

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

WRIT PETITION NO. 2538 OF 1995

Bhima Yadav Sundermal

Age: 41 years, Occ.: Ex-Conductor,

R/o At Post Upali, Tq. Dharur,

Dist. Beed.

..PETITIONER

VERSUS

Maharashtra State Road Transportation

Corporation,

Through It's Divisional Controller,

Beed Division, Beed.

..RESPONDENT

....

Mr. P.L. Shahane, Advocate for petitioner.

Mr. A.B. Dhongade, Advocate for Respondent.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th FEBRUARY, 2016

ORAL JUDGMENT :

1. This petition was admitted by this Court by order dated 14.03.1997 only on the point of punishment.

2. Mr. Shahane, learned Counsel for the petitioner submits that the petitioner has challenged the judgment and award dated

30.06.1994 delivered by the Labour Court, Aurangabad by which Reference IDA No. 81/1991 has been rejected.

3. He submits that the petitioner joined the respondent-Corporation in 1978 as a bus conductor on casual basis. In 1980, he was taken on regular time scale. On 18.03.1984, he was charged with having retained an amount of Rs.2,102.10/- with himself for five days and did not deposit the said amount immediately with the respondent-Corporation which a bus conductor is expected to do.

4. He submits that a charge-sheet cum show cause notice was served upon him. He submitted a detailed reply to the charge-sheet stating therein that he is a person with a rural background. On the concerned date, after discharging his duties as a bus conductor, he was not feeling well. So he went to the Medical Hospital at Beed. He was treated for five days in the hospital. He submitted a medical certificate. He deposited the money after five days. Mr. Shahane submits that yet, the enquiry officer held him

guilty for temporary misappropriation and he was dismissed from service by way of punishment on 31.05.1984.

5. Mr. Shahane further submits that he was in employment for more than five years. His past record is clean and unblemished. The act of temporary misappropriation and that to when he was not keeping well cannot be said to be a grave and serious misconduct. He further submits that he has been acquitted by judgment dated 29.07.1986 delivered by the learned Chief Judicial Magistrate in Criminal Case No. 18/1986. He therefore prays for allowing this petition, quashing the impugned award dated 30.06.1994 and be granted notional reinstatement in service with continuity and full back wages till the date of his superannuation.

6. Mr. Dhongade, learned Counsel appearing on behalf of the respondent-Corporation has opposed the petition. He submits that there are specific rules applicable to the bus conductor who are supposed to deposit the cash collected during the journey, forthwith and account for the same. It is only after depositing the amount

and closing the cash book, that a bus conductor is permitted to leave.

7. On the concerned date, the petitioner, without any intimation to the respondent-Corporation, retained an amount of Rs.2,102.10/- with himself for five days. The amount may appear to be meager as in 2016. However 32 years ago, this amount of Rs.2,102.10/- would constitute a huge amount. The salary of the petitioner itself was less than Rs.2,000/- in 1984.

8. He further submits that the petitioner did not deposit the amount with the respondent-Corporation till he was warned and intimated of disciplinary action. Only after such warning, he returned the amount to the respondent-Corporation.

9. With regard to the acquittal of the petitioner, Mr.Dhongade submits that it is settled law that acquittal in criminal proceedings cannot be a ground for exonerating an employee from disciplinary proceedings. He therefore prays for the dismissal of this petition.

10. I have considered the submissions of the learned Counsel for both the sides.

11. There is no dispute that rules applicable to the bus conductor are quite strict and are expected to be rigidly and scrupulously followed. A bus conductor is not supposed to carry cash accumulated during the journey by selling tickets, either to his residence or keep it with himself. The petitioner has retained the said amount for about five days. An amount of Rs.2,102.10/- would be a huge amount as in March, 1984 and it is probably more than the monthly salary of the petitioner then.

12. The petitioner has not put forth a specific challenge in the statement of claim to the fairness of the enquiry and the findings of the enquiry officer. Specific prayers for setting aside the enquiry and the findings of the enquiry officer have not been put forth. As such, the Labour Court was left only to decide whether the punishment imposed upon the petitioner could be said to be commensurate to the seriousness and the gravity of misconduct

proved against him or whether it could be termed as being 'shockingly disproportionate'.

13. I find that the Labour Court has recorded in paragraph no.5 of the impugned award that the service record of the petitioner was very bad. He has committed similar misconducts many times. This conclusion is drawn based on the perusal of the default card. Nevertheless, this Court in the case of *Bajaj Auto Ltd. Vs. Kalidas Devram Patil* reported in **2000 (84) FLR 157** has concluded that a short tenure of clean past record would not operate as a mitigating factor. This Court concluded that unless the past record is clean and unblemished for a long duration indicating the character and attitude of an employee, it would not amount to a mitigating factor.

14. Considering the fact that the past record of only about five years of the petitioner is blemished and the charge proved against him is of temporary misappropriation of Rs.2,102.10/-, I do not find that his acquittal by the Court of criminal jurisdiction would affect the decision taken by the employer. As such, I do not

find that the impugned judgment and award could be termed as being perverse or erroneous.

15. In the light of the above, this petition is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)