

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9228 OF 2013

Pallavi Shriram Disle,
Age 24 years, Occ. Service
R/o Borgaon, Tq. Kaij,
District Beed.

..Petitioner

Versus

1. The State of Maharashtra

2. The Divisional Controller,
MSRTC, Osmanabad.

..Respondents

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Advocate for Petitioner : Shri Gude Madhav P.
Respondent 1 : Deleted
Advocate for Respondent 2 : Shri Bagul D.S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 29, 2015

... JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. Shri Gude, learned Advocate for the petitioner submits that a false charge was levelled upon the petitioner and based on the same, the charges set out in the charge sheet dated 10.6.2010 are held to be proved. A second show cause notice, along with the Enquiry Officer's report, proposing

the punishment of dismissal from service was served upon the petitioner.

5. The petitioner, therefore, filed Complaint (ULP) No. 58 of 2010 before the Labour Court, Latur under Section 28(1) read with items 1(a), (b), (d) and (f) of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"). An application for interim relief under Section 30(2) of the said Act was filed. By the order dated 11.1.2012, the Labour Court allowed the interim application Exhibit U-2 and stayed the second show cause notice, dated 29.11.2010, thereby, preventing the respondent MSRTC from awarding any punishment to the petitioner.

6. The MSRTC preferred Revision (ULP) No.24 of 2012 before the Industrial Court, challenging the interim order of the Labour Court. By its judgment and order dated 10.10.2013, the Revision Petition was allowed and the interim order of the Labour Court was set aside. The application for interim relief was, therefore, rejected.

7. Shri Gude submits that the evidence on record is not sufficient to conclude that the charges have been proved against the petitioner. The Bus passengers, who had stated a particular weight of their luggage for which the petitioner issued luggage tickets, have not been examined in the enquiry. In the absence of any evidence from the passengers, the charge of misappropriation on the ground of issuing lesser luggage tickets, disproportionate to the fare applicable for the weight of the luggage,

cannot be said to have been proved.

8. He further submits that there are seven family members, dependent upon the petitioner. Her employment as a Bus Conductor is the only source of income. Under the ex-parte ad-interim orders of the Labour Court, she was protected. Subsequently, by the interim order dated 11.1.2012, the proposed punishment was stayed. Even after the Industrial Court allowed the Revision Petition of the respondent MSRTC on 10.10.2013, she was protected. By order dated 7.11.2013 in this petition, passed by the Vacation Court, the petitioner was further protected. Shri Gude, therefore, submits that this protection be continued and the Labour Court be directed to decide the Complaint within one month.

9. Shri Bagul, learned Advocate on behalf of the respondent MSRTC submits as under:-

(a) That the petitioner was appointed as a Bus-Conductor on 9.7.2009 at the age of about 21 years.

(b) In the third month of her appointment on 12.10.2009, she was charged with having committed a misconduct and was inflicted with the punishment of fine of Rs.100/- by order dated 29.10.2009.

(c) In the sixth month of her employment, she was charged with misappropriation on 21.1.2010, having sold used tickets. Her three

annual increments were permanently stopped by an order of punishment dated 31.3.2010.

(d) On the same date 21.1.2010, despite being a lady Bus Conductor and not having been appointed as a Bus Driver, she drove the MSRTC Bus. She did not even have a driving license. By order of punishment dated 30.1.2010, fine of Rs.50/- was imposed on her.

(e) In her eighth month of service on 12.3.2010, she was charged with misappropriation. By order of punishment dated 30.4.2010, she was issued with a severe warning.

(f) On 6.5.2010 and 5.6.2010, she was charged with misappropriation.

(g) The punishment order is yet to be issued as she was again charged with misappropriation by charge sheet dated 10.6.2010, which is subject matter of this litigation.

10. Shri Bagul, therefore, submits that in less than one year of her appointment, she was punished for four misconducts and the seventh misconduct is a subject of this litigation.

11. Shri Bagul further submits that the Reporter of the MSRTC recorded the statements of three passengers, who were travelling from Beed to

Paranda. The petitioner claims that she issued such tickets, which were commensurate to the fare to be charged for the luggage as declared by the passengers. Shri Bagul submits that it was the duty of the petitioner to measure the luggage and issue an appropriate luggage ticket. The petitioner or for that reason any Bus Conductor is not expected to rely on the mere statement of the passenger and issue the luggage ticket. It was noticed in the surprise check that was carried out 5.6.2010 that the petitioner had an excess of Rs.117/- with her.

12. He then submits that the Reporter was examined in the enquiry and who has corroborated the statement of the passengers which were recorded. He, therefore, prays for dismissal of this petition.

13. It is undisputed that the petitioner is charged with misappropriation. It is the seventh episode in her service of eleven months with the respondent MSRTC.

14. The Apex Court in the case of Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others [AIR 1996 SC 285], while concluding that the Labour Court has the jurisdiction under item 1 of Schedule IV of the said Act to entertain a challenge to the proposed punishment even at the penultimate stage, has struck a note of caution. Paragraph No.53 of the said judgment reads as under:-

“53. Before parting with this case, however, we must strike a note

of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant Clauses 7 of item I of schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.”

15. It is, therefore, evident that the Labour Court, before interfering with the proposed punishment, is expected to meticulously scan the allegations in the Complaint and if necessary get the necessary investigation made in the light of such complaint. Only when a very strong prima facie case is made out, it may intercept the domestic enquiry even while exercising powers under Section 30(2) of the said Act. The Apex Court has observed that, “Such order should not be passed for mere askance by the

Labour Court. Otherwise the very purpose of holding domestic enquiry as per the Standing Orders would get frustrated.”

16. Upon going through the order of the Labour Court, dated 11.1.2012, I am constrained to observe that the Labour Court has disregarded the note of caution issued by the Apex Court in the case of Hindustan Lever (supra). From the impugned order it does not appear that the Labour Court can be said to have meticulously scanned the enquiry proceedings. There is no reference to the past service record of the petitioner, which is highly blemished. The Labour Court has also lost sight of the fact that the petitioner has put in only one year of service.

17. This Court in the matter of Bajaj Auto Limited Vs. Kalidas Deoram Patil [1999 (3) Mh.L.J. 857], has considered the effect of a clean past service record and a blemished past service record. In the instant case, the past service record is self explanatory.

18. In the above backdrop, the Labour Court was obliged to consider whether a very strong prima facie case has been made out by the petitioner before it could have allowed application Exhibit U-2. As such, the Industrial Court has rightly arrived at a conclusion in the impugned judgment that the conclusions of the Labour Court are perverse and unsustainable.

19. This Court, in the matter of Usha Nagorao Phad Vs. Divisional Controller, MSRTC, Latur - Writ Petition No.4001 of 2014, vide its judgment

dated 6.5.2014 has considered a similar case. The ratio laid down by the Apex Court in the case of Janatha Bazar (South Kanara) Vs. The Secretary, Sahakari [AIR 2000 SC 3129], was also considered and the respondent / employer was, therefore, permitted to proceed in accordance with law in relation to the disciplinary proceedings concerning the petitioner. Paragraph Nos. 6 to 8 of the Janatha Bazar judgment (supra), reads as under:-

“ 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) ILLJ 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.

7. *In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent-workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the Management.*

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."*

20. 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 Industrial Court has rightly set aside the interim order of the Labour Court

dated 11.1.2010. This petition is, therefore, devoid of merits and is dismissed.

21. Rule stands discharged accordingly. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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