

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10198 OF 2015

VISHVANATH RAMESH SHINDE
VERSUS
THE DIVISIONAL CONTROLLER, MSRTC, DHULE

...
Advocate for Petitioner : Shri Shelke Shivaji T.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: October 13, 2015

...

PER COURT :-

1. The petitioner is aggrieved by the judgment of the Labour Court dated 23.12.2011, by which, his Complaint (ULP) No.19 of 2011 has been dismissed. The petitioner has also challenged the judgment of the Industrial Court dated 29.10.2013 by which his Revision (ULP) No.10 of 2012 has been dismissed.

2. Shri Shelke learned Advocate for the petitioner strenuously submits that the petitioner who was a Driver, appointed in 2003, was unjustifiably charged with having committed misconducts on 21.1.2006 at about 12.45 Hrs. (Post Noon) at the Akkalkuwa S.T. Depot. He was charged with drunkenness, riotous and disorderly behaviour. It was falsely alleged that he was drunk and he started pelting stones at the S.T. Depot as well as at the S.T. Bus Conductors, who were around him. He has abused another Bus-Conductor and a Driver.

3. He submits that the petitioner denied all the charges levelled upon

him by his reply dated 7.2.2007. He has explained that after his duty was concluded on 21.1.2006 and since he had done double duty for almost an entire week, his health had weakened and he had consumed medicine. He was feeling giddy and was unable to walk because of his weakness and the medicines consumed.

4. He submits that the enquiry was conducted and the Enquiry Office has wrongly concluded that the petitioner was under the influence of liquor. There was no evidence that he had misbehaved with any passenger during any journey or that he had endangered the lives of the passengers.

5. He submits that the petitioner had not consumed liquor, but had consumed a medicine by name "Drakshasav". Considering his clean and unblemished past service record, the respondent should have given an opportunity to the petitioner to improve his conduct and reform himself.

6. Shri Shelke further submits that though the respondent suggested through its written statement that the petitioner has indulged in riotous and disorderly behaviour, the same is not sustainable as the petitioner has never committed such mis-conducts. He further submits that the enquiry was not conducted in a fair and proper manner. He further submits that the Industrial Court lost sight of the perversity that crept into the judgment of the Labour Court and has dismissed the Revision Petition.

7. I have considered the submissions of Shri Shelke and have gone

through the petition paper book with his assistance.

8. It has been observed by the Labour Court that the petitioner participated in the enquiry and had engaged a Defense Representative (D.R.) With the assistance of the D.R., he participated in the enquiry and cross-examined the management witnesses as well as the victim. He led his evidence before the Enquiry Officer. The Labour Court, therefore, did not find any ground to conclude that the Enquiry was conducted in non-adherence to the principles of natural justice.

9. The Labour Court has also considered the oral and documentary evidence recorded in the enquiry. The Conductor who was abused has also deposed in the enquiry and he was cross-examined by the petitioner. There was no element of animosity between the petitioner and the corporation. The Labour Court noticed that the conclusions drawn by the enquiry officer were based on the evidence recorded in the enquiry.

10. The Industrial Court, within its limited revisional jurisdiction, has once again visited the oral and documentary evidence recorded in the enquiry. Considering the same, it came to a conclusion that neither has the petitioner demonstrated any violation of the principles of natural justice, nor could the findings of the enquiry officer be branded as perverse since the conclusions drawn are supported with reasons which are based on the evidence in the enquiry. The first appeal preferred by the petitioner was dismissed.

11. It is no doubt apparent that the petitioner had worked for about three years and his past service record was clean and unblemished. Nevertheless, it cannot be ignored that his past record is of a short duration of less than three years. This Court in the matter of Bajaj Auto Limited Vs. Kalidas Deoram Patil [1999 II CLR 1108], has concluded that a clean and unblemished past record is a mitigating factor, provided the same is over a long period, which establishes the consistency in the behaviour and conduct of an employer. It was concluded that a short clean past record would not indicate such a consistency in the conduct and character of the employee. The view taken by the Single Judge was sustained by the learned Division Bench of this Court in the matter of Bajaj Auto Limited Vs. Kalidas Deoram Patil [1999 (3) Mh.L.J. 857].

12. It is trite law that drunkenness or riotous / disorderly behaviour is to be dealt with, with an iron hand. The situation becomes worse when a Bus-Driver is charged with drunkenness. The petitioner had put in less than three years. Today, the petitioner is said to be about 40 years old and if reinstated, would render a service of 18 more years as a Bus Driver. It is unpredictable whether he would reform himself. *Per contra*, it would be of devastating consequences, if upon reinstatement, he drives the bus in a drunken state and endangers the lives of the passengers as well as the people on the roads.

13. With due circumspection, I am, therefore, unable to accept the

contention of Shri Shelke that one opportunity deserves to be granted to the petitioner so as to enable him to reform himself. The charges proved are of grave and serious nature. The view taken by this Court in the case of Sahil Khan Vs. Hashmat and Company [2006 (6) Bom.C.R. 243], squarely applies to this case.

14. I do not find that the impugned judgments of the Labour Court and the Industrial Court can be said to be perverse or erroneous. The punishment awarded to the petitioner cannot be said to be shockingly disproportionate to the gravity and seriousness of the charges proved against him.

15. As such, I do not find any merit in this petition and the same is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

...

akl/d