

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5257 OF 1995

Sanwarkhan Rasool Khan,
Age-42 years, Occu-NIL,
R/o RPO 114, Baliram Peth,
Jalgaon

PETITIONER

VERSUS

1. State of Maharashtra,
2. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

RESPONDENTS

Mr.P.G.Borade, AGP for respondent No.1.
Mr.U.B.Shriram h/f Mr.D.S.Bagul, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/08/2016

ORAL JUDGMENT :

1. None appeared for the petitioner on 11/05/2016, 07/07/2016 and 14/07/2016. Rather than dismissing the petition in default, I am deciding the same on its merits.

2. Learned Advocate for respondent No.2 / MSRTC has assisted the Court alongwith the learned AGP.

3. The petitioner was appointed as a "Conductor" with the MSRTC

in 1977. He was dismissed from service from 25/04/1987 for having indulged in misappropriation. The petitioner was held guilty of issuing tickets of a lesser fare and unpunched tickets were also retrieved. Having been held guilty of misappropriation in the departmental enquiry, he was dismissed from service.

4. The petitioner preferred Complaint (ULP) No.82/1987 before the Labour Court, thereby challenging the fairness of the enquiry as well as the findings of the Enquiry Officer. By the Part-I judgment, the Labour Court concluded that the enquiry was fair and proper and the findings are not perverse. The issue, that was thereafter to be considered by the Labour Court was as regards whether the punishment of dismissal awarded to the petitioner was shockingly disproportionate. By the impugned judgment dated 08/01/1992, the Labour Court concluded that the punishment of dismissal for the proved misconduct of misappropriation was shockingly disproportionate and thus granted reinstatement with continuity and 50% back wages to the petitioner.

5. The MSRTC preferred Revision (ULP) No.130/1992. By judgment dated 27/01/1995, the revision petition was allowed and the judgment of the Labour Court dated 08/01/1992 was quashed

and set aside. In this petition, interim relief was refused while admitting the petition.

6. It is evident from the prayer clause set out in this petition that the Part-I judgment of the Labour Court dated 26/06/1991 upholding the enquiry and the findings of the Enquiry Officer, has not been challenged. It is trite law that when an enquiry and the findings of the Enquiry Officer are not disturbed, the charges are held to be proved. As such, in the instant case, the charge of misappropriation has been proved.

7. Considering the grounds formulated by the petitioner in the memo of the petition, it is evident that the petitioner has put forth two major grounds, which, according to the petitioner, were properly considered by the Labour Court. Firstly, that the misappropriation of Rs.12.90 paise was not a major misconduct and secondly, Item 1(g) of the MRTU and PULP Act, 1971 was squarely attracted. In my view, both these grounds are unsustainable.

8. Item 1(g) of the MRTU and PULP Act, 1971 reads as under :-

“(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or

the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.”

9. The learned Division Bench of this Court in the matter of Colourchem Ltd., and others Vs.A.L.Alsapurkar and others, 1993(III) LLJ 838, has concluded that unless the charge is of a minor or technical character, Item 1(g) is not attracted. The said view was subsequently upheld by the Hon'ble Supreme Court in the matter of Colourchem Ltd.,Vs.A.L.Alsapurkar and others, [(1998) 3 SCC 192]. Though leniency was shown towards the employee in the said matter, the view taken by this Court with regard to Item 1(g) was not disturbed.

10. The Hon'ble Supreme Court in the matter of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [(2000) 7 SCC 517] and the learned Division Bench of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33] has concluded that amount involved in misappropriation is insignificant. Even if the amount is small, acts of misappropriation have to be dealt with, with an iron hand and no leniency can be shown in such matters of misappropriation.

11. The Industrial Court in the impugned judgment dated 27/01/1995, has rightly concluded that undue sympathy was shown by the Labour Court towards the petitioner. Granting reinstatement with continuity and with or without back wages, in my view, would amount to rewarding an employee for committing misappropriation.

12. In the light of the above, this petition is devoid of merit and is therefore, dismissed. Rule is discharged.

13. No costs.

(RAVINDRA V. GHUGE, J.)