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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 876 OF 2015

The Maharashtra State Road
Transport Corporation/MSRTC,
Division – Ahmednagar,
District – Ahmednagar, through its
Divisional Controller.

...Petitioner..

Versus

Shri. Laxman S/o Kachru Vairal,
Age – 48 years, Occu – Nil,
R/o At post – Takli Khatgaon,
Tal – Nagar,
District – Ahmednagar.

...Respondent...

.....

Shri. Bhausahab S. Deshmukh, Advocate for petitioner.
Shri. A. A. Khande, Advocate for respondent.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 07.12.2015

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner is aggrieved by the judgment and order dated 15.9.2012 delivered by the Labour Court, Ahmednagar, by which Complaint (ULP) No.20/2008 filed by

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the respondent challenging his dismissal dated 15.10.2004 had been allowed. The petitioner is also aggrieved by the judgment and order dated 19.3.2014 delivered by the Industrial Court by which the Revision (ULP) No.118/2012 preferred by the petitioner has been partly allowed.

3] Shri B.S. Deshmukh, learned Advocate for the petitioner submits that the respondent was discharging duties as a Conductor with the petitioner - Corporation. In his past service from 1988 onwards, he has been punished on 45 occasions for having committed 45 misconducts.

4] ON 26.11.2000, when the Bus was travelling from Parner to Wankuta, the Flying Squad carried out a surprise check of the Bus and found that two passengers were travelling ticket-less as used tickets were issued to them. A charge-sheet dated 30.11.2000 was issued to the respondent. After conducting a domestic inquiry as per the Discipline and Appeal Rules, the respondent was finally awarded the punishment of reduction of pay-scale.

5] By order dated 28.9.2001, the punishment of reduction in pay-scale was implemented. A show cause notice dated 23.11.2001 was issued by the appellate

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authority purportedly under Rule 9 of the Discipline and Appeal Rules calling upon the respondent to show cause why the punishment awarded should not be reviewed and why he should not be awarded the punishment of dismissal from service. The respondent promptly replied to the notice on 26.11.2001.

6] Shri B.S. Deshmukh frankly submits that a notice of personal hearing was issued and a hearing was arranged on 22.9.2004, which is almost three years after the respondent submitted his reply. By order dated 15.10.2004, the order of punishment dated 28.9.2001 was reviewed and the respondent was awarded the punishment of dismissal from service.

7] Shri B.S. Deshmukh further submits that the order of reduction dated 28.9.2001 was then recalled after one year of the passing of the dismissal order on 9.9.2005.

8] He, therefore, submits that the conclusion of the Labour Court that the respondent has suffered double jeopardy as he has already suffered the punishment of reduction dated 28.9.2001 and after three years, the order of dismissal is issued without recalling the order

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of reduction, is erroneous. Shri Deshmukh submits that the said conclusion of the Labour Court is unsustainable as the petitioner - Corporation has the legal right to *suo moto* review its earlier decision.

9] He further submits that the error committed by the Labour Court has also been committed by the Industrial Court, which failed to see the perversity in the judgment of the Labour Court and has upheld the said judgment. He, therefore, prays that both the impugned judgments be quashed and set aside and the dismissal of the respondent dated 15.10.2004 be upheld.

10] Shri A.A. Khande, learned Advocate appearing on behalf of the respondent - employee, has strenuously defended the impugned judgments. He does not dispute the facts as have been recorded here-in-above.

11] He, however, points out from Clause 9 below the subject "Appeal" as set out in the modified Discipline and Appeal Rules dated 27.5.2005 that the appellate authority of the petitioner - Corporation is entitled to review the order of punishment issued or prescribed by the disciplinary authority, only within one year. He submits that the phraseology used in Clause 9 indicates

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that the review can be done within one year. He, therefore, submits that it does not mean that the review proceedings should be initiated in one year.

12] Shri B.S. Deshmukh submits that the interpretation of Clause 9 of the petitioner - Corporation is that the review procedure has to be set in motion within one year and it is not incumbent upon the petitioner - Corporation to complete the exercise of review within one year.

13] In order to put the controversy as regards Rule 9 to rest, I have considered the phraseology used in Clause 9, which is in clear and unambiguous terms. It provides for causing a review of the order of punishment prescribed by the disciplinary authority, within one year. The phraseology does not indicate that the Corporation can set the review proceedings in motion within one year. Therefore, I have no hesitation in concluding that the contention of Shri A.A. Khande is sustainable and the review proceedings have to be completed within one year.

14] Be that as it may, I am constrained to refer to the past service record of the respondent while deciding

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as to whether the technical flaws committed by the petitioner should result in the reinstatement of the respondent. The respondent joined duties in 1988. By 2001, he had committed in all 46 mis-conducts. He had been punished for 45 mis-conducts of the nature of allowing passengers to travel ticket-less or re-issuing used tickets.

15] It is trite law that such conduct of a Bus Conductor is to be held to be an act of mis-appropriation and dishonesty. The 46th mis-conduct is the mis-conduct at issue.

16] In this backdrop, I had expressed my view to the learned Advocate for the respondent on 2.12.2015 when this matter was heard at length. Consequentially, the respondent has filed an affidavit dated 4.12.2015, which is tendered across the Bar today. The respondent is also personally present in the Court and Shri A.A. Khande, learned Advocate, identifies him. The said affidavit is taken on record and marked as Exhibit X for identification.

17] Shri A.A. Khande submits that by virtue of Exhibit X, the respondent is willing to submit his

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voluntary retirement application alongwith a resignation to the petitioner - management and the same be considered as an application for voluntary retirement. Notional continuity of service be granted so as to enable the respondent to earn his retiral benefits. Shri A.A. Khande, however, makes a request that this Court may consider whether back wages should be granted to the respondent.

18] Considering the nature of facts as recorded here-in-above and the nature of the mis-conducts, that have been committed by the respondent, he deserved the punishment of dismissal from service, but for the technical flaws created by the petitioner - management. Nevertheless, on the point of Clause 9 of the Discipline and Appeal Rules, the respondent could be said to have technically succeeded against the petitioner.

19] In this backdrop, I am inclined to accept Exhibit X and direct the petitioner to allow the respondent to tender his application for voluntary retirement alongwith a resignation and by accepting the said application, the respondent be treated as voluntarily retired from service with notional continuity

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in service. This would enable the respondent to draw all retiral and pensionary benefits. However, no back wages shall be paid to the respondent from the date of his termination i.e. 15.10.2004.

20] In the light of the above, this petition is partly allowed. The impugned judgment of the Labour Court dated 15.9.2012 and the judgment delivered by the Industrial Court dated 19.3.2014 are quashed and set aside.

21] The respondent shall tender an application for voluntary retirement alongwith a resignation within 15 days to the petitioner - competent authority. Thereafter, the petitioner shall accept the same and shall retire the respondent from service with effect from 1.1.2016. Notional continuity of service from the date of termination is granted to the respondent, by which he would be entitled for retiral and pensionary benefits.

22] Rule is made partly absolute in the above terms. There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)