

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5631 OF 2014

Prabhakar S/o Saluba Bawiskar,
Age-44 years, Occu-Nil,
Conductor Batch No.36582,
Sillod Depot,
R/o At Post Dhotra, Tq.Sillod,
Dist.Aurangabad

PETITIONER

VERSUS

1. The Divisional Controller,
M.S.R.T.C., Aurangabad Division,
Division Office, Pushpa Nagari,
Aurangabad,

2. The Divisional Traffic Supdt. (Default),
M.S.R.T.C., Aurangabad Division,
Division Office, Pushpa Nagari,
Aurangabad

RESPONDENTS

Mr.G.G.Suryawanshi, Advocate for the petitioner.
Mrs.R.D.Reddy, Advocate for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/08/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the concurrent judgments, delivered by the Labour Court dated 26/04/2010 in Complaint (ULP)

No.71/2006 and the judgment dated 30/08/2013 in Revision (ULP) No.41/2010 delivered by the Industrial Court, Aurangabad.

3. The petitioner had joined service with the respondent Corporation as a “Bus Conductor” in 1998. On 16/10/2001, while in journey, the bus was checked by the Flying Squad on the Anwa-Sillod Route. The entry of sale of tickets, less cash deposited, way bills not filled in properly and not closed, were the charges levelled upon the petitioner. Way bills from the period 03/10/2001 till 15/10/2001 were retrieved from the Issuing Clerk pertaining to the petitioner and similar discrepancies were noticed in the said way bills.

4. By charge sheet dated 08/11/2001, the petitioner was charged with having committed above acts amounting to mis-appropriation. The Enquiry Officer held the petitioner guilty of the charges levelled upon him by report dated 10/11/2001. Alongwith the petitioner, the Issuing Clerk was also held responsible.

5. By order dated 25/06/2002, the petitioner was dismissed from service by way of punishment.

6. The petitioner preferred Complaint (ULP) No.71/2006 before the Labour Court. The enquiry was held to be fair and proper and the findings of the Enquiry Officer were sustained and not branded as perverse. While considering the proportionality of the punishment in the light of the seriousness of the mis-conducts proved against the petitioner, the Labour Court dismissed the complaint by the impugned judgment dated 26/04/2010.

7. In Revision (ULP) No.41/2010 preferred by the petitioner, the Industrial Court considered the challenge posed by the petitioner. The contention was that the petitioner had waived his right to employment if he was freshly appointed under Purshis Exh.U-8. This was not considered by the Labour Court. This was also not gone into by the Industrial Court and disregarded. Past record indicating 13 mis-conducts of similar nature was also considered by the Industrial Court. By the impugned judgment dated 30/08/2013, revision petition was dismissed.

8. I have considered the submissions of the learned Advocates for the respective sides.

9. The purshis Exh.U-8, by which the petitioner relinquished his

rights arising out of his earlier employment, provided he was freshly appointed, had rightly been disregarded by the Labour Court. The said purshis has no nexus with the cause of action. The challenge of the petitioner to the enquiry, findings of the Enquiry Officer and proportionality of the punishment cannot be given a go-bye merely by the filing of a purshis as like Exh.U-8.

10. The Apex Court in the case of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [2000 AIR SCW 3439 = AIR 2000 SC 3129] has concluded that the amount of money misappropriated is not germane. The fact of mis-appropriation in itself is a grave and serious mis-conduct. It was held that in cases of mis-conduct, the past service record of the employee should not be considered. The relevant observations of the Apex Court read as under :-

“3. The question involved in these appeals is -- Whether 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 bean 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 Ors. [1996] 2 SCR 827]. In U.P. State Road Transport Corporation v. Basudeo Chaudhary and Anr. : (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 fro a sum of Rs.*

2.35 but recovering @ Rs. 5.35 per head and also by making entry in the way bill 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 Anr. v. Kala Singh and Ors.* : (1997) ILLJ 1041 SC, this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centers and was charged for the misconduct that he inflated the quantum of milk supplies in milk centers 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." (Emphasis supplied).

11. The Division Bench of this Court in the case of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33] has considered a

similar issue. Relevant observations are set out hereunder :-

“9. We may also refer to yet another judgment of the Supreme Court in *Union of India and Ors. v. Upendra Singh* (1994) ILLJ 808 SC. The relevant observations of the Supreme Court may be quoted:

In the case of charges framed in a disciplinary inquiry the tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to

the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view.

“10. We may also refer to the judgment of this Court in Ramchandra Govindrao Gaidhani v. Union of India and Anr. delivered on 18-9-2006 in Writ Petition No. 6211 of 1999, to which one of us (Smt. Ranjana Desai, J.) is a party. Similar view has been taken by this Court in that case. Examined in the light of the above judgments, we cannot fault the Tribunal for having refused to examine the correctness, the truth or otherwise of the charges. We cannot lose sight of the fact that the petitioner did not challenge the Disciplinary Authority's order or the Appellate Authority's order. The first submission of learned Counsel for the petitioner must, therefore, fail.

“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.”

12. In the light of the above, I do not find any error or perversity in the conclusions of the Labour Court as well as the Industrial Court.

13. This petition, being devoid of merit, is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)