

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.5214 OF 1995

Mohan S/o Kanhyaram Jadhav,  
Age-38 years, Occu-Service,  
R/o N-1, D-10-1, Ravinagar,  
HUDCO, Aurangabad

PETITIONER

VERSUS

Divisional Controller,  
Maharashtra State Road Transport  
Corporation, S.T. Divisional Office,  
Aurangabad

RESPONDENT

Mr.P.L.Shahane, Advocate for the petitioner.  
Mrs.R.D.Reddy, Advocate for the respondent.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/07/2016

ORAL JUDGMENT :

1. The petitioner/workman is aggrieved by the judgment of the Industrial Court dated 08/09/1995 by which the judgment of the Labour Court dated 11/01/1994 allowing his Complaint (ULP) no.171/1991 has been set aside.

2. After the impugned judgment was delivered on 08/09/1995, the Industrial Court stayed its order for 4 weeks on 04/10/1995 on

an application filed by the petitioner/workman. This Court, by its order dated 03/11/1995, admitted this petition and granted interim relief to the petitioner in terms of prayer clause "F" which reads as under :-

*"F. Pending the hearing and disposal of the writ petition, the operation of the judgment passed by the Industrial Court, at Aurangabad dated 08/09/1995 in Revision (ULP) No.39/94 may kindly be stayed by appropriate order or direction."*

3. Mr.Shahane, has strenuously criticized the impugned judgment by raising the following issues :-

- [a] Though this is a case of disciplinary proceeding, the Labour Court did not frame the issue with regard to the fairness of the enquiry and the fairness of the findings of the Enquiry Officer.
- [b] Since the abovesaid two issues were not cast, the enquiry cannot be said to be sustained and it cannot be said that the charges against the petitioner are proved.
- [c] The petitioner was held guilty of misappropriation of Rs.50/- since he had not shown the sale of these tickets and had therefore allegedly tried to misappropriate the said amount.
- [d] The mis-conduct, even if it is presumed to have been proved, is of a minor and technical character.
- [e] The complaint was rightly allowed by the Labour Court and the interference of the Industrial Court was unwarranted.

4. Mrs.Reddy, learned Advocate appearing on behalf of the respondent MSRTC has supported the impugned order. She submits on the basis of oral instructions that the petitioner is not in service. She further submits that the charge of misappropriation cannot be said to be of a minor nature and hence this petition deserves to be dismissed.

5. Considering the submissions of the learned Advocates, the issue raised by Mr.Shahane needs to be dealt with at the very outset. It is revealed from the judgment of the Labour Court that the petitioner had contended that the enquiry is baseless and the findings of the Enquiry Officer are perverse. In fact, based on such contentions, it was incumbent upon the Labour Court to frame the following two issues :-

1. Whether the complainant proves that the enquiry is vitiated on account of non-observance of the principles of nature justice ?
2. Whether the complainant proves that the findings of the Enquiry Officer are perverse ?

6. Be that as it may, if the petitioner was serious about the enquiry being unsustainable, he could have requested the Labour Court to recast the issues upon its failure to do so. The Labour Court had framed the issue with regard to whether the dismissal /

termination of the complainant would amount to unfair labour practices under Item I of Schedule IV and whether he is entitled for reinstatement with continuity and full back wages.

7. It is apparent that the petitioner conveniently kept silence and after the complaint was allowed and he was granted reinstatement with continuity of service, though he was deprived of the back wages by way of punishment, he did not challenge the judgment of the Labour Court before the Industrial Court alleging failure to frame proper issues. So also, in this petition, the petitioner has not prayed for any relief in relation to the failure of the Labour Court in framing the two issues.

8. The second contention of Mr.Shahane is that since the two issues were not framed, the charges cannot be said to be proved against the petitioner. I do not find any merit in this submission for the reason that it is settled law that unless the enquiry is set aside or unless the findings of the Enquiry Officer are declared perverse, the charges are said to be proved if the Enquiry Officer has held the employee guilty of the charges levelled upon him. Since the enquiry was not set aside and the findings of the Enquiry Officer were not interfered with either by the Labour Court or the Industrial Court, it

is a presupposition that the charges stand proved against the petitioner.

9. In the above backdrop, the issue that survives and as has been dealt with by the Labour Court and the Industrial Court, is as to whether the punishment awarded to the petitioner can be said to be commensurate to the gravity and seriousness of the misconduct proved.

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 in cases of misappropriation, the quantum of money misappropriated is not relevant. Even if it is a small amount, the misconduct cannot be said to be of a minor or a technical character. This view has been taken by this Court even in the matter of Colourchem Ltd., and others Vs.A.L.Alsapurkar and others, 1991(II) CLR 872 and which view has been upheld by the Hon'ble Supreme Court in the matter of Colourchem Ltd.,Vs.A.L.Alsapurkar and others, [(1998) 3 SCC 192.

11. It emerges from the record that the Labour Court interfered with the punishment on the ground that misappropriation of Rs.50/- would not invite the punishment of dismissal. The said conclusion has rightly been held by the Industrial Court to be perverse and erroneous. I, therefore, do not find any reason to cause any interference in the judgment of the Industrial Court.

12. This petition, being devoid of merit, is therefore dismissed. Rule is discharged.

13. I find it necessary to observe that the Industrial Court had stayed its judgment for 4 weeks. This Court had granted interim relief to the petitioner in terms of prayer clause "F". As such, if the petitioner has been continued in service by the respondent/ Corporation, on the basis of the judgment of the Labour Court dated 06/01/1994 and if he has been continued even pursuant to the orders of this Court, the dismissal of this petition shall therefore not create any right in the respondent to dispense with the services of the petitioner at this stage. He will therefore be entitled for the benefits on the account of his reinstatement and continuance in service. In the event the petitioner has not been reinstated during

the pendency of this writ petition, by the dismissal of this writ petition, no right of the petitioner/employee would therefore survive and his dismissal shall stand sustained.

( RAVINDRA V. GHUGE, J.)