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Date : 24/08/2025

Arjun Shankar Wagh Vs Maharashtra State Road Transport Corporation

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: March 5, 2014

Acts Referred: Industrial Disputes Act, 1947 - Section 10 33 33(2)(b)

Citation: (2014) 5 BomCR 399 : (2014) 142 FLR 376 : (2014) 2 LLJ 284

Hon'ble Judges: Ravindra V. Ghuge, J

Bench: Single Bench

Advocate: P.V. Barde, for the Appellant; B.S. Deshmukh Advocate, for the Respondent

Final Decision: Partly Allowed

Judgement

Ravindra V. Ghuge, J.
Heard the learned Advocates for the respective sides. Rule. By consent, Rule is made returnable forthwith and the

petition is taken up for final disposal.

2. The petitioner, presently aged 67 years, joined the services of the respondent MSRTC in the year 1977 as a Conductor at Shrirampur Depot.

On 4.5.1990, the petitioner was on duty on the State Transport Bus plying between Shrirampur and Nanded. He felt uncomfortable and became

unconscious. As a consequence of which he could not issue few tickets to some of the passengers and was unable to maintain the way bill.

3. The said Bus was inspected at Majalgaon by the Checking Staff of the respondent. On noting that certain passengers were travelling without

tickets and having claimed that they had paid the fare of the journey to the petitioner-Conductor, the Checking Staff prepared a report. The

petitioner submits that he was unconscious and yet the Checking Squad compelled him to record his statement when he was uncomfortable. The

petitioner further claims that when the Bus thereafter reached Manmad, some of the passengers assisted him for availing medical assistance.

4. It is the contention of the petitioner that in this backdrop, he was issued with a charge sheet dated 3.7.1990. Upon completion of the

departmental enquiry, the petitioner was dismissed from service by an order dated 18.1.1992. It is stated that the petitioner attained the age of

superannuation in the year 2007.

5. The petitioner challenged the dismissal order by instituting Complaint (ULP) No. 206 of 1993 before the Labour Court at Ahmednagar. The

petitioner had challenged the fairness of the enquiry besides claiming that the punishment awarded was shockingly dis-proportionate to the gravity

and seriousness of the mis-conduct. In view of these specific challenges, the petitioner categorically states that the respondent by filing its Say and

Written Statement dated 23.11.1994, did not reserve its right to conduct a de novo enquiry in the event of the enquiry being set aside for violation

of the Principles of Natural Justice. According to the petitioner, the respondent had acquiesced its right to conduct a de novo enquiry, if the

domestic enquiry was set aside.

6. The learned II Labour Court, Ahmednagar framed only one issue in light of the pleadings of the petitioner, which is as follows:-

Does the complainant prove that the domestic enquiry conducted against him by the first party is illegal, improper and against the principles of

natural justice?

7. An issue as regards whether the findings of the Enquiry Officer are perverse or not, has rightly not been framed since there was no pleading to

that effect in the complaint.

8. By its order on the issue framed, the Labour Court concluded that the enquiry was illegal, improper and against the principles of natural justice.

The said order dated 6.12.1995 is at page 22 of the petition paper book. The enquiry was thus set aside.

9. The respondent preferred Revision (ULP) No. 90 of 1996 before the learned Industrial Court, Ahmednagar. By its judgment and order dated

25.4.2003, the Revision Petition was dismissed. The petitioner, therefore, contends that the Labour Court, then had to decide only two aspects.

Firstly, whether the punishment awarded to the petitioner could be sustained in view of the domestic enquiry having been set aside and secondly,

whether the petitioner was entitled to back wages from the date of his dismissal. According to the petitioner, the respondent was precluded from

conducting a de novo enquiry in view of no right being reserved in its Written Statement.

10. It is pointed out that the respondent MSRTC led evidence before the Labour Court in a manner as if a de novo enquiry was being conducted.

All the charges levelled upon the petitioner were sought to be proved by leading such evidence. The petitioner, therefore, objected to the recording

of the said evidence by its application dated 21.9.2005, which is at page 14 of the petition paper book. It was, therefore, prayed that the said

evidence should not be read and considered against the petitioner.

11. As a consequence of the said application, the respondent by way of an after thought, moved an application dated 27.9.2005, seeking an

amendment in the Written Statement. The right to conduct a de novo enquiry was sought to be exercised by the respondent after recording of the

evidence, by the proposed paragraph No. 3-BB.

12. The Labour Court considered the application of the petitioner as well as the amendment application of the respondent and delivered its order

on 26.12.2005 which is at page 46 of the petition paper book. It is submitted that the law laid down by the Honourable Supreme Court in the case

of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmidevamma and Another, was not considered by the Labour Court, which rejected

the application of the petitioner and allowed the amendment application of the respondent. This order dated 26.12.2005 was not immediately

challenged by the petitioner.

13. It is further submitted that the Labour Court considered the fresh evidence recorded before it as if a de novo enquiry was conducted and

Complaint (ULP) 206 of 1993 was dismissed by the impugned judgment dated 16.1.2006. The charges of drunkenness while on duty, collecting

fare and not issuing tickets as well as issuing unpunched tickets were held to be proved against the petitioner.

14. The petitioner preferred Revision (ULP) No. 8 of 2006 for challenging the judgment of the Labour Court dated 16.1.2006 as well as the order

dated 26.12.2005 by which the Labour Court had granted a post facto sanction to the conducting of a de novo enquiry (without reserving a right

in the Written Statement and which right was introduced by an amendment). The petitioner states that all the above mentioned issues were taken

up before the Industrial Court in its revisional jurisdiction. He has drawn my attention to page 71 containing the grounds for challenge.

15. It is quite clear that the petitioner had raised a comprehensive challenge and had also called in question the order of the Labour Court allowing

an amendment for introducing a right to conduct a de novo enquiry that too after the recording of evidence was over. Reference was made to the

Lakshmidevamma''s judgment (supra) in the Revision Petition itself.

16. It is submitted that the said Revision Petition was allowed and the matter was remanded back to the Labour Court for fresh decision. The said

judgment of the Industrial Court, dated 13.9.2010, was challenged before this Court by the respondent in Writ Petition No. 674 of 2011. By an

order dated 23.3.2011, this Court, quashed and set aside the judgment of the Industrial Court dated 13.9.2010 and remanded the matter back to

the Industrial Court with a direction to decide the revision afresh. Thereafter, by judgment dated 18.7.2011, the Industrial Court dismissed the

Revision Petition.

17. In the light of this factual matrix, Shri Barde, learned Advocate submits that the judgment of the Honourable Supreme Court in the

Lakshmidevamma''s case (supra) has neither been over-ruled nor held to be bad in law by any judgment of the Honourable Supreme Court and

the ratio laid down in the said judgment still governs the field. He, therefore, submits that when it was specifically laid down by the Five Judges''

Bench that the right to conduct a de novo enquiry ought to be retained/reserved at the earliest possible opportunity and the said right should be

reserved only in the Written Statement, the view taken by the Labour Court and upheld by the Industrial Court is totally erroneous. All subsequent

stages before the Labour Court on account of a serious procedural lapse, are rendered a nullity.

18. Relevant portion [view of Honourable Shri Justice Santosh Hegde for himself and on behalf of S.P. Bharucha, J.] of the Lakshmidevamma''s

judgment (supra) reads as under:-

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 geneses of this procedure can be traced by noticing the following observations of this Court in Workmen of Motipur Sugar

Factory (Private) Limited Vs. Motipur Sugar Factory, :

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 mean-time. 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 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.....

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 has agreed on the conferment of this right of the management but there seems 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 by the management at any stage of the proceedings right upto

the stage of pronouncement of the order on the original application filed either u/s 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.

15. The question again arose in the case of Shambhu Nath Goyal Vs. Bank of Baroda and Others, 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 Shambu Nath Goyals 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 Vs. Britannia Biscuit Co. Ltd. and Another, , which was a judgment of this Court subsequent to that of The Cooper Engineering

Limited Vs. Shri P.P. Mundhe, , the following principles were laid down (Para 16 of Shambhu Nath Goyal Vs. Bank of Baroda and Others,):

..... The management is made aware of the workman''s contention regarding the defeat in the domestic enquiry by the written statement of defence

filed by him in the application filed by the management u/s 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

s. 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 defeat 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.

16. While considering the decision in Shambhu Nath Goyal Vs. Bank of Baroda and Others, , we should bear in mind that the judgment of

Vardarajan, J. therein does not refer to the case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . However, the concurring judgment of

D.A. Desai, J. specifically considers this case. By the judgment in Goyals 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 u/s 33 of the Industrial Disputes Act, 1947 or in the

objection that the management had to file to the reference made u/s 10 of the Act, meaning thereby 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 Shambu Nath Goyals case 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 Shambu Nath Goyals case is just and fair.

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

judgment was delivered on 27th of September, 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 require us to approve the

said judgment to see that a long standing decision is not unsettled without 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 Vs. Bank of

Baroda and Others, is the correct law on the point.

43. SHIVRAJ V. PATIL, J. (for himself and on behalf of V.N. Khare, J.):-After going through the draft judgment prepared by N. Santosh Hegde,

J., we respectfully agreed with the same. Having gone through the draft judgment prepared by Y.K. Sabharwal, J., received later, we felt the

necessity of adding the following few lines.....

44.....

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 he same to meet the ends of justice in a given situation. We reiterate

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 justice.

19. Shri Deshmukh, learned Advocate for the respondent has supported the impugned judgment of the Labour Court as well as of the Industrial

Court. He states that though the right to conduct a de novo enquiry was not reserved in the Written Statement and though fresh evidence was

recorded in the Labour Court without seeking permission to conduct a de novo enquiry, an application seeking amendment to the Written

Statement after the recording of oral evidence was aimed at removing the deficiency that would have remained permanently in the said proceeding.

He stated that since it was purely a procedural lapse, it was not fatal to the said proceedings since the Court has to endeavour to ensure that the

ends of justice are met. The amendment having been allowed by the Labour Court was obviously to meet the ends of justice and though it may

appear to be a bit strange that a de novo enquiry was conducted without reserving a right and without seeking permission of the Labour Court, by

amending the Written Statement, thereafter, the respondent has ensured that the de novo enquiry was sustained. He, therefore, stated that the

findings on facts as regards the charges against the petitioner ought not to be interfered with only on account of procedural lapses.

20. Shri Deshmukh has placed reliance on the judgment of the Honourable Supreme Court in the case of Divyash Pandit Vs. Management

NCCBM [AIR 2006 SC 92]. He contends that the view taken by the Honourable Supreme Court in the said case is on a broader perspective

which is aimed at doing justice. Opportunity to lead further evidence when the enquiry has been invalidated is permitted by the said judgment, even

though, the employer has not sought such an opportunity before the Labour Court. He, therefore, prays for the dismissal of the Writ Petition.

21. I have gone through the impugned judgment of the Labour Court dated 16.1.2006. The charges levelled upon the petitioner have been held to

be proved on the basis of evidence. These findings on facts were neither interfered with by the Industrial Court, nor can this Court in its revisional

jurisdiction venture into a thread bare scrutiny of the entire record and proceedings and arrive at a different finding as if it is a fact finding Court.

Nevertheless perversity in the findings of the Labour Court judgment can be gone into. In the instant case, having considered the impugned

judgments, I do not find any such perversity, which will call for an interference with the impugned judgment of the Labour Court as well as the

Industrial Court.

22. However, the disturbing feature in this case is that neither the respondent had reserved a right to conduct a de novo enquiry in its Written

Statement, nor did it move an application before the said Court seeking permission to lead evidence in an effort to conduct a de novo enquiry.

23. After the evidence was recorded and after the petitioner moved an application dated 21.9.2005, calling upon the Labour Court to disregard

the said evidence, that the petitioner woke up from its deep slumber and filed an application for amending the Written Statement and expressing its

willingness to lead oral evidence. In fact, the proposed paragraph 3-BB aims at seeking permission to conduct a de novo enquiry, indirectly after

the recording of evidence of the Respondent was already over and after he had sought orders to disregard the said evidence.

24. I find that the Labour Court should have rejected the said amendment application in light of the Lakshmidevamma''s case (supra) since it was

filed after the recording of evidence. Be that as it may, with the passage of time and the fact that the petitioner has attained the age of

superannuation in 2007, this entire litigation cannot now be reopened since the petitioner at the age of 67 would have to undergo rigors of litigation.

Equity demands and the ends of justice can be met by issuing such a direction which would compensate the petitioner.

25. Both the learned Advocates have informed that the gratuity of the petitioner has not been paid on account of his dismissal from employment

and no retiral benefits are available to him. He has only obtained the P.F. benefits.

26. In the peculiar facts and circumstances of this case and in order to put the entire controversy to rest, I find that the ends of justice can be met

by directing the respondent to pay gratuity to the petitioner from the date of joining employment which is 1977 till the date of his superannuation in

the year 2007. I am quantifying Rs. 5000/- (Rs. Five Thousand only/-) as the basis for calculating the gratuity to be paid to the petitioner by the

respondent for the period from 1977 till 2007. The said gratuity will be paid by the respondent to the petitioner within a period of eight weeks from

today. With the above directions, the Writ Petition is partly allowed. Rule is accordingly made partly absolute. No order as to costs.