

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1713 OF 2014

THE DIVISIONAL CONTROLLER,
MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION, DIVISION-AHMEDNAGAR,
DISTRICT – AHMEDNAGAR

PETITIONER

VERSUS

VISHNU S/O KISAN KALAMKAR,
AGE-56 YEARS, OCCU-NOT KNOWN,
R/O AT POST – AVHANE (BK.)
TAL.SHEGAON, DIST.AHMEDNAGAR

RESPONDENT

Mr.B.S.Deshmukh, Advocate for the petitioner.

Mr.G.G.Suryawanshi, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 14/07/2015

ORAL JUDGMENT :

1. Heard.
2. Rule.
3. Rule made returnable forthwith and heard finally by the consent of the parties.
4. I have heard the learned Advocates for the respective sides for quite some time. With their assistance, I have gone through the petition paper book as well as the complaint filed by the respondent /

employee bearing (ULP) No.15/2008. The admitted factors emerging from the submissions of the learned Advocates and the record are as under :-

- (a) The respondent was a Bus Conductor.
- (b) The respondent has superannuated in 2014.
- (c) For an act of mis-appropriation, the respondent was subjected to a Departmental Enquiry and was finally awarded the punishment of stoppage of two annual increments permanently by order dated 22/09/1995.
- (d) The Appellate Authority, disagreed with the punishment awarded, recalled the order of punishment and issued a show cause notice proposing the punishment of dismissal from service, dated 10/06/1996.
- (e) The respondent preferred Complaint (ULP) No.83/1996 before the Labour Court, which stayed the review show cause notice.
- (f) Finally the stay was vacated and the respondent approached the Industrial Court by filing a revision petition, which was also rejected.
- (g) He preferred Writ Petition No.2816/2004, which was disposed of by permitting the respondent to offer his reply to the review show cause notice.
- (h) By order dated 12/10/2004, after hearing the respondent, the petitioner imposed the punishment of dismissal from service and the services of the respondent ended w.e.f. 13/10/2004.
- (i) The respondent preferred W.P.No.162/2006, which was disposed of with liberty to approach the proper Forum.
- (j) The respondent, therefore, filed Complaint (ULP) No.15/2008 before the Labour Court, Ahmednagar.
- (k) The fairness of the enquiry and the findings of the Enquiry

Officer have not been challenged.

- (l) Proportionality of the punishment was the only issue raised alongwith propriety of issuing a review order thereby proposing the punishment of dismissal from service to the respondent.
- (m) The petitioner could not act upon its review show cause notice because of the various orders of the Court as referred to hereinabove and could issue the order of dismissal only after this Court disposed of the writ petition filed by the respondent and directed him to submit his reply.

5. The impugned judgment of the Labour Court dated 30/01/2010 resulted in allowing Complaint (ULP) No.15/2008 on the ground that the respondent has been punished twice for the same mis-conduct. The petitioner makes a grievance that the said conclusion is perverse and erroneous since the order of the Disciplinary Authority of awarding punishment of stoppage of two increments was legally withdrawn by the Appellate Authority. For the same reason, the judgment of the Industrial Court also deserves to be termed as perverse.

6. Mr.Suryawanshi, learned Advocate appearing on behalf of the respondent submits that his thrust of arguments was on the point of double jeopardy. The respondent did not lead any evidence on the proportionality of the punishment.

7. He has strenuously defended the impugned judgment of the Labour Court and the Industrial Court on the ground that the punishment awarded could not be withdrawn and the Appellate Authority could not proceed to review the quantum of punishment. He, therefore, has prayed for the dismissal of the petition. In the alternative, he prays for an opportunity to the respondent to lead evidence on the aspect of proportionality of the punishment, legality of the power exercised by the Appellate Authority and to prove that the earlier punishment of stoppage of two increments, once imposed, could not have been recalled.

8. I find that the Labour Court has proceeded on a presumption that the punishment of stoppage of two increments was first awarded in 1995 and as such the punishment of dismissal from service dated 10/12/2004 amounts to imposing a second punishment for the same mis-conduct.

9. Apparently, the Labour Court has mis-directed itself. The punishment imposed by the Disciplinary Authority was sought to be reviewed with promptitude. For the said purpose, a show cause notice was issued to the respondent. He questioned the same by filing a Complaint (ULP) No.83/1996 before the Labour Court, which stayed the notice. After the stay was vacated, he preferred a revision petition,

which was eventually dismissed. Thereafter, he preferred Writ Petition No.2816/2004 which was also dismissed. Thereafter, the petitioner heard the respondent and imposed the punishment of dismissal from service.

10. It is, therefore, clear that the order of stoppage of two increments was withdrawn by the petitioner. In these circumstances, aspect of double jeopardy was not attracted.

11. Nevertheless, I find that the above facts have not been appreciated by the Labour Court. So also, the source of power of the Appellate Authority in disagreeing with the conclusions of the Disciplinary Authority and proposing/enhancing the punishment of dismissal, was also not gone into by the Labour Court. So also, the aspect of proportionality of the punishment, in the light of the past service record of the respondent, has not been considered by the Labour Court despite a specific contention based on the default card having been put forth before the Labour Court. These aspects have also not been looked into by the Industrial Court, which dismissed the revision petition of the petitioner.

12. In the light of the above, this petition is partly allowed. The impugned judgment and order of the Labour Court dated 30/01/2010 in

Complaint (ULP) No.15/2008 is quashed and set aside. For the same reasons, the judgment of the Industrial Court dated 19/10/2013, delivered in Revision (ULP) No.28/2010 is quashed and set aside. The said revision stands disposed of since Complaint (ULP) No.15/2008 is being remitted back to the Labour Court for fresh adjudication.

13. The litigating sides shall be at liberty to lead additional oral and documentary evidence in support of their contentions pertaining to the proportionality of the punishment, source of power of the Appellate Authority and its legality in disagreeing with the punishment imposed by the Disciplinary Authority and awarding the punishment of dismissal from service.

14. The litigating sides shall appear before the Labour Court, Ahmednagar on 07/08/2015 and the learned Judge shall endeavour to decide the said complaint as expeditiously as possible, and preferably on or before 29/02/2016.

15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)