

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

WRIT PETITION NO. 3299 OF 1997

Ranjit Baburao Awhad,
Age : Major, Occupation : Service,
R/o Naikwada, Dhule (Old),
Taluka and District Dhule.

...PETITIONER

-VERSUS-

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Dhule,
Taluka and District Dhule.

...RESPONDENT

...
Advocate for Petitioner : Shri Sachin Bhise h/f Shri S B Bhapkar.
None for Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd December, 2016

Oral Judgment :

1 The Petitioner is aggrieved by the judgment of the Industrial Court dated 25.07.1997 by which Revision (ULP) No.75/1995 filed by the Respondent/ MSRTC was allowed and Revision (ULP) No.366/1995 filed by the Petitioner/ Employee was rejected.

2 The learned Advocate for the Petitioner has strenuously

criticized the impugned judgment of the Industrial Court on the following grounds:-

- (a) Though the enquiry has been sustained and has not been vitiated, the Labour Court by its judgment dated 25.01.1995 rightly concluded that the punishment of dismissal awarded to the Petitioner was shockingly disproportionate.
- (b) The Labour Court concluded in paragraph 15 that the Petitioner may not have an intention to misappropriate the amounts of the MSRTC.
- (c) In paragraph 16, the Labour Court has rightly concluded that *“The misconduct committed by the Complainant could not be dealt by dismissing him from service. At relevant incident, normally another employer would have seriously warned to his delinquent workman. So, I find that, the punishment awarded by the respondent to the complainant has become shockingly disproportionate,”*.
- (d) The Labour Court, therefore, rightly directed reinstatement of the Petitioner by giving him continuity of service and by depriving him of back wages.
- (e) The jurisdiction of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971 is revisional jurisdiction and is

extremely limited.

- (f) In the limited jurisdiction of the Industrial Court, the finding on facts cannot be upset merely because another view is possible.
- (g) While exercising revisional jurisdiction, the Industrial Court should be slow in interfering with the findings arrived at by the Labour Court.
- (h) The Industrial Court lost sight of the fact that the punishment of dismissal for misappropriation of an amount of Rs.7696/- was rightly held to be shockingly disproportionate by the Labour Court.
- (i) Even if it is accepted that the Petitioner had an amount of Rs.10,140.50 belonging to the MSRTC, he had deposited Rs.3069.50 and was unable to deposit Rs.7696/-.
- (j) Merely because the Petitioner did not handover the amount to the checking authority and merely because it was established that the tickets worth Rs.10,140.45 were sold, it does not prove that the Petitioner had intention to misappropriate the money.
- (k) The Industrial Court has been extremely harsh in sustaining the order of punishment of dismissal.
- (l) The misconduct of minor and technical nature, does not

attract the punishment of dismissal from service.

3 None appears for the Respondent/ MSRTC despite the matter having been adjourned on 15.12.2016.

4 I have considered the contentions of the learned Advocate for the Petitioner as recorded hereinabove and have also gone through the seven grounds put forth by the Petitioner below paragraph 9 in the memo of the petition.

5 The Honourable Supreme Court, in the matter of *Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain*, **2005 (104) FLR 291**, has concluded that only if the punishment awarded shocks the judicial conscience of the Court and amounts to shockingly disproportionate punishment, which any prudent person cannot award, the Court can interfere with the quantum of punishment and can suitably reduce the punishment. The Honourable Supreme Court has thus, held that the circumstance in which an interference can be justified, is that the punishment appears to be shockingly disproportionate and not merely disproportionate.

6 The Honourable Supreme Court, in the matter of *Janatha*

Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara Sangha, 2000(7) SCC 517 : AIR 2000 SC 3129, has concluded that the amount of misappropriation is not relevant for awarding the punishment. Whether, the amount is small or large, an act of misappropriation or corruption has to be dealt with, with an iron hand.

7 The learned Division Bench of this Court, in the matter of *PR.Shele vs. Union of India and others*, 2008 (2) Mh.L.J. 33, has concluded that no misconduct involving misappropriation or corruption or moral turpitude can be termed to be a minor misconduct.

8 In the matter of *Colour Chem Limited vs. A.L.Alaspurkar*, AIR 1998 SC 948, the Honourable Supreme Court has concluded that unless the misconduct is proved to be of a minor or technical character, Item 1(g) of Schedule IV of the MRTU & PULP Act, 1971 cannot be attracted.

9 There is no dispute in the instant case that the enquiry has been sustained and the charge of misappropriation of Rs.7696/- has been proved. It is settled law that after the charge is proved, the Court should be cautious in causing an interference in the quantum of punishment. The Default Card of the Petitioner indicates seven misconducts of

misappropriation for which he has been fined on seven occasions. This would, therefore, operate as an aggravating factor.

10 In the light of the above, I find that the Industrial Court has rightly come to the conclusion that the proved misconduct of misappropriation is a grave and serious act and would not fall under Item 1(g) of Schedule IV of the MRTU & PULP Act, 1971. It cannot be termed to be a misconduct of a minor or technical nature.

11 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)