

**IN THE COURT OF JUDGE, LABOUR CORT, BHANDARA.**  
**(Presided over by : F.K. Shaikh)**

**REFERENCE (IDA) CASE No. 01/2022.**

**Exh. No. O-3**

**ADJUDICATION BETWEEN**

Primatsingh Mahipalsingh Chandel,  
Aged 42 years, Occu. Ex-employee,  
R/o. Manohar Chowk, Gondia.

.....

**PARTY NO. 1**

**AND**

Divisional Controller,  
Maharashtra State Road Transport Corporation  
Division Office, Nagpur Road, Bhandara.

.....

**PARTY NO. 2**

**APPEARANCES** : Shri. S. A. Nerkar Advocate for Party No. 1.  
Shri. P.M. Nichakawade Advocate for Party No. 2.

**JUDGMENT ON PRELIMINARY ISSUES.**  
**(Delivered on 08/11/2024)**

The party no. 1 has filed this reference under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred as "I.D. Act") directing the party no. 2 to declare that the departmental enquiry conducted against the party no. 1 was without any competency to Divisional Traffic Officer, the departmental enquiry was not fair and proper and in accordance with principles of natural justice and findings of enquiry are perverse in nature and dismissal is unwarranted and illegal and shockingly disproportionate to the gravity of misconduct, to set aside the dismissal order No. ST/DC/Bh/TR/DEF/6080/1091 dtd. 28-09-2013 and to direct the party no. 2 to reinstate the party no. 1 in service with continuity of service and with full back wages.

2. The Party No. 1's case in brief is as under :

It is stated that the party no. 1 has been held for chaotic and unwarranted situation created in the Gondia depot on 24-10-2012. The Assistant Traffic Superintendent of Gondia depot has falsely lodged a criminal complaint against the party no. 1 and others. The Assistant Traffic Superintendent of Gondia has made a facade of department enquiry. The party no. 2 and its officers have proceeded on pre-determined lines in the so-called enquiry. The party no. 2 and its officers have finally issued dismissal order dtd. 28-09-2013 against the party no. 1. It is stated that the Divisional Traffic Officer had issued a chargesheet and conducted the enquiry without authority. The description of the property which is alleged to have been damaged is not mentioned. The FIR was against 18 employees. The other employees were not chargesheeted. There was no punishment inflicted on the other employees. The party no. 2 has made discrimination with the party no. 1. The principle of natural justice were not followed in the enquiry.

3. The party no. 1 and other employees were acquitted of the criminal charges on 12-02-2021 by the Judicial Magistrate First Class, Gondia. Thereafter, the party no. 1 on 22-03-2021 has sent a notice to the party no. 2 for reinstatement and for setting aside the order of dismissal. The party no. 1 has not received any response. Thereafter, the party no. 1 has written a letter dtd. 15-05-2021 to the Assistant Commissioner of Labour, Gondia for initiating conciliation proceeding. There was no outcome of the conciliation proceeding.

4. Thus, the Assistant Commissioner of Labour has informed the party no. 1 vide letter dtd. 06-07-2021 to seek appropriate relief.

The party no. 1 after collecting necessary documents and after seeking legal advise has approached this Court to set aside the order of dismissal dtd. 28-09-2013, reinstatement with continuity of service with full back wages along with consequential benefits.

5. The party no. 2 in the written statement at Exh. C-4 has stated that the party no. 1 was dismissed from service on 28-09-2013. The application was filed on 10-01-2022 after lapse of 8 years and 3 months. The party no. 1 should have approached this Court before a expiry of 3 years from the date of his dismissal. Thus, the application is time barred.

6. The Depot Manager on the basis of incident dtd. 23-10-2012 has lodged a report bearing Crime No. 91/2012 against the party no. 1 and other employees. Thereafter, the Assistant Traffic Superintendent on 21-11-2012 has submitted a report to the Divisional Controller, Bhandara. On the basis of report, a chargesheet No. 6080/1173 dtd. 22-11-2012 was issued to the party no. 1. The party no. 1 was present with his representative namely Shri. Maheshgawali before the Competent Authority. The party no. 1 has cross examined through is representative on 18-06-2013 and 22-07-2013. The party no. 1 was afforded a chance to lead his defence statement. The party no. 1 has not led any defence statement. Thereafter, enquiry was concluded.

7. The Enquiry Officer has followed the principles of natural justice. The enquiry was fair and proper. The findings of the Competent Authority was based on the evidence brought before him. There is no perversity in the findings of the Enquiry Officer. The Competent Authority while proposing the punishment taken into consideration

past record of the party no. 1. The punishment awarded to the party no. 1 was not shockingly disproportionate. The punishment was imposed after giving every opportunity to the party no. 1.

8. In view of these pleadings, it is prayed that the issue no. 1 be answered in the negative, issue no. 2 be answered in the affirmative and issue no. 3 be answered in the negative.

9. On the basis of rival pleadings of parties, I have framed the preliminary issues at Exh. O-2 and after hearing the arguments of both the sides, I have recorded the findings with the reasons as under :

**ISSUES.**

**FINDINGS.**

- |   |                       |
|---|-----------------------|
| 1} Whether this Court has jurisdiction to try and entertain the present reference ? | : In the Affirmative. |
| 2} Whether the enquiry conducted by the Enquiry Officer are fair and proper ?       | : In the Affirmative. |
| 3} Whether the findings recorded by the Enquiry Officer are perverse ?              | : In the Affirmative. |

**: R E A S O N S :**

**AS TO ISSUES NO.(1) :**

10. Heard learned advocate Shri. Nerkar for the complainant and Shri. Nichakawale for the respondent Corporation. Even though the issue no. 1 is titled as jurisdiction to try and entertain the present reference, the said issue is regarding delay caused in filing the present reference. The learned advocate for the party no. 2 has submitted that the party no. 1 was dismissed from service on 28-09-2013. The party

no. 1 has filed this reference on 10-01-2022 after lapse of 8 years and more than 3 months. It is submitted that the party no. 1 was required to file this application within a period of 3 years from the date of his dismissal. Therefore, the application is time barred.

11. It would be pertinent to point out here that the FIR against the party no. 1 and other employees was lodged on 23-10-2012. After a full-fledged criminal trial, the party no. 1 was acquitted vide judgment dtd. 12-02-2021. Thereupon, the party no. 1 has sent demand notice dtd. 22-03-2021 to the party no. 2 for setting aside a dismissal order and for reinstatement in service with continuity of service and back wages. The said demand notice was not considered by the party no. 2. Thereafter, the party no. 1 vide letter dtd. 15-05-2021 requested the Assistant Commissioner of Labour to initiate conciliation proceeding. Accordingly, the Assistant Commissioner of Labour vide letter dtd. 15-06-2021 intimated the party no. 2 to participate in conciliation proceeding. There was no positive outcome in the conciliation proceeding before the Assistant Commissioner of Labour, Gondia. Thereafter, the Assistant Commissioner of Labour has informed the party no. 1 vide his letter dtd. 06-07-2021 regarding no positive outcome in the conciliation proceeding. Thereafter, the party no. 1 has approached this Court.

12. The main allegations against the party no. 1 was regarding the FIR dtd. 23-10-2012. The party no. 1 had no option but to wait the verdict of the criminal Court before seeking relief by way of reference. The party no. 1 upon acquittal has sent a demand notice seeking reinstatement and for setting aside the dismissal order. Therefore, it

can not be said that there was deliberate delay made by the party no. 1 in filing this reference. In view of this issue no. 1 is answered in the affirmative.

**AS TO ISSUES NO.(2) :**

13. The enquiry papers are produced on record. After perusal of entire enquiry papers, it is revealed that, the Competent Authority has given full opportunity of hearing to the party no. 1. It also appears that, the party no. 1 has fully participated in the departmental enquiry. From perusal of the enquiry papers, it is further revealed that the party no. 1 had appointed one representative Shri. Maheshgawali. It also appears that, said representative Shri. Maheshgawali defended the party no. 1 during the enquiry. It also appears that, on every date notices were issued to the party no. 1 about intimating the date of enquiry. The party no. 1 was duly present during the enquiry. Therefore, it reflected that the party no. 2 Corporation has awarded full opportunity to the party no. 1 and followed principles of natural justice while conducting enquiry.

14. From perusal of papers of the departmental enquiry, it does not appear that, the Competent Authority who was holding enquiry has performed its role as a investigation officer, prosecutor or a judge against the party no. 1 for holding him guilty for the charges levelled against him. The questions which were asked to the party no. 1 during enquiry were not such questions asked for collecting evidence against the party no. 1. In view of these observation, it is held that enquiry which was conducted against the party no. 1 was fair and proper. So, issue no. 2 is answered in affirmative.

**AS TO ISSUES NO.(3) :**

15. In order to answer these issues, it would be proper to go through the documents filed by the party no. 2 at Exh. C-8. The findings of the Enquiry Officer are filed at serial no. 22 from page no. 27 to 30. This Court has gone through the findings recorded by the Enquiry Officer. The Enquiry Officer has written findings of the enquiry in Marathi language. The Enquiry Officer has dedicated only one paragraph for holding the party no. 1 guilty and for dismiss him from service. It would be proper to reproduce the said paragraph in verbatim, which runs as under :-

"कसुरदार श्री. प्रितमसिंह एम. चंदेल, वाहक बि.क्र. १२१७, रा.प. गोंदिया आगार यांनी अहवालात नमुद केल्याप्रमाणे दि. १७ व १८.०९.२०१२ रोजी गोंदिया आगारातील कामगारांनी घेतलेल्या सामुहीक रजा घेवून आंदोलन केले होते. त्या संबंधित केलेल्या प्रशासकीय कार्यवाहीत निषेध म्हणून दि. २४.१०.२०१२ रोजी दसरा सणाच्या दिवशी गोंदिया आगारातील कर्मचा-यांनी सामुहीक पी.एच. घेण्याचे ठरविले. त्या अनुषंगाने विभागातील अधिकारी तसेच प्रादेशिक व्यवस्थापक व प्रादेशिक कार्यालयाचे अधिकारी हे दि. २३.१०.२०१२ रोजी गोंदिया आगारात कामगारांना समजविण्यास्तव व मार्गदर्शन करण्यास्तव गेलेले असतांना व आगार व्यवस्थापक यांच्या कार्यालयात चार ते पाच कर्मचारी प्रादेशिक व्यवस्थापक यांच्याकडे बसलेले असतांना दि. १७, १८ व १९.०९.२०१२ च्या अनुषंगाने केलेली कार्यवाही रद्द करावी अशी आग्रही भुमिका घेतल्याने कसुरदार यांनी आगार व्यवस्थापक त्यांच्या कक्षबाहेर निघून लोखंडी रॉड हातात घेवून उभ्या असलेल्या खातेवाहन क्रमांक एम.एच.३६/२०२१, एम.एच.०६/ए.एस.६३५९ व एम.एच.१५/के.-५६८९ या वाहनांची तोडफोड करून खातेवाहनाचे अंदाजे ६०,०००/- रुपयाचे आर्थिक नुकसान झाले व सदर कसुरदार यांनी

विघातक कृत्य करुन उध्दट भाषेत वर्तणुक केली, हया बाबी चौकशीअंती पूर्णपणे सिध्द होत असल्यामुळे वरील संपुर्ण विवेचनावरुन प्रस्तूत प्रकरणी कसुरदार श्री. प्रितमसिंग एम. चंदेल, वाहक, बि.क्र. १२१७, रा.प. गोंदिया आगार यांचेवर अनुसूची "अ" कलम नं. ११, २६ व २८ अन्वये लावण्यात आलेले आरोप हे संपूर्णतः निसंदिग्धपणे सिध्द होत आहेत."

16. After perusal of the above mentioned paragraph in Marathi, it can be seen that the Enquiry Officer has merely stated that the party no. 1 went out of the cabin of Depot Manager, took iron rod in his hand and caused damage to the tune of Rs. 60,000/- to the vehicle Nos. MH-36/2021, MH-06/AS-6359 and MH-15/K-5689. The Enquiry Officer has not mentioned as to how he has jumped to the conclusion that the party no. 1 came out of the cabin of the Depot Manager and caused damage as alleged. It would be pertinent to point out here that as per the FIR there were 18 employees who were involved in the offence. It is nowhere discussed as to how the party no. 1 only was responsible for the offence. As pointed out earlier, there is absolutely nothing in the findings of the Enquiry Officer as to how the party no. 1 was held responsible for the alleged incident. Merely a statement by the Enquiry Officer that the party no. 1 was responsible for the alleged incident would not suffice it to show that the party no. 1 was responsible.

17. The Enquiry Officer in the last paragraph of his findings has mentioned about previous penalties to the party no. 1. The party no. 1 can not be held guilty on the basis of his previous penalties. It appears that there was no application of mind by the Enquiry Officer while coming to the conclusion of holding the party no. 1 as guilty. There is

nothing on record to show that the party no. 2 taken action against the other employees who were allegedly involved in the incident. In view of this, it appears that the findings of the Enquiry Officer are perverse.

18. On the basis of findings recorded on preliminary issue nos. 1 to 3, I proceed to pass the following order :

**ORDER**

1. It is hereby declared that the enquiry conducted by the Enquiry Officer against the party no. 1 is fair, proper and in accordance with the principles of natural justice.
2. It is hereby declared that the findings recorded by the Enquiry Officer are perverse.
3. Reference to proceed futher for remaining issues.

BHANDARA.  
DATE : 08/11/2024.

**(F.K. Shaikh)**  
Judge,  
Labour Court, Bhandara.

**Order Below Exh. U-1**

This Court has given judgment on preliminary issues at Exh. O-3. This Court has held that the findings recorded by the Competent Authority are perverse. Therefore, it is necessary to give an opportunity to the party no. 2 Corporation to lead evidence in order to justify their action against the party no. 1. Therefore, the party no. 2 Corporation is hereby directed to lead evidence, if any, on next date.

BHANDARA.  
DATE : 08/11/2024.

**(F.K. Shaikh)**  
Judge,  
Labour Court, Bhandara.