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

WRIT PETITION NO. 1642 OF 2012

Maharashtra State Road Transport
Corporation, Osmanabad Depot,
Osmanabad.
Through it's Depot Manager.

...PETITIONER

-VERSUS-

Baburao Dadarao Yedake,
Age : 47 years, Occ : Nil,
R/o Gaosud, Tq. & Dist.Osmanabad.

...RESPONDENT

WITH
CIVIL APPLICATION NO.15467/2013
IN WP/1642/2012
Baburao Dadarao Yedake v/s MSRTC

...

Mr.D.S.Bagul and Mr.R.N.Jain, Advocate for the Petitioner/ Employer.

Mr.Ramesh V. Naiknavare, Advocate for the Respondent/ Employee.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th August, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner/ Employer is aggrieved by the judgment and

order dated 06.05.2010 delivered by the Labour Court in Complaint (ULP) No.14/2007 thereby, partly allowing the complaint. The Petitioner has also assailed the judgment of the Industrial Court dated 27.09.2011 delivered in Revision (ULP) No.31/2010 by which the revision petition filed by the Petitioner has been dismissed.

3 The Petitioner submits that the impugned judgment of the Labour Court is purely an outcome of misplaced sympathy having been shown towards the Respondent/Employee. There are 36 punishments undergone by the Employee as is evident from the Default Card placed on record. Most of these misconducts pertain to misappropriations committed by the Employee, who was a Bus Conductor in the service of the Petitioner/ Corporation. Without arriving at a conclusion that the punishment awarded is shockingly disproportionate and shocks the judicial conscience of the Court, the Labour Court has granted reinstatement with continuity of service and full back-wages to the Respondent/ Employee.

4 On 08.06.2006, the Respondent/ Employee did not deposit the cash amount of Rs.7280/- and left the workplace. He deposited the said amount on 08.10.2006. Charge Sheet No.526/2006 was served upon him. The Enquiry Officer found him guilty of the charge.

5 On 06.02.2007 again the Employee committed a similar misconduct of not depositing the cash collected as fare for tickets and left his place. The Cashier noticed the same and informed the higher authorities. Thereafter, the Respondent/ Employee deposited the cash.

6 The enquiries were, therefore, initiated with regard to both the charges. Finally, the Respondent/ Employee was issued the second show cause notice dated 16.04.2007 proposing the punishment of dismissal. He approached the Labour Court by filing Complaint (ULP) No.14/2007 and challenged the proposed punishment with reference to Enquiry Case Nos.526/2006 and 53/2007. After hearing both the sides, the Labour Court vacated the interim protection granted. The Employee was, therefore, dismissed from service vide order dated 07.09.2007.

7 Shri Bagul, learned Advocate for the Petitioner/ Corporation, submits that with regard to some other similar misconducts proved, the Employee had filed few cases before the Labour Court which were pending.

8 He further points out that by order dated 21.12.2009, the preliminary issues were decided and it was held that Enquiry No.53/2007

is vitiated and Enquiry No.526/2006 is legal and proper. However, the findings of the Enquiry Officer in both the enquiries were branded as perverse. The Petitioner, therefore, conducted a de-novo enquiry.

9 Shri Bagul further submits that by the impugned judgment dated 06.05.2010, the complaint was partly allowed on the basis of the de-novo enquiry conducted. Enquiry No.53/2007 was held illegal on the basis of the findings of the Enquiry Officer being vitiated and therefore, the Labour Court set aside the show cause notice of dismissal. Enquiry No.526/2006 was interfered with and the show cause notice of dismissal was set aside and the punishment of stoppage of two consecutive annual increments permanently was imposed by the Labour Court.

10 The Industrial Court failed to see the error committed by the Labour Court and dismissed the revision petition by the impugned judgment dated 27.09.2011.

11 Shri Bagul, therefore, submits that despite the de-novo enquiry, the Labour Court relied upon its conclusions drawn on the basis of the evidence recorded in the enquiries without considering the evidence recorded in the de-novo enquiry. He submits that this is a clear perversity in the judgment of the Labour Court because once the enquiry was set

aside, the Labour Court was not required to be influenced by its observations in Part-I judgment dated 21.12.2009. He, therefore, submits that the impugned judgments of the Labour Court and the Industrial Court deserve to be quashed and set aside.

12 Shri Naiknavare, learned Advocate appearing for the Respondent/ Employee, has strenuously canvassed that both the impugned judgments are fair and proper. Neither of them are perverse. Both are sustainable. This petition, therefore, be dismissed.

13 Shri Naiknavare, however, reiterates his statement made on instructions that as tenure of about 03 to 04 years is left and the Employee would superannuate in a short time, he would prefer to tender a resignation letter and opt for Voluntary Retirement so as to ensure that his retirement benefits are rescued. He does not claim any other monetary benefits and he only desires to save his retiral benefits for his old age. The Petitioner/ Corporation has shown its disinclination to the said offer. Yet, the Employee submits that even today the offer is open and the Employer may take a decision.

14 Notwithstanding the above, Shri Naiknavare has vehemently submitted that minor misconduct of negligence is held to be proved

against the Employee. The punishment of permanent stoppage of two consecutive annual increments is a major punishment which he has accepted. The charges of misappropriation could not be proved by the Petitioner/ Corporation and hence, the Labour Court has rightly modified the quantum of punishment. He, therefore, submits that the Industrial Court having correctly appreciated the conclusions of the Labour Court, has dismissed the revision petition.

15 I have considered the submissions of the learned Advocates as have been recorded herein above. There is no dispute that the Petitioner/ Corporation led evidence before the Labour Court and tried to establish various acts of misconduct. Surprisingly enough, though the Labour Court has discussed the entire evidence recorded before the Court and has also considered the Default Cart, it has concluded in paragraph 8 of the impugned judgment that *“After hearing both sides and taking into consideration the evidence of both sides and documents filed on record and also taking into consideration the arguments of respective counsel for the both sides, I have held in my findings to the preliminary issues for the detail reasons mentioned in the order dated 21.12.2009 that Enquiry No.53/2007 is illegal and Enquiry No.526/2006 is legal. I have also held that the findings of both the enquiries are perverse as the punishment of shockingly*

disproportionate and long tenure service of the complainant is not taken into consideration.”

16 Further, the Labour Court in the same paragraph 8 has concluded as under:-

“8. However, thereafter there was no communication to the complainant regarding further commencement of the enquiry and suddenly findings are given by the Enquiry Officer. The witness examined by the respondent after giving findings to the preliminary issues as above only proves the fact that the complainant has deposited cash late and also the respondent tried to establish the fact on record that he is guilty of series of such similar misconducts for which he is punished in past with the help of default cards filed on record. I have carefully gone through the default card filed on record and on perusal of default card, it is seen that the complainant is not punished for similar misconduct of depositing cash late on all the occasions. Sometimes he is punished for remaining absent, sometimes he is punished for having depositing cash less by meagre amount of Rs.4/- or some other smaller amount but later on he has either deposited the amount or the same is recovered from his salary as argued by Ld. Counsel for the complainant, therefore, depositing cash late with the corporation is the technical and minor misconduct and technical and minor lapse in the duty and hence, taking into consideration the long tenure of the complainant punishment of dismissal is not proper for the complainant. The detail reasons have already been given by me for the same in my findings to the preliminary issues and therefore, complainant deserves for relief of reinstatement in enquiry No.53/2007 as the enquiry is held to be illegal and therefore, findings of the Enquiry Officer are vitiated. As regards the enquiry No.526/2006 the minor and

technical lapse of duty which may also be called as a minor and technical misconduct is proved. The punishment of dismissal is shockingly disproportionate and therefore, complainant deserves for some minor punishment in the said enquiry against him and hence, I have answered issue No.1 and 2 accordingly and I proceed to pass following order.....”

17 After arriving at the above mentioned unusual conclusion, the Labour Court has directed the Petitioner to reinstate the Respondent in service with continuity and back-wages. I cannot concur with the conclusions of the Labour Court as are reproduced herein above.

18 In the matter of Hanumant Pandurang Indalkar vs Tata Engineering And Locomotive reported in **2006 (2) MhLJ 583**, this Court has concluded that once the enquiry is set aside for any reason whatsoever including for the reason of perversity in the findings of the Enquiry Officer, the evidence recorded in the enquiry is to be discarded and is not to be referred to since the enquiry stands vitiated and watered down. If a de-novo enquiry is conducted by the Employer before the Labour Court, the Court shall base it's conclusions only on the basis of the de-novo enquiry conducted before it in the Court.

19 The Industrial Court was expected to see this perversity and remit the matter back to the Labour Court. Instead, the Industrial Court has merely referred to the various stages and evidence in the enquiry and concluded that the judgment of the Labour Court is sustainable. The Industrial Court has also referred to the findings of the Enquiry Officer and concluded that because the Employee was suffering from mental tension, he has tried to undo his act by depositing the cash thereafter. Such conclusions were not expected since the Industrial Court was dealing with the aspect as to whether, the judgment of the Labour Court could be termed as perverse and erroneous.

20 In the light of the above, the judgment of the Labour Court dated 06.05.2010 in Complaint (ULP) No.14/2007 is quashed and set aside. So also, the judgment of the Industrial Court dated 27.09.2011 in Revision (ULP) No.31/2010 is set aside. The Revision stands disposed of since I am remitting Complaint (ULP) No.14/2007 to the Labour Court at Latur.

21 The Labour Court, Latur shall hear both the litigating sides only on the evidence recorded before it, pursuant to Part-I order dated 21.12.2009. The Labour Court shall not refer to the earlier findings of the Enquiry Officer and shall not be influenced by it's observations set out in

Part-I order dated 21.12.2009. It shall decide the complaint purely on the basis of the evidence recorded before it and shall decide the complaint in accordance with law.

22 Both the litigating sides pray for a particular date for appearance before the Labour Court. As such, the litigating sides shall appear before the Labour Court on 24.08.2015. The Labour Court shall not issue formal notices of hearing to the parties. It shall endeavour to decide the complaint as expeditiously as possible and preferably on or before 31.12.2015.

23 Needless to state, the Petitioner shall not be precluded from considering the proposal put forth by the Respondent/ Employee for tendering a resignation in order to accept the VRS.

24 The Writ Petition is partly allowed and Rule is made partly absolute in the above terms.

25 The Civil Application does not survive and the same is disposed of.

(RAVINDRA V. GHUGE, J.)