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

WRIT PETITION NO. 3409 OF 1995

Syed Majid Ali Akabarali Hashmi,
Age : Major, Occupation : Service,
R/o 5-1-89, Killa Road, Nanded,
Taluka and District Nanded.

...PETITIONER

-VERSUS-

Maharashtra State Road Transport
Corporation, through it's
Divisional Controller, S.T. Division,
Nanded, District Nanded.

...RESPONDENT

....
Shri Shinde Manoj D., Advocate for the Petitioner.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th August, 2015

Oral Judgment:

1 This petition was admitted on 21.07.1995. No interim relief
was granted to the Petitioner.

2 The Petitioner has questioned the legality and propriety of the
judgment and order dated 31.01.1995 delivered by the Industrial Court,
Jalna in Complaint (ULP) No.43/1994 (old No.7/1988). His complaint

was dismissed.

3 The Petitioner joined the service of the Respondent/ MSRTC on 24.11.1982 as a Traffic Inspector. He initially worked in Mumbai region. On 01.07.1983, he was transferred to the Nanded Division where he joined as a Traffic Inspector.

4 He was charged with having committed misconduct involving misappropriation and negligence. A bus conductor, by name Mr.Punne, had committed misappropriation of an amount of Rs.23,100/-. The Petitioner had supervision, control and direction over 250 bus conductors in the entire Nanded region. In between 01.07.1983 upto 08.08.1983, the Petitioner had issued certain certificates confirming the cash tray and way bill of Mr.Punne and has certified such cash tray and way bill with regard to it's authenticity and correctness. He was, therefore, charged with false certification and involvement with Mr.Punne.

5 It is undisputed that the charge of misappropriation was not proved against the Petitioner, as was levelled in the charge sheet served upon him dated 01.12.1983. Nevertheless, the charge of negligence was proved and for which the Respondent awarded him the punishment of stoppage of three annual increments permanently for three years.

6 The Petitioner challenged the said order of punishment dated 31.01.1984. He preferred the First Appeal before the first Appellate Authority, who rejected the same on 01.07.1985. Similarly, his Second Appeal was also rejected on 02.09.1987.

7 The complaint preferred by the Petitioner under the MRTU & PULP Act, 1971 was dismissed by the Industrial Court by the impugned judgment dated 31.01.1995.

8 The grievance of the Petitioner is that he had a clean and unblemished past service record. The charge proved was only as regards negligence. The charge of misappropriation was not proved in the enquiry.

9 Shri Shinde, learned Advocate for the Petitioner, submits that looking at the clean and unblemished past service record of the Petitioner, the judgment of this Court in the matter of *Bajaj Auto Limited v/s Kalidas Devram Patil* reported in 1999(3) Mh.L.J. 857 would apply to his case.

10 Shri Shinde vehemently submits that the clean past service record of an employee operates as a mitigating factor. The charge proved against him is of a minor and technical character. The gravity and

seriousness of the charge is reduced owing to his clean past service record. The judgment of this Court in the case of Bajaj Auto Limited (supra) would, therefore, squarely cover the Petitioner. It is prayed that the impugned judgment be quashed and set aside and the complaint be allowed.

11 Alternatively, it is prayed that stoppage of three increments permanently may be scaled down by deleting the word “permanently”.

12 I have considered the submissions of Shri Shinde, who has taken me through the petition paper book as well as the reported judgment in the case of Bajaj Auto Limited (supra).

13 Though the Respondent/ MSRTC is not before this Court in its capacity as Petitioner, the issue which I cannot lose sight of is whether, the complaint preferred by the Petitioner before the Industrial Court was itself maintainable. The Petitioner's very first appointment was that of a Traffic Inspector. He was having under his control the Nanded Division of the Respondent/MSRTC. He supervised, controlled and directed over 250 conductors approximately. He was empowered to certify their cash trays and way bills. In this backdrop, I am circumspect as to whether, the complaint was maintainable before the Industrial Court since the

Petitioner may not be a workman under Section 2(s) of the Industrial Disputes Act, 1947.

14 Be that as it may, the issue before me is as regards the proportionality of the punishment. The principles laid down by the Court of Appeal in 1947 in the *Associated Provincial Picture Houses Ltd. v/s Wednesbury Corporation* reported in **(1947) 2 ALL ER 680 : (1948) 1 KB 223** need to be followed. The relevant paragraphs set out in the said judgment in relation to the scope of judicial interference in administrative functions, read as under:-

“The contention of the authority, in my opinion, is based on a misconception of the effect of the Act in granting this discretionary power to local authorities. The courts must always remember, first, that the Act deals, not with a judicial act, but with an executive act; secondly, that the conditions which, under the exercise of that executive act, may be imposed are in terms put within the discretion of the local authority without limitation; and thirdly, that the statute provides no appeal from the decision of the local authority. What, then, is the power of the courts ? The courts can only interfere with an act of an executive authority if it be shown that the authority have contravened the law. It is for those who assert that the local authority have contravened the law to establish that proposition. On the face of it, a condition of this kind is perfectly lawful. It is not to be assumed prima facie that responsible bodies like local authorities will exceed their powers, and the court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for the local authority. It is only concerned with

seeing whether or not the proposition made good. When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the courts in a very limited class of case. It must always be remembered that the court is not a court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law.

What, then, are those principles ? They are perfectly well understood. The exercise of such of a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty-those, of course, stand by themselves-unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word "unreasonable." It is true the discretion must be exercised reasonably. What does that mean ? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He

must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, you may have something so absurd that no sensible person could even dream that it lay within the powers of the authority. WARRINGTON, L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head.

In the present case, it is said by counsel for the plaintiffs that the authority acted unreasonably in imposing this condition. In the first place, it appears to me clear that the matter dealt with by this condition was one which a reasonable authority would be justified in considering when it was making up its mind what conditions should be attached to the grant of its permission. Nobody, at this time of day, can say that the well-being and the physical and moral health of children are not matters which a local authority, in exercising its power, can properly have in mind when those questions are germane to what it has to consider. Counsel for the plaintiffs did not suggest that the authority were directing their minds to a purely extraneous and irrelevant matter, but he based his argument on the word "unreasonable," which he treated as an independent ground for attacking the decision of the authority. Once, however, it is conceded, as it must be conceded, that the subject-matter of this condition was one which it was competent for the authority to consider, there, in my opinion, is an end of the case, because, once that is granted, counsel must go so far as to say that the decision of the authority is wrong because it is unreasonable, and then he is really saying that the ultimate arbiter of what is and is not reasonable is

the court and not the local authority. It is just there, it seems to me, that the whole argument entirely breaks down. It is perfectly clear that the local authority are entrusted by Parliament with the decision on a matter in which the knowledge and experience of the authority can best be trusted to be of value. The subject-matter with which the condition deals is one relevant for its consideration. It has considered it and come to a decision on it. Theoretically it is true to say and in practice it may operate in some cases that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is right, but that would require overwhelming proof, can in this case the facts do not come anywhere near such a thing. Counsel in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to unreasonable in the sense, not that it is what the court considers unreasonable, but that it is what the court considers is a decision that no reasonable body could have come to, which is a different thing altogether. The court may very well have different views from those of a local authority on matter of high public policy of this kind. Some courts might think that no children ought to be admitted on Sundays at all, some courts might think the reverse. All over the country, I have no doubt, on a thing of that sort honest and sincere people hold different views. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority who are put in that position and, provided they act, as they have acted here, within the four corners of their jurisdiction, the court, in my opinion, cannot interfere.”

15 The Apex Court has considered the law on the point of punishment appearing to be shockingly disproportionate in the matter of

Chairman & Managing Director, United Commercial Bank v/s P.C.Kakkar reported in **(2003) 4 SCC 364**, and concluded that the Court should not interfere with the decision of the Employer unless the said decision appeared to be an act of procedural impropriety or was illogical or which shocked the judicial conscience in a sense that the decision could be said to be in defiance of logic or moral standards. It was thus, concluded in paragraph 15 of the said judgment as under:-

“15. *It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or*

quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application.”

16 The charge proved against the Petitioner cannot be said to be of a minor or technical character. He has certified Mr.Punne with regard to his cash tray and way bill. Despite his certification of authenticity, Mr.Punne was apprehended of having misappropriated Rs.23,100/- in between 23.01.1982 to 08.08.1983. This is just one example that was noticed. Many such examples may have gone unnoticed. In the light of these facts, the judgment of this Court in the case of Bajaj Auto Limited (supra), may not be applicable.

17 Considering the above and the fact that the punishment of permanent stoppage of three increments has been inflicted upon the Petitioner, I do not find any reason to cause an interference in the quantum of punishment.

18 It is undisputed that there was no prayer put forth before the Industrial Court seeking setting aside of the domestic enquiry on the ground of being vitiated and/or the findings of the Enquiry Officer be branded as perverse. It is, therefore, a foregone conclusion that the charges levelled upon the Petitioner have been proved.

19 In the light of the above, this Writ Petition is devoid of merit and is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)