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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO. 11684 OF 2014

The Divisional Controller,  
Maharashtra State Road Transport Corporation,  
Kothala Road, Sarjepura,  
Ahmednagar, District Ahmednagar.

...PETITIONER

-VERSUS-

Dhananjay Asaram Raje,  
Age : 42 years, Occ : Nil,  
R/o At.Post.Ghodegaon, Tq.Newasa,  
Dist.Ahmednagar.

...RESPONDENT

...  
Advocate for Petitioner : Mr.Bagul D.S.  
Advocate for Respondent : Mr.Golewar V.P.

...

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 11<sup>th</sup> August, 2015**

Oral Judgment:

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

2 The learned Advocates for the Petitioner and the Respondent have extensively canvassed their submissions. The facts of the case are as under:-

- (a) The Respondent/ Employee joined the Petitioner/ Employer as a Bus Conductor in 1997.
- (b) On 24.10.2000, when the Bus was on the Shivoor-Devi Bhoyare route, it was checked by the Flying Squad at Ralegan Therpal.
- (c) The Flying Squad found two tickets of Rs.10/- each having been issued to a passenger, but unpunched.
- (d) The way-bill was closed and there was no entry of the said two tickets.
- (e) The charge sheet cum show-cause notice dated 22.11.2000 was served upon the Respondent.
- (f) The departmental enquiry was concluded on 22.03.2001.
- (g) The second show cause notice dated 01.08.2002 was issued to the Respondent proposing the punishment of dismissal from service.
- (h) After hearing the Respondent, the Petitioner awarded the punishment of dismissal from service to the Respondent by it's order dated 12.08.2002.
- (i) The first appeal preferred by the Respondent to the Appellate Authority was dismissed on 24.03.2003.
- (j) His second appeal was also dismissed on 15.03.2005.
- (k) He preferred Complaint (ULP) No.28/2007 before the Labour

Court.

- (l) By the part-I judgment dated 15.09.2011, the enquiry was held to be fair and proper and the findings of the Enquiry Officer were sustained.
- (m) The part-I judgment dated 15.09.2011 has not been challenged by the Respondent.
- (n) By the judgment and order dated 10.04.2012, the Labour Court while considering the proportionality of the punishment, has concluded that the same is commensurate to the gravity and seriousness of the misconduct and the complaint was, therefore, dismissed.
- (o) The Respondent preferred Revision (ULP) No.115/2012 challenging the judgment of the Labour Court dated 10.04.2012.
- (p) By the impugned judgment dated 18.02.2014, the Industrial Court allowed the revision petition and interfered with the quantum of punishment by directing the Petitioner/ Employer to issue a fresh appointment order to the Respondent/ Employee and the Respondent was deprived of continuity of service and all back-wages from the date of dismissal till the date of fresh appointment.

3               Shri Bagul, learned Advocate for the Petitioner/ Corporation, submits that once the enquiry is sustained and the findings of the Enquiry Officer are not branded as perverse, the charges stand proved. Since the Respondent did not challenge the part-I judgment of the Labour Court dated 15.09.2011, the Industrial Court could not have gone into the charges which have been proved against the Respondent.

4               He draws my attention to the observations of the Industrial Court in paragraph 6 of the impugned judgment to contend that the Industrial Court has concluded that the Respondent may not have the intention of misappropriating a meager amount. He, therefore, submits that the Industrial Court has shown misplaced sympathy towards the Respondent and allowed the revision petition issuing the directions which are impugned in this petition. He, therefore, prays for allowing of this petition.

5               Shri Golewar, learned Advocate for the Respondent/ Employee, has strenuously supported the impugned judgment. He submits that even if it is held that the Respondent was guilty of misappropriation, he had put in a clean service of three years prior to the incident at issue. His clean past service record should be considered as a mitigating factor. The Industrial Court has rightly appreciated that a meager amount is

involved and the punishment of dismissal from service would amount to a disproportionate punishment.

6           He further submits that the Industrial Court has not shown any misplaced sympathy towards the Respondent. The Industrial Court has conscientiously considered that the amount was meager and the clean past service record of three years would reduce the gravity of misconduct even further and hence, the punishment of dismissal from service, which amount to civil death, is a disproportionate punishment. He, therefore, prays that this petition be dismissed as the Respondent is willing to accept a fresh appointment from this date.

7           I have considered the submissions of the learned Advocates and the facts as are recorded herein above.

8           With regard to a short tenure of clean service record, the same has been interpreted by this Court in the case of *Bajaj Auto Limited v/s Kalidas Devram Patil* reported in **2000(2) Bom.C.R. 630 : 2000 (84) FLR 157**. Considering the ratio laid down by the Apex Court in *Palghat BPL & PSP Thozilali Union v/s BPL India* reported in **1996(1) CLR 368**, this Court has concluded that a short tenure of employment like two to

three years or of similar range is not an indicator of honesty and integrity of an employee. A long service record which is clean and unblemished would be a reflection of his personality. A short service record deserves no consideration. The judgment of this Court was upheld by the Appeal Bench.

9           The Apex Court in the case of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara Sangha*, **2000(7) SCC 517 : AIR 2000 SC 3129** has dealt with a similar issue. It is concluded that acts of misappropriation need to be dealt with, with an iron hand. Whether, the amount of misappropriation is small or large, is insignificant. An act of misappropriation in itself is a very serious act. The Apex Court has, therefore, concluded that in a case of misappropriation, the clean past service record should be disregarded. Relevant observations of the Apex Court are as under:-

“3.       *The question involved in these appeals is – whether the 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 legalised 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 Others (1996) 2 SCC 714]. In U.P.State Road Transport Corporation v. Basudeo Chaudhary and another [(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 for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the waybill 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 Dairy Development Corporation Ltd. and another v. Kala Singh and Others [(1997) 6 SCC 159], this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was

charged for the misconduct that he inflated the quantum of milk supplies in milk centres 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.”*

10           The Division Bench of this Court in the case of *P.R.Shele vs. Union of India and others* reported in **2008 (2) Mh.L.J. 33**, has concluded as follows:-

- “14. *That takes us to the last submission of learned counsel for the petitioner as regards the alleged disproportionate punishment. In this connection our attention is drawn by Mr. Suresh Kumar, learned counsel appearing for the respondent, to the judgment of the Supreme Court in Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane, (2005) 3 SCC 254 where the employee had misappropriated the funds of the appellant Corporation. The employee was removed from service. The High Court directed reinstatement with full back wages and continuity of service. The Supreme Court observed that while dealing with the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken*

into consideration. The Supreme Court further observed that when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal. The Supreme Court restored the dismissal order passed by the Disciplinary Authority.

15. We may also refer to another judgment of the Supreme Court in *Managing Director, North-East Karnataka Road Transport Corpn. v. K. Murti*, (2006) 12 SCC 570. 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 back wages. 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."

16. In this case the Divisional Authority, the Appellate Authority as well as the Revisional Authority have held the petitioner guilty. It is observed that the special cancellations were made by the terminal manned by the petitioner. The privilege of special cancellation can only be accessed, if the appropriate user ID and password are entered. The password being confidential is known to the concerned Enquiry Reservation Supervisor who enters his User ID and password. It is observed that the concerned Enquiry Reservation Officer at the relevant time was the petitioner. Conduct of the petitioner is despicable. It shows dishonesty. As said by the Supreme Court, the amount involved is immaterial. It is the conduct and its effect which needs to be seen. If the respondents feel that such a person should not be allowed to work in railways which is a service essentially meant for general public their action of removing him from service cannot be faulted."

11           It is, therefore, trite law that an act of misappropriation should not be interfered with. Any show of sympathy by the Court would

amount to showing misplaced sympathy. I am astonished by the conclusion drawn by the Industrial Court in paragraph 6 which is virtually a conclusion that if an employee, at all, had to misappropriate an amount, he would not misappropriate a meager amount and therefore, it needs to be construed that he had no intention of misappropriation. Such conclusions are bound to send a wrong impression.

12           Considering the above, I find that the impugned judgment of the Industrial Court dated 18.02.2014 is perverse and unsustainable. The said judgment is, therefore, quashed and set aside. Revision (ULP) No.115/2012 stands dismissed and the judgment of the Labour Court dated 10.04.2012 in Complaint (ULP) No.28/2007 stands sustained.

13           The Writ Petition is, therefore, allowed. Rule is made absolute in the above terms.

**(RAVINDRA V. GHUGE, J.)**