

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 2025 OF 1992**

The Divisional Controller,  
Maharashtra State Road Transport  
Corporation, Aurangabad.

...Petitioner

versus

Iftekhar Ahmed s/o Mohd. Isaque,  
S.T. Colony, H.No.2-10-57,  
Fazilpura, Aurangabad.

...Respondent

.....

Mrs. R.D. Reddy, Advocate for petitioner  
Mr. Y.R. Marlapalle, Advocate for respondent.

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**CORAM : N.W. SAMBRE, J.**

**DATE : 26th NOVEMBER, 2015**

**ORAL JUDGMENT :**

Heard respective Counsel.

2. The award came to be passed pursuant to Reference under Section 10 and 12 of the Industrial Disputes Act by the Deputy Commissioner of Labour, Aurangabad in relation to dispute that is dealt with by Labour Court, Aurangabad in its award dated 03/12/1991. The petitioner is employer and respondent is employee, who proceeded on leave for pilgrimage to Saudi Arabia (Riyadh) upon sanction of leave from 06/05/1985 to 05/06/1985.

3. Thereafter, without reporting for duty, the respondent-employee sent communication that his leave be extended from

06/06/1985 to 02/07/1985, which has prompted the employer to charge sheet him. During enquiry, it is noticed that respondent-employee remained absent and as such, Enquiry Officer submitted report against the respondent-employee. The employer has ordered dismissal from service, which has prompted filing of Reference.

4. Learned Labour Court, by award dated 02/12/1991 has allowed the Reference and directed the petitioner-employer to reinstate the employee-second party in service with continuity and back wages from 27/03/1986. Hence, this petition.

5. Learned Counsel for the petitioner, while assailing the order, would urge that charge sheet is for the period of absence from 06/06/1986 to 02/07/1985, for which there was no request by respondent employee for grant of leave. According to her, once inquiry in question is not disputed, punishment for absence for 06/06/1985 to 02/07/1985 is just and proper, particularly in the background of fact that the petitioner-institution is required to discharge services in the public interest by operating public transport.

6. While opposing the above referred prayer, learned Counsel for respondent-employee, would urge that once it is noticed that respondent-employee was out of country and his residential

address at Saudi Arabia (Riyadh) was disclosed, it was duty of the petitioner-employer to serve charge sheet on him that address. He would then urge that same was important mitigating factor that is taken into account by the authority while allowing reference. In addition to above, he would urge that even if the respondent-employee was dismissed from service in earlier two rounds for similar reasons, however, same has hardly bearing over the issue, as according to him, what is required to be taken into account is conduct during his employment. The earlier punishment to the respondent having revoked by petitioner employer cannot be taken into account in this case.

7. He would then added that in case, if present petition is dismissed, even though respondent is already stood superannuated from service, still he will be entitled for back wages and continuity as is ordered by award under challenge.

8. Having bestowed my consideration to the submissions made by learned Counsel for the parties, it is required to be noted that the respondent was dismissed from service for alleged misconduct of absence from duty on 27/03/1986 for his absence from 06/06/1985 to 02/07/1985.

9. Though the petitioner-herein has issued no objection certificate in favour of respondent on 15/04/1978 for his pilgrimage to Saudi Arabia (Riyadh), same was only for period from 06/05/1985 to 05/06/1985. Thereafter, it appears that respondent has communicated the petitioner by air mail mentioning his address Saudi Arabia (Riyadh) that his leave be extended for another one month, which request was after expiry of one month, thereafter also respondent repeated the same reason for one more month.

10. Learned Labour Court, while dealing with the claim, has formed opinion that by giving 'no objection' to the respondent for his visit to Saudi Arabia, the petitioner was in knowledge that the respondent was residing at Saudi Arabia (Riyadh). Labour Court then considered same to be proper address of respondent and casted burden on the petitioner for serving charge sheet, notice etc. to the respondent on his address at Saudi Arabia (Riyadh).

11. Same was found to be basis for allowing Reference in favour of respondent.

12. Upon analysis, it is to required to be noted that the petitioner was not duty bound to serve copy of charge sheet on respondent-employee on his address, which is disclosed in his

application for extension of leave as Saudi Arabia (Riyadh). In any case, in my opinion, it is bounden duty of the petitioner-employee to serve notice to respondent on his address mentioned in the service book, which they have already complied with. Apart from above, the approach of learned Labour Court is not proper, particularly having regard to recording of finding as regards availability of address of respondent as that of Saudi Arabia (Riyadh). Vague address that was available as Saudi Arabia (Riyadh) would have been hardly any consequences for service of charge sheet on respondent, that too, foreign country when the respondent was on pilgrimage and sought extension of leave for 60 days in addition to one month, which was sanctioned.

13. In my opinion, the same was formed to be basis for the purpose of allowing Reference, for the reasons stated herein above, is not justifiable and as such, the order cannot stand on scrutiny of law.

14. Apart from defence that is sought to be raised by learned Counsel for respondent that subsequent absence is taken into account for the purpose of imposing penalty on the respondent is concerned, it is required to be noted, the leave that was sanctioned was for period 06/05/1985 to 05/06/1985. It is noticed that the

respondent remained absent from 06/06/1985 to 02/07/1985 that too, without any sanction thereof from the authority. The other aspects which are formed to be basis for imposing penalty that subsequent absence of respondent after above referred period of default will be only for the purpose of Reference, however, once having noted that the petitioner, was duty bound to provide transport service to the public and respondent being one of its employee, remaining absent, that too, without any sanction of leave, in my opinion, deserves to be dealt with in same manner as is done by the Disciplinary Authority.

15. This Court, in the matter of **Kalyan Tryambakrao Indani Vs. The divisional Controller and anr.** decided on 07/10/2015 in Writ Petition No. 10002/2015, has dealt with similar issue and has noted that the change of address was never communicated either in writing or orally by the petitioner employee therein. The Court then based on the conduct of the parties has invoked the principle of abuse of process of law and by relying upon the judgment of the Apex Court in the matter **Kishore Samrite Vs. State of Uttar pradesh** reported in **(2013) 2 SCC 398**, has noted that, employee petitioner therein has not come out with clean hand before the Court. It is noticed in the present matter that, the learned Tribunal, while dealing with the issue of address, has taken note of address mentioned on the envelope in which the petitioner had sent letter.

The said address mentioned on envelope neither can be termed as official communication nor detailed address is entered into communication with the respondent-employee, as address mentioned on the envelope speaks Riyadh, Saudi Arabia. The intention from the said communication of the respondent-employee cannot be termed to be of communicating officially his address of communication.

16. In my opinion, the past conduct of respondent-employee of remaining absent also taken into account while imposing penalty.

17. In view of thereof, in my opinion, the award delivered by Labour Court allowing Reference and granting continuity of service and back wages from 27/03/1986 is not sustainable, as such, needs to be allowed.

18. For the reasons stated herein above, the impugned order dated 03/12/1991 passed by Presiding Officer, Labour Court, Aurangabad in Reference (IDA) No. 87 of 1988 is hereby quashed and set aside and it is declared that the said Reference stands dismissed.

19. The writ petition stands allowed in above terms.
20. Rule is made absolute as above.

**[ N.W. SAMBRE, J. ]**

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