

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 2032 OF 2002.

Dattatraya Bapusahib Patil
A/o Khatav. Tal.Tasgaon.
Dist.Sangli

.. Petitioner

Vs.

Divisional Traffic Superintendent
(DEFL), Maharashtra State Road Transport
Corporation, Sangli Division,
Dist. Sangli.

.. Respondent

Mr.Umesh Mankapure a/w Mr.Vinod Sangvikar, for the Petitioner.
Mr.G.S.Hegde, for the Respondent No.1.

***CORAM: N.M.Jamdar J.
Friday 21 August, 2015***

Oral Judgment :

By this Writ petition, the Petitioner challenges the order passed by the Industrial Court, Kolhapur allowing the Revision Application filed by the Respondent-Corporation and setting aside the order passed by the Labour Court Sangli in favour of the Petitioner.

2. The Petitioner was in the employment of the Respondent-

State Transport Corporation as a conductor. A charge-sheet came to be issued to the Petitioner on 2 April 1990 under Clause 7J, 10,22 & 44A of the Discipline & Appeal Procedure regulations applicable to the employees of the Respondent-Corporation. The charge-sheet stated that on 21 March 1990, when the Petitioner was working as a conductor on the route Miraj Stand to Sangliwadi, the bus was checked and it was found that the Petitioner had recovered less fare than the tickets which were issued to four passengers, whose statements were recorded. The Petitioner was called upon to give his explanation. The Petitioner gave his explanation which was not found satisfactory and after the conclusion of the inquiry the Petitioner was terminated from services on 6 December 1990.

3. The Petitioner thereafter filed a Complaint ULP No.596 of 1990 under Section 28(1) r/w. Item 1-a, b, d, f & g of Sch.IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, in the Labour Court, Sangli. The Petitioner sought a declaration that his termination was illegal and that he should be reinstated in services in continuity and with full back wages. The Labour Court found that the Petitioner was not charged for misappropriation and the dismissal of the Petitioner was not colourable exercise on the part of the Respondent-Corporation. The Labour Court by order dated 16 July 1994 allowed the Complaint and directed the Respondent to reinstate the Petitioner on his original post with continuity of service and full

back wages.

4. The Respondent-Corporation filed a Revision Application (ULP) No.134 of 1994 in the Industrial Court, Kolhapur. The Industrial Court found that various issues were not addressed by the Labour Court and the Labour Court had misdirected itself to enter into an inquiry as regards the clauses of the regulations rather than finding out whether there was any guilt on the part of the Petitioner. Therefore keeping in mind the limitations of revisional jurisdiction, the Industrial Court considered the matter and came to the conclusion that the only probable explanation for the Petitioner to issue tickets of less denomination was to enrich himself. Accordingly, by order dated 10 March 2002, allowed the revision and set aside the order of the Labour Court. Thereafter the Petitioner has filed the present petition.

5. Mr.Mankapure, the learned counsel for the Petitioner firstly submitted that the Petitioner was charged under clause 7J of the regulations and which does not speak of any misconduct and since the inquiry proceeded on this charge, dismissal on the ground of misconduct is not proper and therefore, the Labour Court was right in directing reinstatement. There is no merit in this submission. Initially, the Petitioner was put to notice that he had issued tickets of less denomination and his explanation was sought for, when the Petitioner was examined, to a specific query put by the Presiding officer, the Petitioner admitted the incident, but he gave an explanation that he was mentally disturbed. This was rejected

stating that the Petitioner was not a novice and his disturbed state of mind was hardly an explanation. The inquiry officer therefore, having rejected this explanation came to the conclusion that the only explanation for this conduct, which was admitted, was that the Petitioner wanted to enrich himself. The incident was put to the Petitioner, that amount in excess of the ticket was received stood established. The only explanation offered was that it was because of disturbed state of mind. Once the explanation was not found correct and the receipt of amount stood established the logical inference was that the Petitioner with full knowledge received this amount and considering the fact that he was not a newly appointed employee the conclusion was drawn that, it was to benefit himself. Therefore, even assuming only charge under clause 7J the Petitioner was not prejudiced and he had an opportunity to fully put forth his case which he did. The Industrial Court has also taken note of the fact that clause 7J is only a specific type of misconduct and clause 12(b) pertains to general fraud, dishonesty and misappropriation.

6. The Labour Court conducted an inquiry only regarding the clauses specified in the charge-sheet, without looking at the case that was put against the Petitioner. The Labour Court accepted the explanation of the Petitioner that he was in a disturbed state of mind, without any discussion, as no such inquiry was necessary. The Labour Court also incorrectly held that the Inquiry officer had not rendered any finding of misconduct, when the Inquiry officer had clearly stated that only inference that can be drawn from lack

of explanation is misconduct. The statement of the passengers to whom tickets of lesser denomination were issued was recorded, inquiry was held and full opportunity was given.

7. Mr.Mankapure submitted that revisional court had exceeded its jurisdiction. There is no merit in this submission either. The learned Labour Court had completely misdirected himself by basing the entire Judgment on the number of regulation specified in the charge-sheet, without looking at the substance of the charge and had come to a complete perverse finding. In view of these perverse findings revisional Court was fully justified in considering the matter in the manner as it did.

8. Furthermore, the Petitioner has approached this Court invoking its equitable jurisdiction. The Petitioner has been found issuing tickets of lesser denomination. No satisfactory explanation is given. The conclusion drawn by the Respondent-employer that this was deliberate, cannot be termed as perverse. The Petitioner was entrusted with collection of revenue for the Respondent-Corporation. With such conduct, may be involving small amount, the Petitioner dis-entitled himself from remaining in the services of the Respondent No.1 on a position of trust. Once these findings of fact were recorded by the Inquiry officer and confirmed by the Industrial Court, it is not possible to exercise writ jurisdiction to grant any relief to the Petitioner.

9. In the circumstances, there is no merit in this petition.

Petition is accordingly dismissed. **Rule discharged.** No order as to costs.

(N.M.Jamdar J.)