

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 798 OF 1997

Maharashtra State Road
Transport Corporation,
Through its Divisional Controller,
Jalna.

..Petitioner

Versus

Tulasidas Dagdoba Kharabe,
Age 49 years, Occ. Ex. Conductor,
R/o Pimper-kheda, Tq. Partur,
District Jalna.

..Respondent

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Advocate for Petitioner : Shri D.S.Bagul
Advocate for Respondent : Shri V.R.Mundada

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 15, 2016

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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the award dated 7.8.1996, by which, the Labour Court has partly allowed Reference (IDA) No.30 of 1990 and has granted reinstatement with continuity of service and 40% backwages to the respondent.
2. This Court by order dated 25.4.1997 admitted this petition and, on the condition that the respondent would be reinstated, stayed the direction to pay backwages to the respondent.
3. I have heard the strenuous submissions of Shri Bagul, learned

Advocate on behalf of the petitioner and Shri Mundada, learned Advocate for the respondent / employee. I have gone through the available record.

4. The respondent was appointed as a Bus-Conductor in 1989. In 1974, the respondent was dismissed from service on the charge of being guilty of habitual absenteeism. In 1978, he was granted a reappointment. He was charge sheeted in 1986, vide charge sheet dated 8.8.1986 alleging that he had remained unauthorizedly absent for 17 days and was absent on the ground of sickness for 74 days. After conducting a full- fledged enquiry, he was held guilty of all the charges and was dismissed from service by order dated 19.10.1989.

5. The respondent raised an industrial dispute for challenging his dismissal in Reference (IDA) No.30 of 1990. By the Part I award, the Labour Court concluded that the enquiry conducted by the MSRTC was not vitiated. By final judgment dated 7.8.1996, the Labour Court interfered with the quantum of punishment on the ground that only 17 days of absence was proved and the 74 days of absence on the ground of sickness cannot be termed to be unauthorized absenteeism.

6. The respondent has been reinstated in service from 1.7.1997 and has retired from employment on 30.4.2007.

7. I have considered the grounds raised by the petitioner / Corporation below paragraph No.6. It is also apparent that the respondent was earlier dismissed in 1974 for unauthorized absenteeism.

8. The issue, therefore, is as to whether the punishment awarded to the respondent was shockingly disproportionate to the seriousness and gravity of the misconduct proved. The Labour Court has arrived at a finding that the respondent was absent for 17 days unauthorizedly. His absence due to sickness can not be said to be unauthorized absenteeism.

9. The respondent has already suffered punishment for his earlier act of unauthorized absenteeism when he was dismissed in 1974 and was reappointed in 1978. From his fresh employment from 1978 till his dismissal in 1989, he has been held guilty of unauthorized absence for only 17 days. The impugned award does not indicate that there was any other punishment imposed upon the respondent in this period of 11 years of service. Though the Labour Court has disagreed with a part of the findings of the Enquiry Officer, it has sustained the findings to the extent of unauthorized absenteeism for 17 days. In my view, the Labour Court has rightly concluded that the punishment for dismissal from service was extremely harsh and disproportionate

and hence rightly reinstated the respondent with continuity of service.

10. In so far as backwages are concerned, I find that the Labour Court has concluded that the punishment of dismissal from service could be modified by awarding the punishment of depriving the respondent of 60% backwages. Taking into account his earlier dismissal and his habit of remaining absent and in the light of the judgment of the Honourable the Supreme Court in the matter of Gauri Shankar Vs. State of Rajasthan [2015 II CLR 497], I find that the backwages of 30% and deprivation of 70% would be an appropriate punishment for the respondent.

11. As such, this petition is partly allowed only to the extent of reducing the backwages from 40% as granted by the Labour Court to 30% from the date of his dismissal - 19.10.1989 till his reinstatement on 1.7.1997.

12. The petitioner shall, therefore, pay 30% of the backwages to the respondent, calculated on the basis of his last drawn wages by drawing an average of the months of July, August and September, 1989. The said amount of 30% of the backwages shall be paid to the respondent within 12 weeks from today. So also, if retiral benefits have not been given to the respondent, the petitioner shall do so

within 12 weeks from today by taking into account continuous service of the respondent from 1978 till 30.4.2007.

13. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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