

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3268 OF 2014

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Jalgaon Division, Jalgaon.

..Petitioner

Versus

Jorsingh Govind Vanjari,
Age major,
R/o at Vasantwadi, Po. Bole,
Tq. Parola, Dist. Jalgaon.

..Respondent

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Advocate for Petitioner : Shri Shinde Manoj h/f Shri Goyanka M.K.
Advocate for Respondent : Shri Patil Vijay Y.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 08, 2015
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ORAL JUDGMENT :-

1. Heard the learned Advocates at length.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The respondent / employee retired on 18.3.2005 on superannuation. The impugned judgment and award of the Labour Court in Reference (IDA) No.47 of 2007 is dated 20.6.2013.

5. The petitioner has canvassed a host of factors. He submits that the respondent / Bus Conductor was charged with having committed misappropriation. His misdeed was discovered on 6.9.2001 when the bus proceeding from Chalisgaon to Patangaon was inspected by the flying squad at Balziri phata. Six passengers were found travelling ticketless and the cash box indicated that the fare of the tickets were collected by the respondent

6. He was charge sheeted and after conducting an enquiry, he was dismissed from service with effect from 26.8.2002.

7. Reference proceedings initiated by the respondent for questioning his dismissal from service resulted in the impugned award by which the order of dismissal was set aside and the respondent was granted 50% backwages from 26.8.2002 till 31.5.2005, which was the date of attaining superannuation.

8. The petitioner indicates that the past record of the respondent is highly blemished. He was earlier dismissed from service on two occasions for similar misconducts committed on 30.9.1979 and 12.2.1986.

9. He submits that the Labour Court has decided all the issues in one stroke thereby concluding that the findings of the enquiry officer are perverse and at the same time has partly allowed the Reference. He, therefore, prays for setting aside the impugned award.

10. Shri Patil, learned Advocate for the respondent / employee has relied upon his affidavit-in-reply and the earlier judgments of the Labour Court, dated 17.3.1993 and the Industrial Court dated 28.6.1993.

11. He further submits that the respondent is a poor person, has retired on 31.5.2005, is in need of money and therefore, no interference is called for in this petition.

12. It is apparent that the Labour Court has erred in deciding the preliminary issues concerning the fairness of the enquiry and the findings of the enquiry officer along with all the issues while delivering the impugned judgment. The procedure laid down in law, which has been considered by this Court and followed in the case of Maharashtra State Roadways Transport Corporation, Beed Vs. Syed Saheblal Syed Nijam [2014 III CLR 547], has not been followed by the Labour Court. It could not have decided the preliminary issues along with all the rest of the issues in one stroke while delivering the impugned award. For this reason alone, the impugned award is rendered unsustainable

13. However, I do not find that any purpose would be served by remanding the reference proceedings to the Labour Court for a decision in the light of the ratio laid down by this Court in the case of Maharashtra Cotton Growers' Marketing Federation Limited and another Vs. Vasant Ambadas Deshpande [2014(3) Mh.L.J.339], and the MSRTC, Beed case (supra), since the respondent has already superannuated. His PF

accumulations totalling Rs.1,17,621/- have already been paid to him on 24.12.2002. The 50% of the backwages as were granted by the Labour Court in the impugned award have not been paid. The petitioner submits that the respondent is not entitled for gratuity as the charge of mis-appropriation has been proved against him which involves moral turpitude

14. In these peculiar facts, the issue is as to whether the matter can be remitted back to the Labour Court for fresh a decision by following the procedure laid down in law. For the said purpose, the respondent who is about 70 years today, will have to prosecute his reference proceeding. Under fortuitous circumstances, the findings of the enquiry officer have been held to be perverse by the Labour Court, thereby setting aside the enquiry.

15. The petitioner after going through the Written Statement submits that the right to conduct a *de novo* enquiry, which is required to be reserved in the Written Statement in the light of the judgment of the Apex court (Five Judges) in the case of KSRTC Vs. Laxmidevamma [2001 II CLR 640], has not been reserved by the petitioner. As such, a *de novo* enquiry is not possible, even if the domestic enquiry is set aside by the Labour Court.

16. In the light of the above and with due circumspection, I am partly allowing this petition by depriving the respondent / employee of gratuity. However, he shall be entitled to the 50% backwages as have been granted by the Labour Court, which is an amount of Rs.1,13,276/- approximately as

stated by the petitioner.

17. This Writ Petition is, therefore, partly allowed. The impugned award is modified by setting aside clause 1 and 2 of the order and by granting the 50% of the backwages as awarded by the Labour Court from 26.8.2002 till 31.5.2005 as quantified compensation. The respondent shall be deprived of gratuity amount since the charge proved against him in the enquiry involves moral turpitude.

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

(RAVINDRA V. GHUGE, J.)

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