

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4314 OF 2014

1. The Executive Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Divisional Office Sangamner, Vidyanagar,
15, Shinde Building, Sangamner,
Dist.Ahmednagar, PETITIONER

2. The Chief Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Vidyut Bhavan, Ground Floor,
Nashik Road, Nasik, Dist.Nashik,

3. The Executive Director,
Mahavitaran,
Maharashtra State Electricity
Distribution Company Ltd.,
Head Office Prakash Gad,
Kalanagar, Bandra (E),
Mumbai 400 051.

VERSUS

Bapu Gambhir More,
Age-44 years, Occu-Service,
R/o Rahata, Tq. Rahata,
Dist.Ahmednagar

RESPONDENT

Mr.Sanjay V.Mundhe, Advocate for the petitioners.
Mr.K.M.Nagarkar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/09/2015

ORAL JUDGMENT :

1. I have heard the learned Advocates for the respective sides at length.

2. The petitioner is aggrieved by the judgment dated 22/03/2013 delivered by the Industrial Court in Complaint (ULP) No.16/2008.

3. It is pointed out by the petitioner that out of 4 charges levelled upon the respondent vide charge sheet dated 31/07/2006, only 1 charge has been proved under Rule 86(3), clause 4 of Schedule K.

4. The punishment proposed against the petitioner vide order dated 27/02/2007 was that the loss of Rs.4,000/- caused to the petitioner be deducted from the salary of the respondent and the punishment of stoppage of one increment for 1 year and the period of suspension to be considered as a part of the punishment.

5. The respondent put forth his reply on 23/03/2007 and stated that none of the charges are proved against him and he deserves to be exonerated. However, by order dated 26/05/2006, the petitioner imposed punishment of stoppage of one annual increment for one year against the respondent with the further direction to recover the amount of Rs.4,000/- and treat the period of suspension as a part of the punishment.

6. The respondent lodged Complaint ULP No.16/2008 before the

Industrial Court, which has been allowed by the impugned judgment dated 23/02/2013. Recovery of Rs.4,000/- is approved by the Industrial Court and the punishment of stoppage of annual increment for one year and treating suspension period as the part of punishment has been quashed and set aside.

7. Mr.Mundhe, learned Advocate submits that the respondent employee did not challenge the fairness of the enquiry and did not question the findings of the Enquiry Officer in the said complaint. No issue concerning these two aspects was therefore cast. The only issue to be considered by the Industrial Court was whether the punishment awarded to the respondent was commensurate to the gravity and seriousness of the misconduct held to be proved against him.

8. He further submits that the first charge that was proved against the respondent was with regard to causing loss to the establishment and conniving with 'any person' resulting in such a loss.

9. He submits that the incident that occurred on 23/05/2006 at 31/11 KV Sub Station was that the respondent had accompanied an

unknown person at about 5.30 p.m. They entered the battery room in which about 1000 meters for single Phase and three Phase were stored. Some of the meters were opened by the unknown person in the presence of the respondent and the current coil and voltage coil (copper coils) were being removed, when the Senior Clerk Mr.Kachare and a Helper Mr.Bhoir spotted the said act. When questioned, the respondent stated that he was training the 55 year old unknown person. He gave evasive answers and this was reported to the Assistant Engineer Mr.Kshirsagar. 24 voltage coils and current coils were stolen by the said person from 8 meters in the presence of the respondent.

10. Mr.Mundhe further submits that once the enquiry is accepted and the findings of the Enquiry Officer are not questioned, the only aspect that remained to be decided by the Industrial Court was with regard to the proportionality of the punishment. He submits that though the respondent was not held guilty of any theft, he was held guilty of the first charge of conniving with a stranger in causing loss to the establishment. The theft that had occurred at the hands of the unknown person, who was introduced to the store room by the respondent is the crux while deciding the gravity and seriousness of the mis-conduct.

11. He further submits that the Industrial Court has erroneously concluded that an annual increment has been stopped for 3 years and that the suspension period is also considered to be an additional punishment and recovery of the amount of Rs.4,000/- is considered as the third punishment. He, therefore, submits that the Industrial Court has shown misplaced sympathy to the respondent and allowed his complaint.

12. Mr.Nagarkar has strenuously supported the impugned judgment. He refers to the affidavit in reply filed by the respondent on 03/11/2014 to contend that the respondent is an honest and devoted employee of the petitioner. He has been acquitted by the Court of criminal jurisdiction in RTC No.71/2006 by judgment dated 07/12/2011. Once he is acquitted, he deserves to be exonerated in the enquiry.

13. He further submits that stoppage of an annual increment for one year is the first punishment awarded to him. Recovery of Rs.4,000/- is the second punishment awarded to him. Treating suspension period as a part of the punishment is the third punishment awarded to him. The rules with regard to minor lapses and major lapses do not permit the petitioners to impose 3

punishments on the respondent.

14. He further submits that the enquiry was conducted on a single day and the same was concluded. A person namely Chindhu Kute, who was with the respondent, ran away from the scene. Charge of theft was not proved against him. Industrial Court has rightly appreciated the enquiry proceedings and has correctly concluded that 3 punishments have been inflicted upon the respondent.

15. He submits that the respondent can at the most, be held guilty of a minor mis-conduct and the punishment of recovery of Rs.4,000/- was rightly held by the Industrial Court to be an appropriate punishment.

16. He further relies upon the judgment delivered by the learned Judicial Magistrate, First Class to support his contention that once he is acquitted of the criminal offence registered against him, the employer would lose its right to award any punishment to the respondent. He could have challenged the recovery of Rs.4,000/-. However, he did not desire any further issues in his day to day service and hence he chose not to challenge the said punishment.

17. I have considered the submissions of the learned Advocates. I have gone through the impugned judgments with their assistance.

18. The Industrial Court has fallen in a serious error in concluding that the recovery of Rs.4,000/- was in fact a punishment imposed upon the respondent. The loss caused by the conduct of the respondent to the petitioner establishment has been recovered from his salary.

19. It is trite law that once a delinquent is held guilty and is punished for the said mis-conduct, the period of suspension merges in the punishment. An order concluding that it merges in the punishment cannot be said to be a punishment prescribed, nor does it tantamount to imposing of punishment upon the delinquent. The punishment imposed on the respondent was stoppage of one annual increment for one year which has been wrongly construed by the Industrial Court to be a stoppage for 3 years. Having been punished on account of a charge proved would merge the suspension period in the order of punishment.

20. It is not disputed by the respondent that he had not challenged the enquiry and the findings of the Enquiry Officer before the

Industrial Court in Complaint (ULP) No.16/2008. Consequentially, no issue to that effect was framed by the Industrial Court. In this fact situation, the conclusion has to be that the findings of the Enquiry Officer are accepted by the employee. The Industrial Court, therefore, rightly proceeded to adjudicate upon the proportionality of the punishment vis-a-vis the seriousness and the gravity of the misconduct proved.

21. This Court, in the matter of Association of Engineering Workers Mumbai V/s Hindustan Motor Manufacturing Co. Mumbai 2015(II) CLR 619 has held that a misconduct in a departmental enquiry can be held to be proved if there is some evidence on record and on the pre-ponderance on the principles of probability. If the misconduct can be said to be proved, no interference is called for.

22. In the instant case, the respondent is not held guilty of theft. The charge that is proved against him is conniving with a stranger which has resulted in a loss caused to the property of the employer. As observed above, it is concluded by the Enquiry Officer that the loss of the coils from 8 meters is on account of the involvement of the respondent. Issue, therefore, is whether such involvement, which has resulted in a theft by an unknown person can be said to be a

minor mis-conduct.

23. It is trite law that unless the punishment awarded is shockingly disproportionate and it appears to be an outrageous defiance of moral standards and logic, no interference is called for. Similarly, misplaced sympathy shown by the Court in favour of a delinquent is an anathema (Chief Executive Officer, Zilla Parishad Jalgaon Vs. Maharu Kautik Patil (deceased, through LR's and others, 2015 (III) CLR 7).

24. In my view, the fact that the respondent accompanied an unknown person and allowed the person to enter the Stores Room, which resulted in a theft of 24 voltage coils and current coils from 8 meters, cannot be termed to be a minor misconduct. It virtually amounts to conniving with a thief to cause theft.

25. 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 concluded in paragraph Nos. 9, 10 and 15 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) 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.”

26. In this backdrop, the punishment awarded does not shock my judicial conscience. It ought not to have shocked the judicial conscience of the Industrial Court. As such, the interference caused by the Industrial court in concluding that recovery of Rs.4,000/-, which was the value of the property stolen was appropriate punishment, is a grave error committed by the Industrial Court. The impugned judgment is, therefore, perverse and erroneous.

27. In the light of the above the impugned judgment dated 22/03/2013 is quashed and set aside. Complaint (ULP) No.16/2008, therefore, stands dismissed. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)