

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1805 OF 2007

Divisional Controller,
MSRTC, Jalgaon Division,
Through Divisional Controller,
Jalgaon

PETITIONER

VERSUS

Rafikkhan Mustafakhan,
Age-Major, Occu-Nil,
R/i Mullawada, Bada Ghar,
Erandol, Tal.Erandol,
Dist.Jalgaon

RESPONDENT

Mr.M.K.Goyanka, Advocate for the petitioner.
Mr.S.R.Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/04/2016

ORAL JUDGMENT :

1. This petition has been admitted on 19/06/2007 and the hearing was expedited.

2. I have heard the learned Advocates for the petitioner/ Corporation and the respondent/employee.

3. The respondent joined as a Driver in 1980. He was granted leave on medical grounds for 2 years since he underwent a brain

surgery on 03/11/1997. He reported for duties on 21/06/2000 and was imparted training for 5 days till 26/06/2000.

4. The respondent remained absent from 28/06/2000 till 10/12/2000. He was issued with a charge sheet and which was followed by a departmental enquiry. The charge of absenteeism for 5 months and 12 days was held to be proved and he was finally terminated by way of punishment on 26/02/2001.

5. The departmental first appeal preferred by the respondent was rejected on 27/08/2001. Similarly his second appeal was also rejected.

6. The respondent filed Complaint (ULP) No.60/2003 before the Labour Court for challenging his termination. Delay was condoned. By judgment and order dated 21/03/2005, the complaint was dismissed.

7. The respondent preferred Revision (ULP) No.9/2005 before the Industrial Court. By impugned judgment dated 21/09/2006, the Revision Petition was allowed as the Industrial Court concluded that the charge of continuous absence was not proved and hence there

could not be an order of termination when the charges are not proved.

8. The learned Advocate for the Corporation submits that the respondent did not challenge the fairness of the enquiry and did not challenge the findings of the Enquiry Officer before the Labour Court. On the issue of proportionality, the Labour Court concluded that the punishment awarded to the respondent needs no interference. He, therefore, submits that in this backdrop, the Industrial Court could not have concluded that the absenteeism is not proved by the Corporation.

9. It is further stated that the respondent attained the age of superannuation on 30/06/2006. However, he was paid his provident fund accumulations for an amount of Rs.1,67,915/- on 15/02/2001 and was paid his gratuity for an amount of Rs.51,129/- on 28/11/2001.

10. Mr.Patil, learned Advocate for the respondent/employee has strenuously supported the impugned judgment. He, however, submits that the respondent did not challenge the enquiry or the findings of the Enquiry Officer before the Labour Court.

11. He further submits that several applications supported with medical certificates were placed before the Enquiry Officer. This aspect was considered by the Industrial Court and it rightly came to a conclusion that the charge of absenteeism was not proved against the respondent. So also, the absence of 5 months and 12 days cannot be said to be a serious misconduct. He, therefore, submits that this Court may not interfere with the impugned judgment in its supervisory and writ jurisdiction.

12. I have considered the submissions of the learned Advocates.

13. In the light of the judgment of the Hon'ble Apex Court (4 judges bench) in the matter of Workmen of Motipur Sugar Factory Private Ltd.,Vs. The Motipur Sugar Factory Private Limited, AIR 1965 SC 1803, it is settled that where the order of dismissal by way of punishment is based on a departmental / domestic enquiry conducted by the employer and if the fairness of the enquiry and the findings of the Enquiry Officer are challenged, the Labour Court or Tribunal is required to frame two issues with regard to whether the employee proves that the enquiry is vitiated on account of non-observance of the principles of natural justice and whether he proves that the findings of the Enquiry Officer are perverse.

14. In the instant case, I find from the pleadings of the respondent in his complaint that he has come before the Labour Court with a categorical stand that the petitioner has not conducted any departmental enquiry, no opportunity of hearing was given and he has been suddenly terminated without compliance of Section 25-F and 25(G) of the I.D.Act. It is quite unusual that the respondent/employee, despite having suffered a departmental enquiry, has claimed that there was no enquiry conducted at all. Naturally, the Labour Court did not frame an issue with regard to the fairness of the enquiry and the findings of the Enquiry Officer.

15. The Industrial Court, while dealing with the revision petition filed by the respondent concluded that the charge of unauthorized absenteeism cannot be said to be proved against the respondent. He has not deliberately remained absent and was compelled by the circumstances.

16. I find the view taken by the Industrial Court to be unsustainable since a domestic enquiry was conducted, charges were proved and the issue of the fairness of the enquiry and the findings of the Enquiry Officer were not raised before the Labour Court which legally would not permit the Industrial Court to go into on account of

lack of pleadings.

17. Moreover, even if it is assumed that the revisional jurisdiction of the Industrial Court u/s 44 of the MRTU and PULP Act, 1971, which is otherwise limited and narrow, is expanded to go into the fairness of the enquiry, the moment the Industrial Court realises that the findings are perverse or the enquiry is vitiated, it would be obliged to remand the matter back to the Labour Court for framing of the first two issues and for a proper trial in the light of the ratio laid down in the case of Workmen of Motipur Sugar Factory (supra) and which has been considered by this Court in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(3) Mh.L.J. 339 = 2014(1) CLR 878

18. Without following the law, as is laid down, the Industrial Court could not have set aside the judgment of the Labour Court. The impugned judgment is, therefore, perverse and erroneous.

19. Notwithstanding the above, the subsequent events cannot be ignored, in as much as the absence of the respondent for 5 months

and 12 days cannot be termed to be a minor misconduct. The respondent has been continuously absent for 162 days, unauthorizedly. On the ground of proportionality, the order of termination cannot be faulted as it does not amount to awarding a shockingly disproportionate punishment.

20. The petitioner has paid the Provident Fund accumulations, gratuity and and has made retiral benefits available to the respondent, who has superannuated on 30/06/2006. It is, in this backdrop, that I do not find any reason to remit this matter to the Industrial Court after 10 years of retirement of the respondent.

21. As such, on account of there being no challenge to the enquiry and the findings of the Enquiry Officer and since I find that the punishment awarded to the respondent is not shockingly disproportionate, the impugned judgment of the Industrial Court dated 21/09/2006 is quashed and set aside. Revision (ULP) No.9/2005 stands dismissed.

22. However, considering the passage of time and the subsequent events, the petitioner shall not cause any recovery of the retiral benefits paid to the respondent, as noted above.

23. Writ petition is, therefore, allowed and Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)