

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5976 OF 2014

Shri Ashok Pundlikrao Daware,
Age 58 Years, Occ. Nil,
R/o 302-B, Omkar Residency,
Ganesh Nagar, Ambejogai Road, Latur. ..Petitioner

Versus

1. The Maharashtra State Road
Transport Corporation,
Through Vice President and
Managing Director, Central Office,
Maharashtra Vahatuk Bhavan,
Dr. Anandrao Nair Road, Mumbai - 8.

2. The Inquiry Officer,
Regional Manager,
Regional Office, MSRTC, Nagpur.

3. The Vice President and
Managing Director, MSRTC,
Central Office,
Maharashtra Vahatuk Bhavan,
Dr. Anandrao Nair Road, Mumbai - 8.

4. The Chairman and the Appellate Authority,
Special Appellate Committee,
Central Office, Maharashtra Vahatuk Bhavan,
Dr. Anandrao Nair Road, Mumbai – 8.

5. The State of Maharashtra,
Through the Secretary,
General Administration Deptt.,
Mantralaya, Mumbai - 32. ..Respondents

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Advocates appearing for :
Petitioner : Shri Mukul S. Kulkarni
Respondents 1, 3 and 4 : Smt. R.D.Reddy,

Respondent 5 : Shri U.H.Bhogle, AGP
Respondent 2 : Served.

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CORAM : RAVINDRA V. GHUGE, J.
Dated : September 1, 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 order dated 06/09/2013 passed by respondent No.3 and the order dated 10/02/2014 passed by respondent No.4 authority.
3. The petitioner was the Divisional Controller at the Jalna Establishment of the respondent MSRT Corporation. He retired from service on 28/02/2014 after attaining the age of superannuation.
4. The Registered Union with the respondent gave a notice of strike dated 07/03/2009 indicating that the strike would commence on 25/03/2009. Some meetings were held with the Union Leaders. Nevertheless, the strike occurred and caused a loss to the respondent MSRTC.

5. The petitioner was charged with having committed misconducts vide the charge sheet dated 02/06/2009. Since the petitioner is not a workman under section 2(s) of the Industrial Disputes Act, 1947, the respondent / Corporation conducted an enquiry after considering the reply of the petitioner dated 01/07/2009.

6. The petitioner was held guilty of the charges levelled upon him. Along with the petitioner, 5 other persons were also held guilty of having not taken necessary steps in order to avoid the strike. By order dated 06/09/2013, the petitioner was called upon to explain as to why an amount of Rs.15,202/- should not be recovered from him on account of the monetary loss caused to the respondent. Similar amounts were also recovered from the other 5 employees.

7. The petitioner preferred an appeal dated 22/10/2013 before the Appellate Authority. By order dated 10/02/2014, the Appellate Authority rejected the appeal by observing that a loss of 76,010/- was caused to the Corporation and the said amount was being recovered from those held guilty.

8. The petitioner submits that there was no evidence before the Enquiry Officer and despite the same, the Enquiry Officer has held the petitioner guilty of the charges levelled upon him.

9. Mr.Kulkarni, learned Advocate for the petitioner strenuously submits that the Enquiry Report indicates that the witness Mr.Tikotkar did not remain present in the inquiry, who was a party to the report submitted by the Reporting Committee. Hence the Enquiry Officer could not have held that the charges are proved against the petitioner.

10. Mrs.Reddy, learned Advocate on behalf of respondent Nos. 1, 3 and 4 has strenuously supported the impugned order. She submits that the petitioner has selectively referred to a few portions of the Enquiry Officer's Report and hence it cannot be said that there was no evidence before the Enquiry Officer.

11. She points out that a preliminary report was called for. The signatory to the report Mr.Ratnaparkhi appeared in the enquiry, lead evidence and proved the report. His Associate Mr.Tikotkar did not remain present. Nevertheless, there was sufficient material before the Enquiry Officer as has been observed in the Enquiry Report. The

petitioner was given every opportunity to lead evidence. He was permitted to cross-examine the Management's witness.

12. She further submits that the petitioner did not react to the situation and did not initiate appropriate steps for defusing the situation. He merely conducted one meeting with the Union Leaders on 25/03/2009 which was the last date prior to the commencement of the strike. He did not even care to prepare a summary report / noting about the said meeting. 5 persons along with him were held responsible and hence each of them had to bear the burden of the financial loss caused to the Corporation. She, therefore, prayed for the dismissal of this petition.

13. Having considered the submissions of the learned Advocates, I have gone through the petition paper book with their assistance.

14. I have considered the Enquiry Officer's Report. On the basis of evidence before him, the Enquiry Officer has concluded that the petitioner did not depute the representatives so as to participate in the meeting with the Union Office bearers. I find that the Enquiry Officer, based on the material before him, has concluded that the petitioner did not take necessary steps for defusing the situation.

15. I find that the Management expected the petitioner to be proactive and react to the situation. Due to the agitation, certain buses had to be cancelled, causing a loss of about Rs.76,010/- to the Corporation.

16. It is trite law that the evidence in disciplinary proceedings cannot be equated with the probative value of the evidence as is recorded in criminal proceedings. Conclusions in disciplinary proceedings are drawn on the preponderance on the principles of probabilities. There was evidence available before the Enquiry Officer, which assisted him to arrive at a conclusion in the enquiry. I do not find it to be a case of no evidence before the Enquiry Officer.

17. The petitioner had appealed to the Appellate Authority against the order dated 06/09/2013. By the impugned order dated 10/02/2014, the Appellate Authority / Committee reviewed the matter in the light of the petitioner's appeal and unanimously agreed that the punishment imposed upon the petitioner deserves to be maintained.

18. I do not find that the impugned order dated 06/09/2013 and 10/02/2014 could be termed as being perverse or erroneous.

19. In the light of the above, this petition, being devoid of merit, is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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