

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 9337 OF 2015

Prakash S/o Chaitram Shinde,
Age : 58 years, Occu : Nil,
R/o At Post Kusumba,
Tq. & Dist. Dhule.

...Petitioner...

Versus

1 Maharashtra State Regional
Transport Corporation
Through its Divisional Controller,
M.S.R.T.C. Division, Dhule.

2 The Depot Manager (Senior)
M.S.R.T.C. Dhule Depot, Dhule,
Tq. & Dist. Dhule.

...Respondents...

.....

Shri. R. A. Tambe, Adv. for petitioner.

Shri. D. S. Bagul, Adv. for respondent Nos. 1 & 2.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 07.12.2015

ORAL JUDGMENT :

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

2] On 15.9.2015, I had recorded the submissions of

- 2 -

the learned Advocates as follows:-

"1. The Petitioner, who was an employee with the Respondent/MSRTC as a Bus Conductor, has challenged the judgment dated 27.07.2011 delivered by the Labour Court in Complaint (ULP) No.09/2008 and the judgment of the Industrial Court dated 21.07.2014 in Revision (ULP) No.12/2013.

2. The Petitioner was terminated by way of punishment vide order dated 09.04.2007 w.e.f. 12.04.2007. The charge of misappropriation was the basis of his termination which has been duly proved in the domestic enquiry.

3. By the order dated 28.03.2011, the preliminary issue Nos.1 and 2 were decided by the Labour Court in Complaint (ULP) No.9/2008 filed by the Petitioner for assailing his dismissal. Issue Nos.1 and 2 were held in the negative thereby, upholding the fairness of the enquiry and the findings of the Enquiry Officer. By the impugned judgment dated 27.07.2011, the Labour Court concluded that the punishment awarded is not shockingly disproportionate and hence, the complaint was dismissed.

4. The Petitioner preferred Revision (ULP) No.12/2013 by which he has challenged the judgment dated 27.07.2011 delivered by the Labour Court and has not challenged the order dated 28.03.2011 which decided the first two

- 3 -

issues. By the impugned judgment dated 21.07.2014 the revision petition was also dismissed.

5. Issue notice before admission to the Respondents, returnable on 05.10.2015.

6. Shri Bagul, learned Advocate, waives service for both the Respondents.

7. The parties to note that if possible, this petition is likely to be decided at the admission stage on the returnable date."

3] I have heard the learned Advocates at length.

4] It is not in dispute that the Labour Court delivered its part one judgment on the fairness of the enquiry and the findings of the Enquiry Officer on 28.3.2011. Issue Nos.1 & 2 were answered in the negative and the enquiry was held to be fair and proper and the findings of the Enquiry Officer were sustained.

5] It is also not in dispute that the Labour Court delivered its final judgment dated 27.7.2011 and dismissed the complaint.

6] The petitioner preferred Revision (ULP) No.12/2013 before the Industrial Court. Grounds for challenge indicate that the part one judgment dated 28.3.2011 as well as the final judgment dated 27.7.2011

- 4 -

are criticized. It is specifically prayed in prayer clause (B) that the departmental enquiry conducted against the employee be declared as not legal, fair and proper and also the findings of the Enquiry Officer be declared as perverse. It is only that the learned Advocate for the employee before the Industrial Court failed to pray that the part one judgment dated 28.3.2011 be set aside. Nevertheless, it is apparent that the part one judgment has been challenged and criticized though in the prayer clause, a prayer for setting it aside has not been made.

7] In the light of the above, considering that the part one judgment as well as the final judgment of the Labour Court have been challenged before the Industrial Court, the Industrial Court was required to look into the challenge to both these judgments.

8] I find from the judgment of the Industrial Court that it has considered the criminal case against the petitioner while deciding the revision petition. The fairness of the enquiry was also considered. However, whether the findings of the Enquiry Officer are perverse or not, has not been dealt with.

9] As such, this petition is partly allowed.
The judgment and order of the Industrial Court dated 21.7.2014 is quashed and set aside.

Revision (ULP) No.12/2013 is remitted back to the Industrial Court with the following directions :-

[a] The litigating sides shall appear before the Industrial Court, Dhule, on 21.12.2015. Formal notices need not be issued by the Industrial Court.

[b] The petitioner is permitted to amend prayer clause (B) so as to add a prayer for setting aside part one judgment dated 28.3.2011 delivered by the Labour Court in Complaint (ULP) No.9/2008, after the last sentence ending with the words "are perverse" on internal page no.5 of the revision petition.

[c] the Industrial Court shall thereafter decide Revision (ULP) No.12/2013 in the light of the grounds raised by the petitioner against the part one judgment dated 28.3.2011

- 6 -

and the final judgment dated 27.7.2011 delivered by the Labour Court in Complaint (ULP) No.9/2008, on its own merits.

[d] The Industrial Court is expected to decide the revision proceedings on or before 30.6.2016.

10] Rule is made partly absolute in the above terms with no order as to costs.

(RAVINDRA V. GHUGE, J.)