

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4302 OF 2005

1. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Division Osmanabad,
Dist.Osmanabad,

PETITIONERS

2. The Depot Manager,
Maharashtra State Road Transport
Corporation, Depot-Bhoom,
Dist.Osmanabad.

VERSUS

Mr.Shivaji S/o Darappa More,
Age-56 years, Occu- –
R/o Hipparga Rava, Taluka – Tuljapur,
Dist.Osmanabad

RESPONDENT

Mr.A.B.Dhonbade, Advocate for the petitioners.
Ms.Vaishali R. Deshpande h/f Mr.A.S.Bayas, Advocate for the
respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/08/2015

ORAL JUDGMENT :

1. This petition was admitted by order dated 27/06/2005. By order dated 26/08/2005, the payment of back wages was stayed by this Court without interfering with the order of reinstatement.

2. Contention of the petitioners is that the judgment of the

Labour Court dated 26/06/2001 in Complaint (ULP) No.184/1996 as well as the judgment of the Industrial Court dated 19/01/2005 in Revision (ULP) No.45/2001 (New No.110/2004), are unsustainable.

3. The petitioners submit that the respondent was engaged in service in 1975 as a "Bus Conductor". He was regularized in service on 01/03/1977. From 11/01/1995 till 10/03/1995, for a period of about 60 days, he remained unauthorizedly absent. He was served with a charge sheet and after conducting a departmental enquiry, he was terminated from employment on 11/09/1995, after considering his past service record.

4. The respondent preferred Complaint (ULP) No.184/1996 before the Labour Court. It is undisputed that the enquiry was upheld and the findings of the Enquiry Officer, were not interfered into by concluding that the evidence recorded in the enquiry was sufficient to prove the charges. Nevertheless, by the impugned judgment and order dated 26/06/2001, the respondent was granted reinstatement with continuity and back wages from 01/09/1997 till reinstatement. The Labour Court proposed the punishment of bringing down the basic wages of the respondent by four stages in lieu of the punishment of dismissal.

5. The petitioners preferred Revision (ULP) No.110/2004 before the Industrial Court, which dismissed the revision petition by its judgment dated 19/01/2005.

6. Mr.Dhongade, learned Advocate submits that the respondent had committed 16 mis-conducts in between 09/08/1986 and 31/05/1995 for which he was awarded minor punishments. He has not challenged any of these punishments.

7. Mr.Dhongade further submits that once the enquiry was upheld and the findings of the Enquiry Officer are held to be proper, the only issue that remains to be adjudicated upon by the Labour Court is as regards the proportionality of the punishment. He submits that though the mis-conduct at issue of remaining unauthorizedly absent for 60 days may not appear to be a serious mis-conduct, the past service record indicating 16 mis conducts, would operate as an aggravating factor thereby sustaining the punishment.

8. He, therefore, submits that the impugned judgments are unsustainable and perverse and deserve to be interfered with. He

submits that though the Industrial Court has recorded in paragraph 8 of the impugned judgment that back wages have been paid to the respondent pursuant to his reinstatement on 26/06/2001, he is circumspect as to whether the same has actually being paid or not since this Court has stayed the direction of payment of back wages by its order dated 26/08/2005.

9. Mr.Bayas, learned Advocate with Mrs.Deshpande, learned Advocate has strenuously defended the impugned judgments. It is contended that over a period of more than 20 years of service, the respondent has maintained a clean record till 09/08/1986. He initially suffered Jaundice and later on some other ailments affected his health, owing to which he could not remain present.

10. The impugned judgments are strongly supported by the respondent contending that the unauthorized absence of 60 days needs to be overlooked since it is not a long absence so as to amount to a major mis conduct. It is further submitted that the punishment of dismissal from service is disproportionate and has awarded the punishment of civil death to the petitioner.

11. It is, therefore, submitted that though the enquiry has been

upheld and the findings of the Enquiry Officer are sustained, the Labour Court has rightly interfered with the punishment and suggested a lesser punishment by directing the petitioner to reinstate the respondent. For the same reasons, the judgment of the Industrial Court is appropriate and calls for no interference.

12. The respondent has relied upon the judgment of the Apex Court in the case of Chairman cum Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhary and others, AIR 2010 SC 75. Paragraph No.26 is cited as being the ratio of the said judgment. It is, therefore, prayed that this petition be dismissed with costs.

13. I have considered the submissions of the learned Advocates. I have gone through the record available.

14. It is undisputed that the enquiry has been upheld and the findings of the Enquiry Officer are sustained. It is trite law that the issue of proportionality can alone be gone into by the Labour Court once the enquiry is upheld and the findings are sustained. It is also trite law that unless the punishment awarded appears to be shockingly disproportionate, the Courts should normally refrain from

interfering with the quantum of punishment.

15. The scope of judicial interference in decisions taken by the Authorities or the employer has been well considered in the case of Associated Provincial Picture Vs. Wednesbury Corporation (1947) 2 ALL ER 680 : (1948) 1 KB 223. The relevant two paragraphs read as under :-

“The contention of the authority, in my opinion, is based on a misconception of the effect of the Act in granting this discretionary power to local authorities. The courts must always remember, first, that the Act deals, not with a judicial act, but with an executive act; secondly, that the conditions which, under the exercise of that executive act, may be imposed are in terms put within the discretion of the local authority without limitation; and thirdly, that the statute provides no appeal from the decision of the local authority. What, then, is the power of the courts ? The courts can only interfere with an act of an executive authority if it be shown that the authority have contravened the law. It is for those who assert that the local authority have contravened the law to establish that proposition. On the face of it, a condition of this kind is perfectly lawful. It is not to be assumed prima facie that responsible bodies like local authorities will exceed their powers, and the court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for the local authority. It is only concerned with seeing

whether or not the proposition made good. When an executive discretion is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the courts in a very limited class of case. It must always be remembered that the court is not a court of appeal. The law recognises certain principles on which the discretion must be exercised, but within the four corners of those principles the discretion is an absolute one and cannot be questioned in any court of law.

What, then, are those principles? They are perfectly well understood. The exercise of such of a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty—those, of course, stand by themselves—unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. In the present case we have heard a great deal about the meaning of the word “unreasonable.” It is true the discretion must be

exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word “unreasonable” in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting “unreasonably.” Similarly, you may have something so absurd that no sensible person could even dream that it lay within the powers of the authority. WARRINGTON, L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head.....”

16. The Apex Court has referred to the Wednesbury principle in its subsequent judgments delivered in the case of Chairman and Managing Director, United Commercial Bank V/s P.C.Kakkar [(2003) 4 SCC 364]. Same has also been considered in the case of

B.C.Chaturvedi Vs/ Union of India [(1995) 6 SCC 749.

17. The Labour Court, while dealing with the issue of proportionality, was under an obligation to consider the effect of the 16 misconducts evidenced by the default card of the respondent. Without considering the past service record, the Labour Court has concluded as under :-

“As regards Item i-G is concerned, in my opinion, to some extent said item attracts in this complaint because the dismissal imposed on the complainant is for the act of misconduct of remaining absent from duty without leave and without prior permission. But it appears that total length of employment rendered by the complainant from 01/03/1977 has not been taken into consideration by the respondent while imposing the punishment of dismissal.”

18. The above reproduced paragraph is the conclusion of the Labour Court, being totally oblivious of the fact of 16 mis conducts for which the respondent has been punished. Similar error has been committed by the Industrial Court, which has not gone into this aspect and dismissed the revision petition concluding that the punishment is shockingly disproportionate.

19. In the judgment delivered by the Apex Court in the case of Chairman cum Managing Director (supra), the concerned employee had resigned from service in order to avoid an unceremonious removal. The employer had refused to accept the resignation and dismissed the employee for absence of 6 months. His past service record does not appear to have been referred to or canvassed before the Apex Court, which has finally concluded that the punishment of removal from service for 6 months absenteeism was a grossly disproportionate punishment. In the instant case, 16 mis conducts seen from the default card would operate as an aggravating factor, which therefore renders this case distinguishable.

20. In the light of the above, I find that the conclusions drawn by the Labour Court and Industrial Court are unsustainable. The order of reinstatement is, therefore, perverse.

21. The subsequent events during this entire journey of litigation cannot be lost sight of. The respondent was reinstated on 26/06/2001 and retired from service on superannuation on 28/02/2006. By setting aside the impugned judgment, the fact of his reinstatement and having worked to earn his salary, can neither be undone nor can it be taken away. In my view, by setting aside the

order of the Labour Court to the extent of back wages from 01/01/1997 till 25/06/2001, would meet the ends of justice.

22. In the light of the above, this petition is partly allowed. The judgment of the Labour Court is modified by refusing back wages to the respondent from 01/01/1997 till 25/06/2001. If the said back wages have not been paid, the same shall not be paid by the petitioners. In the event, the said amount has been paid, the petitioners shall adjust the said amount while calculating the gratuity of the respondent and shall therefore pay the residual amount of gratuity to the respondent. All pensionary benefits alongwith the gratuity amount shall be made available to the respondent within a period of 12 weeks from today. After calculating the gratuity amount as above, the petitioners shall pay simple interest @ 3% on the said residual gratuity amount.

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

(RAVINDRA V. GHUGE, J.)