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wp9074.13, etc.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9074 OF 2013

Ramkumar S/o. Gunwantrao Mangrule,
Age: 46 years, Occu. Service as S. T. Conductor,
R/o. S. T. Colony, Nalegaon Road,
Udgir, At Post. Tq. Udgir,
Dist. Latur

...PETITIONER

VERSUS

Divisional Controller,
Maharashtra State Road Transport
Corporation, Latur Division,
Latur, At Post. Tq. And Dist. Latur

...RESPONDENT

WITH

WRIT PETITION NO. 8198 OF 2014

Vikram S/o. Prabhakarrrao Waychalkar,
Age: 27 years, Occu. Service as Conductor,
R/o. Hanuman Road, Udgir,
Tq. Udgir, Dist. Latur

...PETITIONER

VERSUS

Divisional Controller,
Maharashtra State Road Transport
Corporation, Latur Division,
Latur, At Post. Tq. And Dist. Latur

...RESPONDENT

Mr P. L. Shahane, Advocate for petitioners;
Mr D. S. Bagul, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 23rd February, 2015

ORAL ORDER

As the issue involved in both the writ petitions is common, they are taken up together for final disposal, with the consent of the parties.

2. In both the writ petitions, the petitioners are claiming to be working as Conductors with respondent – Maharashtra State Road Transport Corporation and while performing their duty on a particular route, it was noticed that they have acted contrary to the Conduct Rules and were accordingly charge-sheeted.

3. So far as Writ Petition No.9074 of 2013 is concerned, the petitioner claims that after he was charge-sheeted, an enquiry was conducted against him and punishment of stoppage of one annual increment with permanent effect was imposed on him vide order dated 30th December, 2011.

4. After the above referred order of punishment dated 30th December, 2011, the petitioner was served with another notice dated 12th November,

2012, issued by the reviewing authority, with an intention to review the order of punishment of stoppage of one annual increment with permanent effect and he was called upon to explain as to why he should not be dismissed from the service of the respondent – employer i.e. Maharashtra State Road Transport Corporation.

5. Feeling aggrieved by the notice dated 12th November, 2012, the petitioner preferred Complaint (ULP) No.45 of 2012 along with an application Exh.U-2 for grant of interim relief, before the Labour Court, Latur.

6. Learned Judge, Labour Court, Latur rejected the application for interim relief Exh.U-2 by order dated 3rd January, 2013. The learned Labour Court, having regard to the express power of review has inferred that the employer has every right to review its earlier order of punishment and take recourse to enhancement of punishment, if so required.

7. Aggrieved by the order dated 3rd January, 2013, passed by the Labour Court, Latur, the petitioner preferred Revision (ULP) No.2 of 2013, which also suffered the same fate, as is apparent from the judgment dated 9th October, 2013, passed by the learned Member, Industrial Court, Latur. Being aggrieved by the orders passed by both the Courts below, the petitioner has preferred Writ Petition No.9074 of 2013.

8. So far as Writ Petition No.8198 of 2014 is concerned, after conclusion of disciplinary enquiry, the Enquiry Officer had imposed punishment of fine of Rs.244/- against the petitioner. The said order was also sought to be reviewed by the reviewing authority of employer by issuing show cause notice dated 12th November, 2012, calling upon the petitioner to explain as to why he should not be dismissed from service.

9. Feeling aggrieved by the notice dated 12th November, 2012, the petitioner preferred Complaint (ULP) No.44 of 2012 along with an application Exh.U-2 for grant of interim relief, before the Labour Court, Latur, which came to be rejected by the learned Labour Court by order dated 29th November, 2012, which has been further confirmed by the learned Member, Industrial Court, Latur, by judgment dated 6th September, 2014, passed in Revision (ULP) No.3 of 2013. Being aggrieved by the orders passed by both the Courts below, the petitioner has preferred Writ Petition No.8198 of 2014.

10. Mr Shahane, learned Counsel appearing on behalf of the petitioners has urged that there are no powers of review to the authority and as such has sought to place reliance on the judgment of this Court in the matter of **M.S.R.T.C., Chandrapur, through its Divisional Controller vs. Labour Court, Chandrapur**, reported in **Laws (Bom)-2009-2-34**, so

as to canvass that the show cause notice in question issued to the petitioners are not sustainable in law and the Labour Court should have granted interim relief in their favour. Learned Counsel for the petitioners has placed reliance on the judgment of this Court in the matter of **Ramesh Gopinath Tidke, Conductor, Buldhana Depot, M.S.R.T.C., Buldhana vs. Divisional Controller, M.S.R.T.C., Divisional Office, Buldhana**, reported in **2009 I CLR 252**, so as to canvass that double punishment cannot be imposed on the petitioners for one and the same misconduct.

11. Mr Bagul, learned Counsel appearing on behalf of the respondent, while countering the submissions made by Mr Shahane, has sought to urge that the power of the respondent-employer to review its own order is already channelized by catena of judgments. There is express power under the relevant statute, which are referred to and dealt with by the learned Labour Court and the Industrial Court, in its entirety. He has further sought to urge that the present case is not the one that of the imposition of double punishment, but is a case of review of the punishment awarded earlier as same is in accordance with statutory provision. He submits that the reviewing authority has every power to review the punishment imposed earlier and to substitute with that of the other punishment, provided the employee is given appropriate opportunity of hearing. According to him, the petitioners are served with the show cause notice for substitution of punishment and they are also called upon

to submit their reply to the same, which will be considered on its own merits. According to him, the very proceedings are rightly rejected by the Courts below.

12. Having considered rival contentions of the parties, it is required to be noted that the main complaints (ULP) preferred by the petitioners – Conductors are pending adjudication before the Labour Court.

13. The petitioners, after conclusion of the disciplinary proceedings were awarded punishment and before undergoing the said punishment by them, the reviewing authority of respondent – employer has *suo motu* issued the show cause notice to them, calling upon them to explain as to why punishment of dismissal from service should not be imposed against them.

14. Perusal of the findings recorded by both the Courts below reveals that the Industrial Court has discussed at length the very power under the Discipline and Appeal Rules, particularly clause 12 (b) contemplates imposition of appropriate punishment on the present petitioners. Both the Courts below have taken into account the aspect of equity while considering the claim for grant of interim relief, i.e. past service record of the petitioners. The past service record of the present petitioners is full of misconduct reported by the employer.

15. In addition to above, it is required to be noted that in the proceedings initiated before the Labour Court and the Industrial Court it is concurrently held that the petitioners have not made out any case for grant of interim relief, in my opinion, in absence of any illegality or material irregularity being shown, it will not be appropriate for this Court to invoke the jurisdiction under Article 227 of the Constitution of India to accede to the request of the petitioners herein for grant of interim relief, which is refused by both the Courts below.

16. In the light of above discussion, the judgments relied on behalf of the petitioners (cited supra), have hardly any application to the facts of the present case.

17. In that view of the matter, no case for interference is made out. In the result, both the writ petitions fail and stand rejected with no order as to costs.

(N.W. SAMBRE, J.)

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