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

WRIT PETITION NO. 9088 OF 2015

Vivekanand Vaidyakiya Pratishthan Va
Shanshodhan Kendra.
Through it's Secretary,
Latur.

...PETITIONER

-VERSUS-

Jayant s/o Achutrao Patil,
Age : 47 years, Occ : Service,
R/o C/o Reddy Nivas,
Dnyaneshwar Nagar,
Ambajogai Road, Latur.
Mob.9763620948.

...RESPONDENT

...

Advocate for Petitioner : Shri Natu Sharad V.

Advocate for Respondent : Shri S.S. Thombre.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th November, 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 judgment and order dated 20.07.2015 delivered by the Industrial Court, Latur by which Revision (ULP) No.58/2013 filed by the Respondent, has been allowed and the Petitioner has been directed to reinstate the Respondent in service with full back-wages and continuity of service.

3 Shri Natu, learned Advocate for the Petitioner, submits that the Respondent was subjected to a departmental enquiry after the charge of theft of Rs.3500/- was levelled upon him. By the order of punishment dated 29.08.2006, the Respondent was dismissed from service. He preferred Complaint (ULP) No.71/2006 before the Labour Court for challenging the fairness of the enquiry, the findings of the Enquiry Officer and the order of punishment dated 29.08.2006.

4 Shri Natu further points out that by the Part-1 order/ judgment dated 06.12.2012, the Labour Court concluded that the departmental enquiry was legally and properly conducted and the findings of the Enquiry Officer are not perverse. He points out that by the final judgment dated 16.03.2013, the Labour Court concluded that the punishment of dismissal from service awarded to the Respondent was commensurate to the gravity and seriousness of the misconduct.

5 He further submits that the Respondent preferred Revision (ULP) No.58/2013 before the Industrial Court at Latur. The part-1 judgment dated 06.12.2012 was not challenged by the Respondent before the Industrial Court. He had only challenged the final judgment of the Labour Court dated 16.03.2013 to the extent of its conclusion that the punishment awarded is proportionate.

6 Shri Natu points out that the Industrial Court, while considering the proportionality of punishment, has gone into the nature of the misconduct proved against the Respondent and has concluded that the amount of Rs.3500/- cannot be said to have been stolen by the Respondent by an act of theft or dishonesty, but was purely “advance” in nature. He, therefore, makes a grievance that the conclusion of the Industrial Court that the Respondent had not acted dishonestly, is an unsustainable conclusion in the face of the fact that the charge levelled upon the Respondent was proved before the Labour Court.

7 He further submits that the Industrial Court had a limited jurisdiction of scrutinizing as to whether, the judgment of the Labour Court dated 16.03.2013 was perverse or not. In doing so, the Industrial Court has transgressed its limitation and has exercised jurisdiction not vested in it by law. By coming to the conclusion that the charge of

dishonesty and theft was never proved, indicates that the Industrial Court has reopened the issue as to whether, the charges were proved or not, which it could not have done in its revisional jurisdiction especially in the light of the fact that the part-1 judgment of the Labour Court dated 06.12.2012 was not challenged before the Industrial Court. He, therefore, submits that the impugned judgment deserves to be quashed and set aside.

8 Shri Thombre, learned Advocate for the Respondent/ Employee, has strenuously supported the impugned judgment. An affidavit in reply has also been entered on behalf of the Respondent. The deposition before the Enquiry Officer has also been placed on record in support of his contention that the Industrial Court has rightly considered the gravity and seriousness of the misconduct and has concluded that the Respondent deserves to be reinstated with continuity and full back-wages.

9 Shri Thombre points out that the evidence before the Enquiry Officer clearly indicates that the Respondent had taken Rs.3500/- by way of an advance. No doubt, he had taken the said advance on the pretext of paying the same to Dr.Bharadia in connection with the work of the Petitioner Establishment and had utilized the amount. Nevertheless, the amount so taken was by way of an advance and in the event, the

Respondent was guilty of not accounting for the said amount or repaying the said amount, it could not be said that he had stolen the said amount.

10 He further adds that the Respondent has not been charged with misappropriation of an amount. The charge levelled upon him is with regard to theft and dishonesty with the owner and an act adversely affecting the discipline and good conduct of the employee. He submits that even if the case of the Petitioner Establishment is taken at its best, the charge proved is that the Respondent had taken an advance of Rs.3500/- and had not accounted for it and had not repaid the said amount, which could then entitle the Employer to recover the said amount from the salary of the Respondent.

11 On instructions from the Respondent present in the Court, an affidavit dated 27.11.2015 has been filed by the Respondent categorically declaring that he is willing to waive his entire back-wages from the date of his dismissal dated 29.08.2006 till 15.12.2015, provided the Petitioner/ Employer shows magnanimity and pardons him for the mistake that he has committed. Further undertaking set out in the affidavit is that hence forth the Respondent shall not commit any such misconduct and if at all, he commits any act which amounts to misconduct, the Employer will be at liberty to take a serious view of the same and in which situation, the

Respondent will not be entitled for any leniency.

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

13 It is undisputed that the part-1 judgment of the Labour Court dated 06.12.2012 upholding the enquiry and the findings of the Enquiry Officer, has not been challenged by the Respondent before the Industrial Court. It is also undisputed that the issue open to the Industrial Court within its revisional jurisdiction under Section 44 of the MRTU & PULP Act, 1971 was to scrutinize whether, the punishment of dismissal awarded to the Respondent was commensurate to the gravity and seriousness of the misconduct proved against him. The charge levelled upon the Respondent under the Standing Orders 24D and 24L applicable to the Petitioner read as under:-

“24(D) : Theft and dishonestly deceiving the owner in his business or property.”

“24(L) : The said act adversely affect the discipline and good conduct of the employees of the establishment.”

14 I find from the record available that the Respondent had neither stolen the amount of Rs.3500/- nor has he been charged with causing misappropriation of funds. The amount of Rs.3500/- was taken by the Respondent on a particular pretext. The said amount was allocated to

him at his request by way of an advance, which undoubtedly he was obliged to account for and return the amount if was in excess. The said amount was not returned as the Respondent had utilized it for the cancer treatment of his father, which stand he had subsequently altered before the Enquiry Officer.

15 Notwithstanding the above, I do not find that the Respondent was ever charged of having stolen the said amount or having misappropriated the said amount. Though the phraseology of Standing Order 24D indicates theft and dishonesty, the act committed by the Respondent was of the extent of taking an advance amount and not accounting for it. In my view, therefore, the punishment in the nature of dismissal would amount to a civil death to the Respondent in the absence of a specific charge of theft or misappropriation. Nevertheless, he deserves punishment commensurate to the gravity of the misconduct.

16 Since the issue involved is of money, I am unable to concur with the conclusion of the Industrial Court that the Respondent deserves to be reinstated in service with continuity and full back-wages. The Respondent could be sufficiently penalized by depriving him of the entire back-wages from the date of dismissal 29.08.2006 till the date of reinstatement, which I am inclined to grant.

17 The last drawn salary of the Respondent was at the rate of Rs.3650/-. Depriving him of the entire back-wages for the past about 09 years and 03 months, would be sufficient punishment. It is on account of this view that I am accepting the statement of the Respondent made on an affidavit tendered today. The said affidavit is, therefore, marked as Exhibit X for identification.

18 In the light of the above, the impugned judgment of the Industrial Court dated 20.07.2015 shall stand modified and the Respondent shall stand reinstated w.e.f. 15.12.2015 with notional continuity of service. He shall stand deprived of the entire back-wages from the date of dismissal 29.08.2006 till 14.12.2015.

19 Exhibit-X shall be treated as an undertaking and the Respondent shall be duty bound to ensure that no further misdemeanor would be committed by him. In the event, it so happens, the Respondent shall not be entitled for any leniency. The present misconduct at issue shall be considered as a part of a blemished past service record.

20 Needless to state, the Respondent shall not be entitled for any monetary benefits for the above said period and shall also not be entitled

for any increments, if were normally available as part of his service conditions.

21 This petition is, therefore, partly allowed. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)