench: he only requests the Chief Justice to constitute a Full Bench for hearing

the matter. Such a Bench is constituted by the Chief Justice. The Chief Justice of a Court may as a rule, out of deference to the views expressed by

his colleague, refer to the case; that does not mean, however, that the source of the authority is in the order of reference. Again it would be impossible

to hold that a judgment delivered by a Full Bench of a High Court after due consideration of the points before it is liable to be regarded as irrelevant by

Judges of that Court on the ground of some alleged irregularity in the constitution of the Full Bench.

13. While citing the above judgment with approval, the Supreme Court again in the case of (Sub-Inspector Rooplal & anr. Vs. Lt. Governor Through

Chief Secretary, Delhi & ors.)9, 1999 DGLS (soft) 1395 : (2000)1 S.C.C. 64 4considered the question that sub-ordinate Court is bound by the

precedent of superior Court, and a Bench of a Court is bound by the precedent of a Co-ordinate Bench. While discussing the jurisprudential basis for

honouring a precedent, the Supreme Court also expressed a view that even the co-ordinate Bench cannot pronounce a judgment contrary to

declaration of law made by another Bench. The Supreme Court held as under: -

12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Co-ordinate Bench of the Tribunal has overruled, in

effect, an earlier judgment of another Co-ordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the

subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Co-ordinate Bench of the same Tribunal was incorrect, it ought

to have referred the matter to a larger Bench so that the difference of opinion between the two Co-ordinate Benches on the same point could have

been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said

judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our

system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone

can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned;

deviation from the same should be only on a procedure known to law. A sub-ordinate Court is bound by the enunciation of law made by the Superior

Courts. A Co-ordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a

larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhovandas Purshottamdas Thakkar Vs. Ratilal Motilal Patel,

1967 DGLS (soft) 249 : A.I.R. 1968 S.C. 37,2 while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment

of a larger Bench of the same Court observed thus:

The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of

Bhagwati, J., in Pinjare Karimbhai case, (1962)3 Guj.L.R. 529 and of Macleod, C.J., in Haridas case, A.I.R. 1922 Bom. 149(2) did not lay down the

correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial

decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can

be achieved only if Judges do not ignore decisions by courts of co-ordinate authority or of superior authority. Gajendragadkar, C.J., observed in

(Bhagwan Vs. Ram Chand)10, 1965 DGLS (soft) 58 : A.I.R. 1965 S.C. 1767:

It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is

inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he

should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant

papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with

such matters and it is founded on healthy principles of judicial decorum and propriety.Ã¢â‚¬‹

26. On the issue of the rule of per incuriam decisions, it was held in Murarao Malojirao Ghorpade (supra) in paragraphs Nos.14, 15, 16 and 17 as

under:-

Ã¢â‚¬Å“ 14. The respect for the law of precedent was illucidated by the Supreme Court again in the case of (Govenment of Andhra Pradesh & anr. Vs.

B. Satyanarayana Rao (Dead) by L.Rs. & ors.)11, 2000 DGLS (soft) 677 : (2000)4 S.C.C. 26, 2where the Court explained rule of per incuriam

decisions and held as under:

8. ..... The rule of per incuriam can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court rendered

on the same issue or where a Court omits to consider any statute while deciding that issue. .....

15. Similarly, in the case of (Lily Thomas & ors. Vs. Union of India & ors.)12, 2000(Supp.) Bom.C.R. (S.C.)464 : 2000 DGLS (soft) 940 : (2000)6

S.C.C. 224, the Supreme Court reiterated the principle that rulings of larger Benches should be followed and those of co-ordinate Benches of equal

strength not be differed from and must be followed. The Supreme Court also observed that the Division Bench would not be justified in ignoring the

Full Bench judgment or even that of a co-ordinate Bench.

16. The law declared by the Supreme Court is binding on all the courts but such a decision has to be made on the expected norms of the ratio

decidendi. The Supreme Court itself stated a word of caution that the judgment of the Supreme Court and the law declared should not be applied

mechanically but after due examination and specifying the fact that the judgments are really applicable to the facts and circumstances of the case. In

the case of (Delhi Administration (Now NCT of Delhi) Vs. Manohar Lal)13, 2002 DGLS (soft) 707 : (2002)7 S.C.C. 222, the Court held as under:-

5. We have carefully considered the submissions of the learned Counsel appearing on either side. Apparently, the learned Judge in the High Court was

merely swayed by considerations of judicial comity and propriety and failed to see that merely because this Court has issued directions in some other

cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete

justice, keeping aside even technicalities, the High Court, exercising statutory powers under the criminal laws of the land, could not afford to assume to

itself the powers or jurisdiction to do the same or similar things. The High Court and all other courts in the country were no doubt ordained to follow

and apply the law declared by this Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and

ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the

cases before them. Considered in that context, we could not find from the decisions reported in Sukumaran and Santosh Kumar any law having been

declared or any principle or question of law having been decided or laid down therein and that in those cases this Court merely proceeded to give

certain directions to dispose of the matter in the special circumstances noticed by it and the need felt, in those cases, by this Court to give such a

disposal. The same could not have been mechanically adopted as a general formula to dispose of, as a matter of routine, all cases coming before any

or all the courts as a universal and invariable solution in all such future cases also. The High Court had no justifying reason to disturb the conclusion of

the first Appellate Court, in this regard.

17. The importance of following the law declared by the Supreme Court was emphasized by the Court in the case of (State of Punjab Vs. Bhag

Singh)14, 2003 DGLS (soft) 677 : (2004)1 S.C.C. 54 7where the Supreme Court said that judicial discipline to abide by declaration of law by the

Supreme Court cannot be forsaken under any pretext by any authority or Court, be it even the highest Court in a State, oblivious to Article 141 of the

Constitution.Ã¢â‚¬â€‹

27. While dealing with the issue of the Judgment of a higher Court, or a larger bench, or a coordinate bench, having binding effect, on a bench of a

lessor strength, it was concluded in paragraphs No.19 to 22 as under:-

19. Normally, the judgment of a higher Court or a larger Bench or coordinate Bench would be binding on a Bench of a lesser strength. The exception

to the applicability of the law of precedent is, if on the facts of a given case and the law applicable, the case falls for good and valid reasons within the

exception specified in the judgment, or that the judgment is per incuriam, sub silentio and/or hit by stare decisis. Unless the subsequent judgment

discusses such an issue and records reasons, it may fall within the mischief of violating the law of precedent which may not be in conformity with the

canons of judicial discipline. The concept of certainty and finality is essential in judicial decision making process.

20. Whether a precedent is binding and effective itself is an issue to be considered by the Court. The ratio and effect of the judgment is required to be

ascertained with reference to the question of law as decided by the Court. The ratio of the judgment or the principle upon which the question before

the Court is decided is alone binding as a precedent, and this must be ascertained and determined by analysing all the material facts and issues

involved in the case. While observing so, the Supreme Court in the case of (ICICI Bank & anr. Vs. Municipal Corporation of Greater Bombay &

ors.)16, 2006(1) Bom.C.R. 319(S.C.) : 2005 DGLS (soft) 496 : (2005)6 S.C.C. 40 r4elied upon the decision in the matter of (Paisner Vs. Goodrich)17,

(1955)2 All.E.R. 530, (All.E.R. at p.332 H1), where Lord Denning observed:

When the Judges of this Court give a decision on the interpretation of an Act of Parliament, the decision itself is binding on them and their successors:

see (Cull Vs. IRC)18, (1939)3 All.E.R. 761, (Morelle Ltd. Vs. Wakeling)19, (1955)1 All.E.R. 708. But the words which the judges use in giving the

decision are not binding. This is often a very fine distinction, because the decision can only be expressed in words. Nevertheless, it is a real distinction

which will best be appreciated by remembering that, when interpreting a statute, the sole function of the Court is to apply the words of the statute to a

given situation. Once a decision has been reached on that situation, the doctrine of precedent requires us to apply the statute in the same way in any

similar situation; but not in a different situation. Wherever a new situation emerges, not covered by previous decisions, the courts must be governed by

the statute and not by the words of the Judges.

21. The Supreme Court in the case of (Bharat Petroleum Corpn. Ltd. Vs. Mumbai Shramik Sangh & ors.)20, 2001(3) Bom.C.R. 326(S.C.) : 2001

DGLS (soft) 707 : (2001)4 S.C.C. 448. held as under:-

2. We are of the view that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial

discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a

Bench of three learned Judges.

22. The settled principle of judicial discipline and propriety requires that a smaller Bench normally may not question the correctness of the decision of

a larger Bench even on the ground of sub silentio or per incuriam. Generally, it would lie in the domain of equi Bench to make a reference. The

concept of finality as well as judicial hierarchy in the administration of justice would suffer if the norm of precedent is not applied to the functioning of

the Court, much less a smaller Bench, that even a equi Bench is expected to follow the law, may be for valid and appropriate reason. It may request

for a reference to a larger Bench but the earlier decision cannot be thrown out for any purposes whatsoever.Ã¢â‚¬â€‹

28. In the matter of Permanent Magnets Ltd.Mumbai versus Vinod Vishnu Wani (2002 (3) Mh.L.J. 413)<.a> this Court, again had the occasion to

consider the reserving of a right in the written statement for conducting a de-novo enquiry. Placing reliance upon the Judgment of this Court in the

matter of Chandrikaprasad Mishra versus Shree Babulnath Mandir Charities and another (2000 Lab.I.C.1677), this Court concluded that, the right to

conduct a de-novo enquiry is born for the first time and is available to an employer, only after the domestic enquiry conducted under the standing

Orders, is vitiated. Such a right has to be reserved by the employer in the written statement, since it is the first available opportunity to the employer to

counter the claim of the employee that the enquiry be vitiated, the findings of the Enquiry Officer be declared as perverse and relief of reinstatement

in service be granted to the workman. It was then concluded that, such a right would be available to an employer only if it is reserved in the written

statement.

29. In Chandrikaprasad (supra), the employer had not reserved any right to conduct a de-novo enquiry in the written statement. There was no plea

raised in the written statement and therefore, the employer had not disclosed any willingness on it's part to conduct a de-novo enquiry. The

proceedings before the Labour Court were concluded and the matter was carried to the Industrial Court under section 44 in its revisional jurisdiction.

A plea was raised before the Industrial court that liberty be granted to the employer to conduct a de-novo enquiry. The Industrial Court was

persuaded and was convinced, which led to the revision being partly allowed. This Court concluded that, the Industrial Court could not have done so

since no right was reserved in the written statement and no plea was taken to conduct a de-novo enquiry before the Labour Court. The Judgment

delivered in Lakshmidevamma (supra), delivered in 2001 declares that the law laid down in Shambhunath (supra) is the correct law and it should not

be disturbed.

30. The learned advocate for the management Corporation cites a Judgment delivered on 19.6.2019 by this Court in the matter of Maharashtra State

Electricity Transmission Co. Ltd. Versus Vasant Kishanrao Deshpande Writ Petition No.5514 of 2018 with connected petition 12708 of 2018

(Aurangabad) wherein, this Court considered the law laid down in Lakshmidevamma (supra) and Divyash Pandit (supra) and concluded that, the

Industrial Court had not committed any error in accepting the request of the management in the revisional proceedings under section 44 to conduct a

de-novo enquiry, though no such right was reserved before the Labour Court and no plea taken that it would conduct a de-novo enquiry before the

Labour Court.

31. I find that the counsel appearing in the said matters did not cite the law laid down in Shankar Chakravarti (supra), Deepak Tari (supra), Shashikant

Kavishwar (supra), Permanent Magnets (supra), Wajid Ali T. Kadri versus M/s D.D. Shaha and Co. 2007 (6) Mh.L.J. 650, the Judgment dated

5.3.2014 delivered by this Court in the matter of Arjun Shankar Wagh versus MSRTC 2014 (5) BCR 99.9 and Chandrikaprasad (supra). In fact, the law laid

down in Chandrikaprasad is prac(cid:41)cally a tailor made Judgment in the ma(cid:45)er of Maharashtra State Electricity Transmission Co. Ltd delivered at Aurangabad on

19.6.2019. As such, keeping in view the law laid down by the learned five judges Bench of this Court in the ma(cid:45)er of Murarao Ghorpade (supra), the view taken

by this court on 19.6.2019 in the Maharashtra State Electricity Transmission case is rendered per incuriam. The learned advocate for the pe(cid:41)(cid:41)oner employee

submits that he has just learnt that the said judgment dated 19.6.2019 is now subject ma(cid:45)er of a review filed by Vasant Deshpande and the Honourable Court

has issued notice in the said matter.

32. In view of the above, I find that the law laid down in the matters of Shambhu Nath Goyal (supra) and Lakshmidevamma (supra) has crystallized

the position. In the light of the several judgments delivered thereafter by the Honourable Apex Court and the Bombay High Court referred to above,

any view taken to permit an employer to conduct a de-novo enquiry without reserving such a right in the written statement would amount to deviating

from the law crystallized over 40 years. The principle of 'stare-decisis' is squarely applicable.

33. In view of the above, this petition is allowed. The impugned Judgment delivered by the Industrial Court dated 21.7.2018 stands quashed and set

aside. Revision ULP. No.31/2016 filed by the respondent Corporation stands dismissed. Rule is made absolute.

34. The petitioner workman has now made a prayer in this petition that the Judgment of the Labour Court dated 20.6.2016 be set aside as it permitted

the employer to conduct an enquiry without reserving any right in the written statement. I find that the petitioner workman had never challenged the

said judgment before the Industrial Court u/s 44 and therefore, such a prayer cannot be directly entertained by this Court in the light of the law laid.

down. by. the. Bombay. High. Court. in. the. matters. Of Engineering Employees Union versus Devidayal Rolling Mills Pvt. Ltd, Thane & another

(1986 Mh.L.J.331) and in the matter of Clifford Rebello versus Hotel Oberoi Towers (2001 III CLR 805). Nevertheless, as there is no limitation

prescribed for filing a revision and since the petitioner was in litigation for all these years, he may avail of the remedy of filing a revision ULP before

the industrial Court u/s 44, if so advised.

35. I deem it appropriate to compliment all the learned advocates who have ably assisted the Court in this matter.