

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

WRIT PETITION NO. 1077 OF 1997

Pandurang s/o Ukandi Bansode,
Age : 48 years, Occupation : Service,
R/o Gadanki, Pensionpura,
Hingoli, Dist.Parbhani.

...PETITIONER

-VERSUS-

- 1 Maharashtra State Road Transport Corporation.
Through its Divisional Controller, Parbhani.
- 2 Divisional Traffic Superintendent,
MSRTC, Parbhani.
- 3 The State of Maharashtra.
Mantralaya, Mumbai.
Through its AGP

...RESPONDENTS

...
Advocate for Petitioner : Shri P.L.Shahane.
None for the Respondents.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th October, 2016

Oral Judgment :

- 1 Respondent No.3 being a formal party, stands deleted.
- 2 The Petitioner is aggrieved by the judgment of the Labour

Court dated 31.12.1994 by which his Complaint (ULP) No.91/1990 was dismissed. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 27.02.1997 by which his Revision Petition No.2/1995 has been dismissed.

3 I have heard the learned Advocate for the Petitioner for quite sometime. None for the Respondent/ Corporation.

4 The Petitioner is aggrieved by the concurrent findings of the Labour Court as well as the Industrial Court. The Petitioner was a Bus Conductor, who was appointed on 22.12.1971. Before he was dismissed from service giving rise to this litigation, he was punished on several occasions for having committed similar misconducts of misappropriation. Lesser punishments like fine, warning, reduction of basic pay, withholding of increments on permanent basis, etc. were imposed on him.

5 With regard to the cause of action at issue, the bus was checked by the Checking Squad of the Corporation while in journey. 22 passengers out of 61 were found to be traveling without tickets. Some of the passengers had paid the ticket fare and it was explained by the Petitioner that he could not issue tickets to them after acceptance of fare since the bus was over crowded and was checked at the distance of two

and half kilometers from the starting point. A departmental enquiry was conducted against the Petitioner as per the Discipline and Appeal procedure. Upon being found guilty of misappropriation, he was dismissed from service on 08.12.1990.

6 In the complaint filed by the Petitioner challenging his dismissal, the Labour Court scrutinized the enquiry and the findings of the Enquiry Officer and concluded that the principles of natural justice were adhered to while conducting the enquiry and the findings of the Enquiry Officer are not perverse. The Labour Court then concluded, after considering highly blemished past service record of the Petitioner, that the punishment awarded to him was not shockingly disproportionate. The complaint was, therefore, dismissed.

7 In the revision petition filed by the Petitioner, the Industrial Court once again revisited the entire case by considering the record and proceedings. Noting that dishonesty was proved and excess cash was found with the Petitioner and after considering his blemished past service record, the Industrial Court has dismissed the revision petition.

8 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 unless the punishment appears to be shockingly disproportionate and the judicial conscience of the Court is shocked, no interference is called for. Even if the punishment may appear to be slightly disproportionate, the Court ought not to interfere.

9 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, 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, have concluded that in the cases of misappropriation, whether, the amount misappropriated is small or large, is insignificant. Misappropriation is a grave and serious misconduct which deserves to be dealt with, with an iron hand.

10 Shri Shahane informs that during the pendency of the proceedings before the Labour Court as well as the Industrial Court as well as this Court, the Petitioner was protected, he continued in service and has superannuated on 31.12.2005. All retiral benefits have been paid to him except gratuity. He, therefore, prays that the gratuity be protected.

11 Considering the misconduct proved, any indulgence by this

Court would amount to showing misplaced sympathy. It is under fortuitous circumstances that the Petitioner continued in employment during the pendency of the litigation, survived the dismissal order and retired from service. The Respondent/ Corporation paid him entire retiral benefits except gratuity.

12 Since I find that the impugned judgments of the Labour Court and the Industrial Court cannot be termed as being perverse or erroneous, this Writ Petition is dismissed. Rule is, therefore, discharged.

13 Needless to state, the Petitioner would not be entitled for gratuity considering the effect of the provisions of the Payment of Gratuity Act, 1972. So also, the retiral benefits paid until now, shall not be recovered.