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

**WRIT PETITION NO.3619 OF 2002
WITH
CIVIL APPLICATION NO.813 OF 2015
IN
WRIT PETITION NO.3619 OF 2002**

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

..Petitioner

-Versus-

Pradeepkumar Sudhakar Kodilkar.

..Respondent

.....
Mr.Manoj Shinde u/f Mr.M.K.Goyanka, Advocates for the Petitioner.
Mr.R.D.Bhalerao, Advocate for the Respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th February, 2015

Per Court:

1 By consent of the parties, the Writ Petition itself is taken up
for final hearing along with the Civil Application.

2 I have heard the learned Advocates appearing for the
respective sides for quite sometime.

3 The undisputed aspects of this case are as follows:-

(a) The Respondent/ Employee was dismissed from service on

04.04.1988 for proved misconducts.

- (b) The Default Card indicates previous misconducts for which the Respondent/ Conductor has been punished.
- (c) By Part-I Award delivered on 25.02.2001 in Reference IDA No.315/1994 preferred by the Respondent/ Employee, the domestic inquiry has been upheld as being legal, fair, proper and in consonance to the principles of natural justice.
- (d) In fact the findings of the Inquiry Officer have not been called in question and as such, there was no issue cast to deal with the sufficiency of evidence and the conclusions drawn by the Inquiry Officer.
- (e) Despite the Part-I Award dated 25.02.2001 having not been called in question by the Respondent/ Employee, the Labour Court while delivering it's final judgment and award (Part-II) dated 23.01.2002 has gone into the sufficiency of evidence with regard to the charges proved against the Respondent in paragraphs 11, 12, 13 and 14 of the impugned judgment.
- (f) Finally in paragraph 15 of the impugned judgment, the Labour Court has come to a conclusion that the charge levelled upon the Respondent/ Employee was only as regards suspicion that was expressed in the charge sheet and based on such conclusion, the Labour Court has held that the

punishment of dismissal awarded to the Respondent/ Conductor was shockingly disproportionate.

- (g) Reinstatement with continuity of service and 25% back-wages with effect from 04.04.1988 has been granted by the Labour Court vide the impugned judgment and award.

4 The learned Advocate appearing for the Petitioner/ MSRTC has assailed the impugned judgment on the ground that once the Part-I Award was delivered and not challenged and in the face of no challenge to the findings/ conclusions of the Inquiry Officer, the Labour Court ought not to have entered into the aspect as to whether, the charges levelled upon the Respondent/ Employee were proved or not.

5 Mr.Bhalerao, learned Advocate appearing for the Respondent/ Employee has vehemently supported the impugned judgment. The contention is that when the Labour Court found that the charge of misappropriation levelled against the Respondent/ Employee was merely an outcome of suspicion, the Labour Court has rightly concluded that mere suspicion is not enough to prove the charge. Mr.Bhalerao, therefore, submits that the burden of proving the charges is not discharged by the first party and therefore, the order of reinstatement with continuity and 25% back-wages was rightly passed. Mr.Bhalerao further submits that the

Respondent has been deprived of 75% of the back-wages which is sufficient punishment awarded to him.

6 Mr.Bhalerao then submits that the Petitioner/ MSRTC has reinstated the Respondent/ Employee in service and he has superannuated on 30.11.2014. Consequent to his superannuation, the Petitioner/ MSRTC has not paid his gratuity, pensionary benefits as well as retiral benefits only on account of pendency of this Writ Petition.

7 I have considered the submissions of the learned Advocates appearing for the respective parties. The whole issue turns upon, whether, the Labour Court was justified in interfering with the order of punishment on the ground that the charges proved against the Respondent/ Employee could not be said to have been proved.

8 It is admitted that the fairness of the findings of the Inquiry Officer were not questioned in the Reference proceedings. It is also admitted that an issue to the extent of fairness of the findings was also not framed. It also emerges from the record that by the Part-I Award dated 25.02.2001, the inquiry was upheld.

9 In the light of crystallized law which has been considered by

this Court while delivering a judgment in the case of *MSRTC v/s Syed Saheblal Syed Nijam* reported in **2014 (4) Mh.L.J. 687**, it was not open for the Labour Court to go into the sufficiency of evidence and to conclude that the charges are not proved, in the facts and circumstances of this case.

10 In the light of the above, the Labour Court could not have come to a conclusion that the charges are not proved against the Respondent/ Employee and that there was only a mere suspicion.

11 The Division Bench of this Court in the case of *P.R.Shele vs. Union of India and others* reported in **2008 (2) Mh.L.J. 33**, dealing with the issue of misappropriation has concluded that the quantum of misappropriation is not a matter of consideration. The amount is not material. It was held in paragraphs 14, 15 and 16 as follows:-

“14. That takes us to the last submission of learned counsel for the petitioner as regards the alleged disproportionate punishment. In this connection our attention is drawn by Mr. Suresh Kumar, learned counsel appearing for the respondent, to the judgment of the Supreme Court in *Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane*, (2005) 3 SCC 254 where the employee had misappropriated the funds of the appellant Corporation. The employee was removed from service. The High Court directed reinstatement with full back wages and continuity of service. The Supreme Court observed that while dealing with the

question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. The Supreme Court further observed that when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal. The Supreme Court restored the dismissal order passed by the Disciplinary Authority.

15. We may also refer to another judgment of the Supreme Court in *Managing Director, North-East Karnataka Road Transport Corpn. v. K. Murti*, (2006) 12 SCC 570. The relevant paragraph of the judgment may be quoted:-

*"The learned counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this court, one in *Regional Manager, Rajasthan SRTC v. Ghanshyam Sharma* which was also a case of bus conductor carrying passengers without issuing tickets. This court, in the above case, held that carrying the passengers without tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. This court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgment in *Karnataka SRTC v. B. S. Hullikatti*. In the said judgment, this Court has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a rate less than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed that in cases like the present, orders of dismissal*

should not be set aside. The learned counsel for the appellant also cited *Divisional Controller, N.E.K.R.T.C. v. H.Amaresh*. In this case, this Court was considering the case of misappropriation of a small amount of State Road Transport Corporation's fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the Corporation. This Court also held that punishment of dismissal from service awarded by the disciplinary authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any employer unless there exists a statutory provision in this behalf. This Court also observed that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved."

16. In this case the Divisional Authority, the Appellate Authority as well as the Revisional Authority have held the petitioner guilty. It is observed that the special cancellations were made by the terminal manned by the petitioner. The privilege of special cancellation can only be accessed, if the appropriate user ID and password are entered. The password being confidential is known to the concerned Enquiry Reservation Supervisor who enters his User ID and password. It is observed that the concerned Enquiry Reservation Officer at the relevant time was the petitioner. Conduct of the petitioner is despicable. It shows dishonesty. As said by the Supreme Court, the amount involved is immaterial. It is the conduct and its effect which needs to be seen. If the respondents feel that such a person should not be allowed to work in railways which is a service essentially meant for general public their action of removing him from service cannot be faulted."

12 Similarly, the Apex Court in the case of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara Sangha* reported in **2000(7) SCC 517 : AIR 2000 SC 3129**, has also concluded that the amount of misappropriation, be it small or large, is not germane. The charge of misappropriation deserves to be met with an order of dismissal.

13 Despite the law as is laid down, the peculiar aspect of this case is that the Respondent/ Employee has already been reinstated and has subsequently superannuated. I, therefore, do not find that the Respondent/ Employee be deprived of his gratuity and pensionary benefits, only in the backdrop of these facts. It is in these peculiar circumstances that the order of the back wages to the extent of 25% as granted by the Labour Court deserves to be quashed and set aside.

14 In the light of the above, this Writ Petition is partly allowed. Since the Respondent/ Employee has already superannuated, I am not interfering with the judgment and award granting reinstatement with continuity, which otherwise is rendered unsustainable in law. I, therefore, set aside the impugned judgment and award to the extent of granting 25% back-wages to the Respondent/ Employee. Rule is, accordingly, made

partly absolute.

15 In view of this Writ Petition having been partly allowed, Civil Application No.813/2015 is also disposed of.

(RAVINDRA V. GHUGE, J.)