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

WRIT PETITION NO. 4095 OF 2015

- 1 Divisional Traffic Superintendent,
Competent Authority,
Office of Divisional Controller,
Maharashtra State Road Transport
Corporation, Sarjepura, Dist.Ahmednagar.
- 2 Depot Manager,
Maharashtra State Road Transport
Corporation, Tarakpur Depot,
Dist.Ahmednagar.

...PETITIONERS

-VERSUS-

Sharad Baburao Pote,
Age : 52 years, Occ : Service,
R/o House No.794, Malgalli,
Bhingar, Dist.Ahmednagar.

...RESPONDENT

WITH
WRIT PETITION NO.6770 OF 2015

Sharad Baburao Pote,
Age : 52 years, Occ : Nil,
R/o House No.794, Malgalli,
Bhi Nagar, Ahmednagar,
Taluka and District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 Divisional Traffic Superintendent,
Competent Authority,
Office of Divisional Controller,
Maharashtra State Road Transport
Corporation, Sarjepura, Dist.Ahmednagar.

2 Depot Manager,
Maharashtra State Road Transport
Corporation, Tarakpur Depot,
Dist.Ahmednagar.

...RESPONDENTS

...
Mr.Goyanka M.K., Advocate for the Employer/ MSRTC.
Mr.Kakade Amol N, Advocate for the 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 first petition is preferred by the MSRT Corporation in it's
capacity as an Employer against the Respondent/ Employee. The second
petition is filed by the Employee against the same MSRT Corporation. As
such, the litigating sides would be referred to as the "Employer" and
"Employee" in this judgment.

3 The Employer has challenged the judgment of the Industrial
Court dated 23.02.2015 by which Revision (ULP) No.50/2014 filed by the
Employee was partly allowed by the Industrial Court and he was granted

reinstatement with continuity of service and with consequential benefits, but without back-wages.

4 The Employee has filed the petition for claiming full back-wages which have been refused by the Industrial Court.

5 Since both these petitions involve the same judgment and order of the Industrial Court, I am deciding both the petitions together.

6 The Employer seriously criticized the impugned judgment of the Industrial Court on the ground that misplaced sympathy has been shown towards the Employee. The Employee was a Bus Conductor having joined duties on 01.11.1988. In between 1988 to 2009, the Employee has indulged in 14 misconducts which include many instances of misappropriation. He has been punished for the said misconducts. Besides the present cause of action, the Employee was earlier dismissed from service after conducting departmental enquiries. Under the orders of the Court, he was reinstated in employment.

7 Shri Goyanka, learned Advocate appearing for the Employer, points out that the Labour Court, while dealing with Complaint (ULP) No.19/2013 filed by the Employee for challenging his termination dated

08.08.2013 invoking Section 28(1) and Item No.1 of Schedule IV of the MRTU & PULP Act, 1971, concluded by way of the judgment dated 07.03.2014 on the first two preliminary issues, that the departmental enquiry was conducted in a fair and proper manner in tune with the principles of natural justice and the findings of the Enquiry Officer are not perverse.

8 Mr.Goyanka further submits that with the judgment delivered on the preliminary issues, the Labour Court dealt with the remaining issues involving the aspect of proportionality of punishment awarded to the Employee and concluded that the punishment of dismissal from service is commensurate to the gravity and seriousness of the misconduct. The complaint was, therefore, dismissed by the judgment dated 03.11.2014.

9 The Employee preferred Revision (ULP) No.50/2014 invoking the revisional jurisdiction of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971 in which he has challenged the Part-I judgment dated 07.03.2014 along with the final judgment dated 03.11.2014 delivered by the Labour Court in Complaint (ULP) No.19/2013.

10 The Industrial Court has not dealt with the Part-I judgment

dated 07.03.2014 in the entire body of the impugned judgment. It has not come to the conclusion that the Part-I judgment dated 07.03.2014 is perverse and deserves to be set aside. The impugned judgment runs into 26 pages. The Industrial Court has only reproduced the contentions of both the sides dating back to the initial complaint filed by the Employee for challenging the second show cause notice. Besides repetition of their contentions and arguments in 24 pages out of the 26 pages judgment, no conclusion has been drawn in relation to the Part-I judgment dated 07.03.2014 delivered by the Labour Court. Surprisingly in the operative part of the order in clause (2), the Industrial Court concludes that both the judgments are illegal, unjustified and are quashed and set aside.

11 I surely cannot agree with such conclusions drawn by the Industrial Court. On this count alone and in the light of the fact that there has been no discussion about the Part-I judgment, the conclusion of the Industrial Court to the extent of setting aside the Part-I judgment dated 07.03.2014 deserves to be quashed and set aside.

12 The Employee has been held guilty of misappropriation. There are 14 other misconducts which are evident from the Default Card. Some of them pertain to the acts of misappropriation as well. The Employee was punished on each occasion. I am unable to concur with the

conclusions of the Industrial Court that the bread and butter of the Employee has been snatched away by the Employer and he does not deserve the punishment of dismissal from service.

13 I find it quite unexpected that the Industrial Court has also extended an advise to the Employee in the paragraph prior to the operative part of the order that *“The Applicant after reinstatement in service shall show good behaviour to the opponent ST Corporation and shall not repeat misconduct in future. If, such occasion is given by the applicant in future, then the opponent corporation would no doubt proceed against him as per the discipline and appeal procedure of ST Corporation. It is expected that the applicant would definitely not misuse leniency shown by this court and would behave properly not to snatch his bread and butter by the Employer again.”*

14 In my view, the Industrial Court has overstepped its jurisdiction. It is not expected that the Industrial Court should extend an advise to any Employee. It clearly indicates that the Industrial Court has lost sight of the Wednesbury Principles as have been laid down in *Associated Provincial Picture Houses Ltd. v/s Wednesbury Corporation* reported in (1947) 2 ALL ER 680 : (1948) 1 KB 223.

15 The relevant paragraphs by which the Wednesbury principles have been laid down, 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.

In the present case, it is said by counsel for the plaintiffs that the authority acted unreasonably in imposing this condition. In the first place, it appears to me clear that the matter dealt with by this condition was one which a reasonable authority would be justified in considering when it was making up its mind what conditions should be attached to the grant of its permission. Nobody, at this time of day, can say that the well-being and the physical and moral health of children are not matters which a local authority, in exercising its power, can properly have in mind when those questions are germane to what it has to consider. Counsel for the plaintiffs did not suggest that the authority were directing their minds to a purely extraneous and irrelevant matter, but he based his argument on the word "unreasonable," which he treated as an independent ground for attacking the decision of the authority. Once, however, it is conceded, as it must be conceded, that the subject-matter of this condition was one which it was competent for the authority to consider, there, in my opinion, is an end of the case, because, once that is granted, counsel must go so far as to say that the decision of the authority is wrong because it is unreasonable, and then he is really saying that the ultimate arbiter of what is and is not reasonable is the court and not the local authority. It is just there, it seems to me, that the whole argument entirely breaks down. It is perfectly clear that the local authority are entrusted by Parliament with the decision on a matter in which the knowledge and experience of the authority can best be trusted to be of value. The subject-matter with which the condition deals is one relevant for its consideration. It has considered it and come to a decision on it. Theoretically it is true to say and in practice it may operate in some cases that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is right, but

that would require overwhelming proof, can in this case the facts do not come anywhere near such a thing. Counsel in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to unreasonable in the sense, not that it is what the court considers unreasonable, but that it is what the court considers is a decision that no reasonable body could have come to, which is a different thing altogether. The court may very well have different views from those of a local authority on matter of high public policy of this kind. Some courts might think that no children ought to be admitted on Sundays at all, some courts might think the reverse. All over the country, I have no doubt, on a thing of that sort honest and sincere people hold different views. The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority who are put in that position and, provided they act, as they have acted here, within the four corners of their jurisdiction, the court, in my opinion, cannot interfere.”

16 It is settled law that unless the punishment appears to be shockingly disproportionate and an act of outrageous defiance of moral standards and logic which shocks judicial conscience, the Court should refrain from interfering with the quantum of punishment more so by an act of misplaced sympathy.

17 It is trite law that the past service record, if blemished, operates as an aggravating factor. The Employee has been punished on 14

occasions. There have been two terminations by way of punishment here before and the same have been interfered with by the Court.

18 The Apex Court, in the *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Nourakara Sangha*, **2000(7) SCC 517 : AIR 2000 SC 3129**, has concluded that when a charge of misappropriation is proved which involves moral turpitude, the past service record of the Employee should not be considered by the Employer as the charge in itself is extremely grave and serious in nature.

19 It would be apposite to reproduce the observations of the Apex Court in the *Janatha Bazar* judgment (supra) as under:-

“3. *The question involved in these appeals is – whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondents-workmen with 25% back wages inspite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages.*

6. *As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management removing the workmen from the service and reinstating them with 25% back wages. Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. [Re.: Municipal Committee, Bahadurgarh v. Krishnan Behari and Others (1996) 2 SCC 714]. In U.P.State Road Transport Corporation v. Basudeo Chaudhary and another [(1997) 11 SCC 370] this Court set aside the judgment passed by the High Court in a case where a conductor serving with the U.P. State Road Transport Corporation was removed from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs. 65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. and another v. Kala Singh and Others [(1997) 6 SCC 159], this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held that in view of*

proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11A of the I.D. Act to grant relief with minor penalty.

8. *In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.”*

20 In the light of the above and considering the fact that the charge at issue proved against the Employee was for misappropriation of Rs.920/-, the impugned judgment and order delivered by the Industrial Court dated 23.02.2015 in Revision (ULP) No.50/2014 is quashed and set aside. The Revision stands dismissed.

21 The Writ Petition filed by the Employer is, therefore, allowed and Rule is made absolute in the above terms. The Writ Petition filed by the Employee is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)