

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1088 OF 2014

Gurudatta Kashinath Sarode,
Age 50 years, Occ. Service,
R/o Lane No.7, Parola
Charmakar Chowk, Dhule.

..Petitioner

Versus

1.Divisional Controller,
Maharashtra State Road
Transport Corporation,
Dhule Division, Dhule.

2. Divisional Traffic Officer (Default),
Maharashtra State Road
Transport Corporation,
Dhule Division, Dhule.

..Respondents

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Advocate for Petitioner : Shri Choudhari N. L.
Advocate for Respondents 1 & 2 : Shri Bagul D.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 21, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the judgment and order dated

8.12.2011, delivered by the Labour Court, by which, his Complaint (ULP) No. 16 of 2008 has been dismissed. The petitioner is also aggrieved by the judgment of the Industrial Court dated 8.2.2013, by which his Revision (ULP) No.44 of 2011 has been dismissed.

5. The petitioner joined employment as a Bus-Conductor from 1989. By the order of termination dated 30.5.2007, he has been dismissed for proved mis-conducts.

6. The petitioner preferred Complaint (ULP) No.16 of 2008 for challenging his order of punishment. Same was initially allowed by the Labour Court vide judgment dated 30.11.2009. The respondent / Corporation preferred Revision (ULP) No.17 of 2010 by which, the judgment of the Labour Court was quashed and set aside and the Complaint was remitted to the Labour Court.

7. The petitioner, therefore, preferred Writ Petition No.7547 of 2010 before this Court. By order dated 21.4.2011, the petition was partly allowed by directing the Labour Court to decide the Complaint afresh and if the enquiry is vitiated, the respondent be given the liberty to conduct a *de-novo* enquiry, since the said right was reserved by the Corporation in its written statement.

8. Shri Choudhary, learned Advocate for the petitioner submits that after the Complaint was remanded to the Labour Court, the enquiry was

upheld. The findings of the enquiry officer were also sustained. On the proportionality of the punishment, the Labour Court concluded that the punishment awarded is not disproportionate.

9. He further submits that Revision (ULP) No.40 of 2011 was filed before the Industrial Court. The same came to be dismissed on the ground that the Industrial Court did not find any perversity in the findings of the enquiry officer.

10. Shri Choudhary has strenuously submitted that the findings of the enquiry officer are not sustainable on account of lack of evidence. The petitioner is alleged to have reissued used tickets and, therefore, committed mis-appropriation. He submits that despite the said charge, the passenger who was allegedly issued a used ticket, was not examined in the enquiry. There was no written complaint lodged by him. In the absence of the evidence of a passenger, who is said to have been issued a used ticket, no charge can be said to be established against the petitioner.

11. He further submits that no evidence has come in the enquiry as to whether the passenger has shown some old bus ticket or whether he had insisted that the used ticket was issued by the petitioner in that journey from Mahur to Dhamnod. A capital punishment has been awarded to the petitioner in the absence of evidence. Shri Choudhary, therefore, submits that the punishment can be said to be shockingly disproportionate.

12. In the light of the above contentions, he submits that the Industrial Court should have set aside the judgment of the Labour Court and should have concluded that the findings are perverse and unsustainable. Unfortunately, the Industrial Court did not find any error in the impugned judgment. The judgment of the Industrial Court reflects non-application of mind. He, therefore, prays that this petition be allowed and the impugned order of termination be quashed and set aside.

13. Shri Bagul, learned Advocate appearing on behalf of the respondent / Corporation submits that there is a presumption against the petitioner. When a passenger seated in a travelling bus shows two tickets issued by the petitioner in that journey itself and which are used tickets, the presumption is that the petitioner bus-conductor has issued the said tickets.

14. He submits that in every such case, the passengers are not required to be examined. There is no animosity between the Corporation and the petitioner. A surprised check was conducted by the flying squad, which is randomly done. In such a check, the tickets issued to the passengers are checked so as to find out whether any passenger is traveling ticket-less or whether used tickets have been issued.

15. He, therefore, submits that the evidence to this effect was brought before the enquiry officer.

16. He further submits that the charge proved against the petitioner

amounts to mis-appropriation. No sympathy, much less leniency, can be shown towards such an employee. Past record of the petitioner is blemished. Findings on facts have been arrived at by the Labour Court and sustained by the Industrial Court. Unless those are held to be perverse, this Court cannot interfere in such concurrent findings.

17. I have considered the submissions of the learned Advocates, who have taken me through the record available.

18. By the Part I judgment of the Labour Court, dated 4.11.2011, the Labour Court has concluded that the enquiry is fair and proper and the findings of the enquiry officer are sustainable. This conclusion is challenged in the Revision petition and criticized even in this petition, by the petitioner. The thrust of the petitioner's argument is that the concerned passenger was not examined in the enquiry and as such, there is no evidence against the petitioner. This issue, as regards examination of the passengers has been dealt with in the matter of KSRTC Vs. B.S.Hullikatti [AIR 2001 SC 930], and KSRTC Vs. A.T.Mane [(2005) 3 SCC 254], by the Supreme Court. The Apex court ruled that the ticket-less passengers or the passengers who are travelling with used tickets, thereby exposing the misconduct of the bus-conductor are not required to be examined.

19. The relevant observations of the Apex Court in the B.S.Hullikatti judgment (supra) are as under:-

"5. On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

7. In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retiral benefits.

8. *The appeal is disposed of in the aforesaid terms."*

20. Similarly, the observations of the Apex Court in the case of A.T.Mane (supra), read as under:-

"7. The fact the respondent was carrying Rs.93/- in excess of the amount is a fact proved. This itself is a misconduct over and above that the courts below ought not to have insisted on examination of the passengers. Since the respondent did not have any explanation for having carried the said excess amount, this omission also is was sufficient to hold the respondent guilty.

8. *This Court in the case of State of Haryana and Anr. vs. Rattan Singh : (1982) ILLJ 46 SC which is also a case arising out of non-issuance of ticket by a conductor held thus:-*

*" In a domestic enquiry all the strict and sophisticated rules of Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal , cannot be held to be good. The simple point in all these cases is, was there **some** evidence or was there **no***

evidence -- not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

In the present case , evidence of the inspector is some evidence which has relevance to the charge and the courts below had misdirected themselves in insisting on the evidence of ticketless passengers. Also merely because the statements were not recorded, the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further, it was not for the court but the tribunal to assess the evidence of the conductor."

9. From the above it is clear once a domestic tribunal based on evidence comes to a particular conclusion normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh (supra) is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh's (supra) has since been followed by this Court in Devendra Swamy vs. Karnataka State Road Transport Corporation (2002) ILLJ 454 SC.

10. Since the only ground on which the finding of the domestic tribunal has been set aside being the ground that concerned

passengers are not examined or their statement were not recorded, in spite of there being other material to establish the misconduct of the respondent, we are of the opinion, the courts below have erred in allowing the claim of the respondent. In our opinion, the ratio laid down in the above case of Rattan Singh (supra) applies squarely to the facts of this case.

11. In the instant case also there is the evidence of the inspector who conducted the checking which establishes the misconduct of the respondent based on which a finding was given that the respondent was guilty of the misconduct alleged. Based on the said finding, the disciplinary authority has punished the respondent by an order of dismissal. But the Labour Court, and the learned single Judge rejected the said finding and set aside the punishment imposed solely on the ground that the evidence of the passengers concerned was not adduced and their statements were not recorded by the inspector which as stated in the Rattan Singh's case is not a condition precedent. Therefore, we are of the opinion that the courts below have erred in interfering with the finding of fact on an erroneous basis.”

21. In the light of the above, this issue is no longer res-integra. The contention of the petitioner is, therefore, unsustainable and hence, the findings of the enquiry officer have rightly been upheld by the Labour Court as well as by the Industrial Court.

22. Shri Choudhary has vehemently submitted that the past record of the petitioner of about 18 years is unblemished. Per contra, Shri Bagul contends that the past record is blemished.

23. In the above backdrop, the issue is as to whether a clean past record deserves any consideration in matters of mis-appropriation. 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 in cases of mis-appropriation, the employer need not consider the past service record of the employee. The misappropriation proved is in itself extremely grave and serious in nature.

24. The observations of the Apex Court in the Janatha Bazar case (supra) 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 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 legalized 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 for 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) 11 LLJ 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).

25. The learned 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 concluded that the cases of misappropriation should not be shown any leniency. Relevant observations of this Court in paragraph Nos. 9, 10 and 15 of the said judgment read as under:-

“9. We may also refer to yet another judgment of the Supreme Court in *Union of India and Ors. v. Upendra Singh (1994) 111 LLJ 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.”

26. It is, therefore, apparent that in a case of mis-appropriation, the amount mis-appropriated is not significant. A small amount of mis-appropriation would not reduce the seriousness and the gravity of the misconduct proved. Consequentially, punishment of dismissal is held to be commensurate and appropriate in such cases.

27. As such, in my view, the Labour Court as well as the Industrial Court has rightly concluded that the punishment awarded is not disproportionate, much less, shockingly disproportionate.

28. In the light of the above, I do not find that impugned judgments of the Labour Court and the Industrial Court could be termed as being perverse or erroneous. The petition is being devoid of merits is, therefore, dismissed.

29. It is noteworthy that, after the Labour Court had initially allowed the complaint, which judgment was subsequently set aside, the petitioner was reinstated in service. Subsequent to the impugned judgment of the Labour Court, dated 8.12.2011 and the judgment of the Industrial Court dated

8.2.2013, the petitioner was again terminated. His subsequent termination, therefore, relates back to the original order of termination, which has been sustained by the Labour Court, Industrial Court and by this Court in the present judgment. Shri Choudhary submits that there is a possibility that the respondent / Corporation may seek recovery of the wages paid to the petitioner, after his reinstatement in the interregnum.

30. In view of the above submissions, it be noted that the petitioner was reinstated after he succeeded before the Labour Court initially. He has worked and has earned his wages by performing his duties. By this judgment delivered today, no right would be created in the respondent / Corporation to seek recovery of wages paid to the petitioner in the light of the above fact situation.

31. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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