

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3319 OF 1998

Bhagwan Bhila Patil,
Age 42 years, Occ.
R/o Mamalde, Tq. Chopda,
District Jalgaon.

..Petitioner

Versus

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

..Respondent

...
Advocate for Petitioner : Shri G.V.Wani
Advocate for Respondents : Shri M.K.Goyanka
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CORAM : RAVINDRA V. GHUGE, J.
Dated : February 27, 2015

ORAL JUDGMENT :-

1. This petition was admitted after issuing notice only on the point of punishment by orders dated 5.8.1998 and 15.3.1999. While admitting the Writ Petition, interim relief was refused.

2. I have heard the learned Advocates for the respective sides at length.

3. The petitioner was appointed as a Bus-Conductor with the respondent - MSRTC on 1.3.1977. He was dismissed from employment on 29.6.1981 for proved misconduct of having not issued four tickets at the rate of Rs.1.50 per ticket to the four passengers, who had travelled ticket-less. Order of dismissal was issued after conducting a departmental enquiry under the

Discipline and Appeal Rules of the MSRTC.

4. Upon raising an industrial dispute under Section 2A of the Industrial Disputes Act, the appropriate Government referred the matter to the Labour Court at Jalgaon and was registered as Reference (IDA) No. 30 of 1980.

5. Two issues were framed as regards the fairness of the enquiry and the findings of the enquiry officer. By Part I Award, dated 23.6.1994, the Labour Court concluded that the enquiry was conducted in a fair manner and the findings of the enquiry officer are sustainable. It is not in dispute that the Part I Award has not been challenged by the petitioner before any Court. As such, the said conclusion in the Part I Award has attained finality.

6. In the light of the above, the only issue that was open for consideration by the Labour Court was as regards the proportionality of the punishment. Shri Wani has vehemently contended that the charge of misappropriation was only to the extent of Rs.6/- and as such, the punishment of dismissal from service was shockingly disproportionate to the gravity and seriousness of the misconduct proved against the petitioner.

7. He has relied upon the judgment of the Apex court in the case of Palghat BPL & PSP Thozhiali Union Vs. BPL India Ltd. and another [(1995) 6 SCC 237]. He further submits that the original petitioner has passed away and his legal heirs are on record. He, therefore, prays for compensation in

view of a disproportionate punishment having been imposed upon the deceased petitioner.

8. Shri Goyanka, learned Advocate for the respondent submits that an amount of Rs.6/- may appear to be a paltry amount as on date. However, on the date of the commission of offence, the petitioner's daily wage was at the rate of Rs.9.10 Ps. He further submits that the petitioner had put in hardly four years of service and as such, no sympathy needs to be shown. He further submits that in the case of misappropriation, the quantum of money misappropriated is never an issue, which deserves any consideration.

9. The Honourable Supreme Court in the case of Palghat (supra) has considered the fact situation, wherein the concerned employee had assaulted an officer and was reinstated. According to Shri Wani, the charge of assaulting is much more grave and serious in comparison to a charge of misappropriating Rs.6/-.

10. In the Palghat case (supra), on account of the backdrop in which the employee had felt cheated by the employer, was held to be a ground, which had provoked the employee to pelt a stone at a passing vehicle of the company. The said stone penetrated the glass pane and had hit an officer. The Apex Court, therefore, concluded that it was not an intention of the employee to injure an officer.

11. This Court in the case of Bajaj Auto Limited Vs. Kalidas Devram Patil

[1999 (3) Mh.L.J. 857], has come to a conclusion that the gravity and seriousness of a misconduct would stand mitigated if the employee had put in long unblemished service. It was thus held that an employment of about three years would not amount to a mitigating factors despite it being unblemished on account of the fact that it is only in a long unblemished service that the attitude and character of an employee is established.

12. The view taken by the Single Judge was upheld by the learned Division Bench of this Court (Coram : R.G.Deshpande & B.B.Vagyani, JJ.), on 20.10.2000, in LPA No. 67 of 2000 [Kalidas Devram Patil Vs. Bajaj Auto Limited]. As such, in my view, the petitioner having put in only four years of service cannot be said to be a mitigating factor so as to reduce the seriousness and gravity of misconduct proved against the petitioner.

13. The learned Division Bench of this Court in the case of P.R.Shele Vs. Union of India and others [2008 (2) Mah.L.J. 33], by placing reliance upon the judgment of the Apex Court in the case of Managing Director, North East Karnataka Road Transport Corporation Vs. K. Murti [(2006) 12 SCC 570], has come to a conclusion that an amount of misappropriation is not an aspect that deserves any consideration. It only indicates the character and attitude of an employee. It was, therefore, held that the question of quantum of punishment ought not to be guided by the quantum of money misappropriated. The misappropriation itself becomes a primary factor.

14. Paragraph Nos.14 and 15 of the P.R.Shele's judgment read thus:-

"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* (2004) III LLJ 1074 SC 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 Corporation v. K. Murti*. 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 backwages. 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."

15. The Apex Court in the case of Janatha Bazar (South Kanara) Vs. The Secretary, Sahakari [AIR 2000 SC 3129], has also laid down the law that the amount misappropriated is not germane while deciding the quantum of punishment. A case of misappropriation needs to be met with the punishment of dismissal from service.

16. The petitioner in the instant case had admitted before the Labour Court in his evidence below Exhibit U/11 that he had admitted his guilt when his spot statement was recorded. Besides the said statement, the Part I Award has attained finality.

17. In the light of the above, I do not find any merit in this petition and the same is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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