

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8903 OF 2013

Baban Kashinath Hase,
Age 51 years, Occ. Service,
R/o Rajapur, Tq. Sangamner,
District Ahmednagar.

..Petitioner

VERSUS

1. Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Sarjepura, Kotla, Ahmednagar,
Through Divisional Controller.

2. Divisional Traffic Officer and
Competent Authority,
Maharashtra State Road
Transport Corporation,
Ahmednagar Division,
Sarjepura, Kotla, Ahmednagar,

..Respondents

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Advocate for Petitioner : Shri Barde P.V.
Advocate for Respondents : Shri Deshmukh B.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 14, 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 impugned judgment of the Labour Court, dated 25.9.2013 delivered in Complaint (ULP) No. 40 of 2009 and the judgment of the Industrial Court dated 14.10.2013 in Revision (ULP) No. 44 of 2013.

5. The petitioner submits that he had joined duties as a Bus Conductor with the respondent / MSRTC on 30.4.1989.

6. On 23.9.2007, the bus on which the petitioner was discharging his duties as a Conductor on the Sangamner to Sakur route, was checked prior to Sakur phata, which is earlier to Sakur. There were 75 passengers in the bus. 40 passengers were with tickets and 35 passengers were students who held valid bus passes.

7. It is submitted that a family of three passengers boarded the bus at Sangamner and sought tickets to alight at Sakur phata. The petitioner, as is contended, issued the tickets upto Sakur phata. After the tickets were punched, the passengers changed their mind and expressed a desire to travel upto Sakur, which is beyond Sakur phata. The petitioner indicated to them that further tickets from Sakur phata upto Sakur would be issued when the bus reaches Sakur phata.

8. It is submitted that the bus was subjected to a surprise check prior to

Sakur phata and these three passengers have given a statement that they have paid their fare for the journey from Sangamner to Sakur and were given tickets upto Sakur Phata. The petitioner is said to have submitted an explanation that because of the above stated change of mind on the part of these passengers, the punched tickets upto Sakur phata were maintained and further tickets from Sakur phata to Sakur were to be issued after reaching the Sakur phata.

9. A domestic enquiry was conducted against the petitioner under the Discipline and Appeal Rules of the respondent. The concerned passenger by name, Shri Tekude was also examined in the enquiry. The enquiry officer concluded that the charges were proved. After the second show cause notice, proposing the punishment of dismissal was issued, the petitioner challenged the same before the Labour Court in Complaint (ULP) No. 40 of 2009. Interim application was rejected. He preferred Revision (ULP) No. 39 of 2009, which was allowed by the Industrial Court by order dated 7.8.2009 and the service of the petitioner was protected during the pendency of the main complaint.

10. It is pointed out that by Part I order, dated 14.9.2009, the Labour Court concluded that the enquiry was conducted in a fair and proper manner. This was questioned before the Industrial Court which directed the Labour Court to decide issue No.2 regarding the allegation of perversity in the findings of the enquiry officer. Under these directions, the Labour

Court delivered another order on the preliminary issue, dated 28.12.2012 concluding that the findings of the enquiry officer are legal and proper.

11. The petitioner further submits that by the final judgment and order dated 25.9.2013, the Labour Court dismissed the Complaint filed by the petitioner. Subsequently, the petitioner assailed the final judgment dated 25.9.2013 in Revision (ULP) No. 44 of 2013, which was dismissed by judgment dated 14.10.2013 impugned in this petition.

12. The petitioner in this petition has challenged the judgment of the Industrial Court, dated 14.10.2013. The judgment of the Labour Court dated 25.9.2013 has not been challenged in this petition.

13. For the sake of clarity, the relevant prayer clause (A) in this petition is reproduced herein below:-

“(A) By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, the Honourable High court may be pleased to quash and set aside the judgment and order dated 14.10.2013 passed by the learned Member, Industrial Court, Ahmednagar in Revision (ULP) No. 44 of 2013;”

14. Shri Barde, learned Advocate for the petitioner has strenuously criticized the domestic enquiry, the evidence recorded in the enquiry, the conclusion of the Labour Court that the enquiry was conducted in a fair and

proper manner, the final judgment of the Labour Court, dated 25.9.2013 and the judgment of the Industrial Court dated 14.10.2013.

15. I cannot ignore the fact that the Labour Court, by its Part I order dated 14.9.2009 has upheld the enquiry. By the Part II order dated 28.12.2012, the findings of the enquiry officer were sustained as being legal, fair and proper.

16. In the light of crystallized law, this Court has concluded in Writ Petition No.2347 of 2014 - Shivaji Daulat Dadar Vs. The Divisional Controller, MSRTC, dated 4.8.2015, that the decision on the preliminary issues is a final judgment since once the enquiry is upheld and the findings are upheld, the Labour Court or the Industrial Court as the case may be, is left with the jurisdiction only to the extent of scrutinizing whether the punishment awarded to the employee is commensurate to the gravity and seriousness of the misconducts proved against such an employee. Paragraph Nos. 13 to 18 of the said judgment read as under:-

"13 The first contention of the Petitioner that the Part 1 order delivered on the issue of fairness of the enquiry and the findings of the Enquiry Officer, is an interlocutory order and hence, it merges into the final judgment of the Labour Court delivered on the complaint, is an unsustainable submission.

14 This Court has dealt with a challenge to the part I judgment of the Labour Court and the judgment of the Revisional Court in

Mahindra & Mahindra v/s Suryabhan Avhad, 2007(6) Mh.L.J. 436 : 2007 (4) Bom.C.R. 118. The law as is laid down by the Apex Court has been considered and this Court dealt with the Part I judgment of the Labour Court on its merits thereby, indicating that the order of the Labour Court on the first two issues is not an interlocutory order.

15 *This Court in the matter of the Maharashtra General Kamgar Union v/s U.S.V. Limited, 2001 (3) CLR 306, has laid down the law that once a departmental/ domestic enquiry is held to be vitiated, the evidence recorded in such an enquiry cannot be used by any party even by consent of the parties.*

16 *Similarly, it is now settled law that once the departmental enquiry is upheld and the enquiry is sustained as being fair and proper, the charges stand proved against the delinquent, then, the Labour Court thereafter, is only to proceed to decide the proportionality of the punishment.*

17 *It is thus, high time that this misconception needs to be cleared. Part 1 order delivered by the Labour Court on the first two issues is not an interlocutory order. It is in fact a final judicial pronouncement on the said two issues which cannot be reopened before the same Court even while the complaint is being decided finally on the rest of the issues, for the reason that once the first two issues are decided thereby, upholding the enquiry and the findings of the Enquiry Officer, the Labour Court loses its jurisdiction to deal with the said two issues while deciding the issue pertaining to the proportionality of the punishment. Part 1 order of the Labour Court or a similar order of the Industrial Court, as the case may be, needs to be challenged before a superior court and it is only the superior court which can reopen the said issues to*

scrutinize, whether, the part 1 judgment of the Labour Court or the Industrial Court, is perverse or not.

18 This Court has recently considered the law on this issue in Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v/s Vasant Ambadas Deshpande reported in 2014(1) CLR 878 : 2014(3) Mh.L.J. 339 and in the case of MSRTC, Beed v/s Syed Saheblal Syed Nijam reported in 2014 (III) CLR 547 : 2014(4) Mh.L.J. 687. I am, therefore, rejecting the first contention of the petitioner that the part 1 order amounts to an interlocutory order."

17. The petitioner did not challenge the judgment of the Labour Court on the preliminary issues dated 14.9.2009 and 28.12.2012 before the Industrial Court. It is recorded by the Industrial Court in the impugned judgment dated 14.10.2013 that the petitioner has challenged the final judgment only dated 25.9.2013, by which the complaint was dismissed, concluding that the punishment awarded to the petitioner was not shockingly disproportionate.

18. In the fact situation recorded as above, the issue, therefore, before the Industrial Court in Revision (ULP) No.44 of 2013 was restricted only to the aspect of proportionality of the punishment since the decision of the Labour Court upholding the enquiry and the findings of the enquiry officer was not specifically challenged.

19. Shri Barde contends that though no such prayer clause was putforth, grounds for criticizing the Part I order dated 14.9.2009 and 28.12.2012 were putforth. I am unable to accept this contention since there ought to be a

specific prayer seeking quashing and setting aside of the Part I orders, dated 14.9.2009 and 28.12.2009 in the event, the petitioner desires to canvass that none of the charges were proved against him and the findings of the enquiry officer are perverse and therefore, unsustainable. The impugned judgment of the Labour Court dated 25.9.2013 is, therefore, restricted only to the extent of whether the punishment awarded to the petitioner was shockingly disproportionate or not.

20. Shri Deshmukh, learned Advocate for the respondent has supported the impugned judgment of the Industrial Court. Shri Barde has taken me through the entire record and proceedings produced from Complaint (ULP) No.40 of 2009 and the Revisional proceedings.

21. The issue that survives for determination is whether the punishment awarded to the petitioner can be said to be shockingly disproportionate. Shri Barde contends that the past service record of the petitioner evidences a single blemish. Rest of the service record from 1989 to 2007 is clean. Shri Deshmukh points out that the petitioner has been awarded the punishment of dismissal from service for acts of mis-appropriation. The said matter is subjudice before the Labour Court, which has stayed the dismissal order. The complaint is yet to be decided. In 1996, the petitioner was punished with a penalty of Rs.25/- for a similar misconduct.

22. Shri Barde has relied upon the following judgments:-

- (1) U.P.State Road Transport Corporation Vs. Mahesh Kumar Mishra - AIR 2000 SC 1151,
- (2) Ramkrushna Shankarrao Raut Vs. MSRTC - 1996 (4) Bom. C.R. 31,
- (3) Mahadeo Atmaramji Nage Vs. MSRTC - 2009 (2) Bom. C.R. 824 and
- (4) MSRTC Vs. Abdul Usman Meboob Shaikh - 2000 (3) ALL MR 283.

23. He contends that the above cited reports are with regard to the Bus-Conductor having been found guilty of issuing less fare tickets or permitting the passengers to travel ticket-less. He further submits that the conduct of the petitioner would be covered by the definition of negligence considering that the bus was over crowded. Charge of misappropriation can be proved only if the intent to misappropriate is established and therefore, mens rea has to be proved.

24. It is trite law that in cases of such nature, mens rea is not required to be established in service jurisprudence. By preponderance on the principles of probabilities, it needs to be seen as to whether there is enough material / evidence on record to prove the act of misappropriation.

25. The Apex Court in the case of KSRTC Vs. B.S.Hullikatti [AIR 2001 SC 930] and in the case of Divisional Controller, KSRTC Vs. A.T.Mane [(2005) 3 SCC 254] has concluded that a Bus Conductor who does not issue tickets or issues used tickets and collects the fare, naturally has the intention to retain the money, which is an act of misappropriation.

26. The relevant observations of the Apex Court in the case of KSRTC Vs. B.S.Hullikatti (supra), read 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."*

27. In the case of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourana Sangha Etc. [2000 AIR SCW 3439 = AIR 2000 SC 3129], the Apex Court has held 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 fro 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 Diary Development Corporation Ltd. and Anr. v. Kala Singh and Ors. : (1997) IILLJ 1041 SC, this Court considered the case of a workman who was working as a Diary 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).

28. It was thus laid down in the case of Janatha Bazar (supra), that where the charge of misappropriation is proved, be it for a negligible amount or a large sum, neither should the Court show misplaced sympathy towards such a litigant nor is the court required to consider the past service record of the employee.

29. 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 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.”

30. It is thus apparent, that the conclusion that the enquiry has been conducted in a fair and proper manner and the findings are legal and sustainable, have attained finality. Issue that remains is about the disproportionality of the punishment.

31. This Court, on 6.8.2015, in Writ Petition No. 4302 of 2005 - The Divisional Controller MSRTC Vs. Shivaji Darappa More, has concluded that the punishment awarded must appear to be shockingly disproportionate and should be an act of outrageous defiance of moral standards and logic so as to cause an interference on the ground that the same could be said to be a

shockingly disproportionate punishment. In this backdrop, the judgments relied upon by Shri Barde are of no assistance as they are with regard to the manner of proving a charge and the act of negligence.

32. As regards the submission of Shri Barde that the conduct of the petitioner would amount to negligence, same is misconceived. It has emerged from the record that the petitioner has issued bus tickets only for the Sangamner - Sakur phata segment. It is established that he has retained the fare from Sangamner to Sakur which was Rs.23/- per ticket as compared to Rs.13/- per ticket upto Sakur phata. Even if the passengers are said to have changed their mind for travelling on the extended segment upto Sakur, the petitioner could have issued tickets for Rs.10/- denomination to each of these passengers, forthwith. He retained the fare right upto Sakur but issued tickets for a lesser fare upto Sakur Phata. As such, it cannot be said that his act could be termed as being an act of negligence.

33. In the light of the above, I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous. The petitioner is facing another litigation having suffered the punishment of dismissal for misappropriation. The matter is subjudice.

34. In the light of the above, this petition being devoid of merit is, therefore, dismissed. Rule is discharged.

35. Shri Barde at this juncture, prays for extension of protection granted to him earlier by the Industrial Court and which was continued by this Court for a further period of four weeks. Shri Deshmukh has opposed the request.

36. It cannot be over looked that the petitioner is held guilty of misappropriation. He could keep his proposed punishment (by the second show cause notice dated 9.7.2009), at bay for the last six years. In this period of pendency of litigation, on the basis of having continued in service, he has committed another act of misappropriation for which he has been dismissed from employment and that matter is subjudice before the Labour Court. I, therefore, find that granting any further protection would not be appropriate. The request of the petitioner is, therefore, rejected.

37. Record and proceedings be returned to the Labour Court forthwith.

(RAVINDRA V. GHUGE, J.)

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