

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4868 OF 2009

Rameshsingh S/o Bansisingh Parihar, PETITIONER
Age-56 years, Occu-Nil,
R/o Garkheda Parisar, Aurangabad

VERSUS

1. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Aurangabad.

2. The Assistant Mechanical Engineer,
Maharashtra State Road Transport
Corporation, Aurangabad.

RESPONDENTS

Mr.K.J.Suryawanshi, Advocate for the petitioner.
Mrs.R.D.Reddy, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 30/07/2015

ORAL JUDGMENT :

1. This petition was admitted by order dated 14/08/2009. It was listed for final hearing by order dated 08/07/2011. Interim relief was refused to the petitioner.

2. I have heard Mr.Suryawanshi, learned Advocate for the petitioner and Mrs.Reddy, learned Advocate for the respondent / Corporation.

3. The petitioner was appointed as a "Mechanic" on 06/06/1979.

He was regularized in service in 1981.

4. By charge sheet dated 16/07/2000, he was charged with unauthorized absenteeism, gross negligence and indiscipline. He was absent for 280 days in the entire year from July 1999 till June 2000. He was however sanctioned medical leave for 62 days thereby bringing down his unauthorized absenteeism to 218 days. He was practically absent throughout the said year.

5. After conducting a departmental enquiry, he was terminated by order dated 09/06/2003. He preferred Complaint (ULP) No.115/2013 before the Labour Court at Aurangabad. It is not disputed that the enquiry was upheld and the findings of the Enquiry Officer were sustained by the Labour Court which was based on the joint purshis filed by the petitioner employee and the respondent/Corporation by which there was no challenge to the enquiry and the findings.

6. The petitioner, as regards the proportionality of the punishment and claim for back wages, did not step into the witness box.

7. By the impugned judgment and order dated 20/06/2006, the

Labour Court dismissed the complaint upholding the proportionality of the punishment. The petitioner preferred Revision (ULP) No.28/2006 before the Industrial Court, which was dismissed by the impugned judgment dated 23/03/2009.

8. Grievance of the petitioner is that despite his past service record being totally clean, the punishment of dismissal for unauthorized absence of 218 days is shockingly disproportionate. He submits that his parents were unwell. So also, he was also unwell. His available leave was to the extent of 62 days, which was granted. Since he had exhausted leave, he was held to be unauthorizedly absent for 218 days. He, therefore, submits that the Labour Court should have granted reinstatement with continuity of service and could have deprived the petitioner of the back wages.

9. I am unable to agree with the submissions of the petitioner. He was practically absent in the entire year from July 1999 till June 2000. His 62 days available leave was adjusted against his absence. Charge of gross negligence and indiscipline was also proved against him.

10. Surprisingly, the petitioner withdrew his challenge to the

enquiry and the findings of the Enquiry Officer and hence the issues as regards the fairness of the enquiry and the findings of the Enquiry Officer did not survive. On those premises, the charges levelled upon the petitioner stood proved.

11. Unauthorized absence for 218 consecutive days coupled with gross negligence and indiscipline, cannot be termed as a minor misconduct. The punishment of termination from service could be interfered with only if the said punishment appeared to be shockingly disproportionate. The Wednesbury principles on judicial interference have been laid down in the matter of Associated Provincial Picture Vs. Wednesbury Corporation (1947) 2 ALL ER 680 : (1948) 1 KB 223.

The relevant two paragraphs of the said judgment, 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.....”

12. The Apex Court in the case of Chairman and Managing Director, United Commercial Bank V/s P.C.Kakkar [(2003) 4 SCC 364] has concluded that unless the punishment appears to be shockingly disproportionate and amounts to an outrageous defiance of logic and moral standards, it ought not to be interfered with.

13. I am, therefore, unable to accept the submissions of the petitioner that the punishment imposed upon the petitioner for the charges proved against him can be said to be shockingly disproportionate. The petitioner has attained the age of superannuation. Retiral benefits have been paid.

14. As such, this petition being devoid of merit, is dismissed. Rule is discharged.

15. In the event, the gratuity is still not paid to the petitioner, the respondent shall do so within a period of 12 weeks from today and which shall be accompanied with interest @ 3% p.a.

(RAVINDRA V. GHUGE, J.)