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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3665 OF 2004

Subhash S/o. Ramlal Patil,
Age : 49 years, Occ : Nil,
R/o Shivaji Nagar, Pachora,
Tq. Pachora, Dist. Jalgaon.
...Petitioner...

Versus

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Jalgaon Division, Jalgaon.
...Respondent...

.....

Shri P.B. Salunke, Advocate for petitioner.
Shri Manoj Shinde, Advocate h/f Shri M.K. Goyanka,
Advocate for respondent.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.03.2016

ORAL JUDGMENT :

1] This petition was admitted by this Court vide
order dated 24.6.2005.

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2] The petitioner is aggrieved by the judgment and order dated 6.3.2004 delivered by the Industrial Court by which Revision (ULP) No.44/2001 filed by the respondent – Corporation was allowed and the judgment of the Labour Court was quashed and set aside.

3] The petitioner submits that he joined the respondent as a Driver in 1981. His past record is clean and unblemished. He was charged with having remained unauthorizedly absent for 67 days. A domestic enquiry was conducted against him and upon being held guilty of the charges, a second show cause notice dated 3.1.2000 was issued to him. Finally he was dismissed from service.

4] The petitioner preferred Complaint (ULP) No.24/2000 before the Labour Court at Jalgaon. By its part one order, the Labour Court concluded that the enquiry was conducted in a fair and proper manner. The enquiry was thus upheld. However, while delivering the final judgment, the Labour Court concluded that the findings of the Enquiry Officer are partly perverse and the complaint was partly allowed. The petitioner was granted reinstatement with continuity of service without

back wages.

5] The petitioner submits that the respondent filed the revision petition before the Industrial Court. By the impugned judgment, the revision petition was allowed and the judgment of the Labour Court was quashed and set aside.

6] The petitioner submits that after the Labour Court allowed his complaint, he was reinstated in employment. After the Industrial Court allowed the revision petition of the respondent – Corporation, the petitioner was dismissed from service on 8.9.2004. The date of retirement of the petitioner is 31.5.2012. He has been paid his provident fund dues. Retiral benefits and gratuity is still not paid.

7] The petitioner contends that his land was acquired by the Government and he was frequently required to attend to certain proceedings in relation to such acquisition. Consequentially, he was required to remain absent. It is further submitted that the health of the petitioner was not sound and as such he was required to remain absent owing to ill-health. On various occasions, he has filed applications seeking leave

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supported with medical certificates, which have not been accepted by the respondent – management.

8] It is further submitted that though the respondent contends that the petitioner's past service record is blemished, the default card was not established before the Labour Court. It is further submitted that the unauthorized absence for 67 days is a minor misconduct and the punishment of dismissal from service is shockingly disproportionate to the gravity and seriousness of the mis-conduct. It is, therefore, prayed that this petition be allowed.

9] Shri Goyanka, learned Advocate for the respondent, has defended the impugned judgment of the Industrial Court. He submits that the Labour Court did not consider the past service record of the petitioner. As on 8.12.2000, the petitioner had committed 35 mis-conducts. He was reinstated on account of the judgment of the Labour Court and he continued till 8.9.2004. Until then, his mis-conducts had grown to 44. This was considered by the Industrial Court and hence the revision filed by the respondent was allowed. He, therefore, prays for the dismissal of this petition.

10] I have considered the submissions of the learned Advocates.

11] It needs to be mentioned that the past service record of an employee is neither required to be mentioned in the charge-sheet nor are the mis-conducts contained in the past record required to be proved before the Labour Court. It is trite law that the past service record is a factor that has to be considered by an employer while quantifying punishment to be awarded to an employee. A clean and unblemished past service record over a considerable service period is considered as a mitigating factor and a blemished past service record is considered as an aggravating factor.

12] It is also trite law that until the punishment awarded to an employee appears to be shockingly disproportionate, the Courts are not to interfere in the punishment merely because it may appear to be disproportionate.

13] The Labour Court has concluded that the findings of the Enquiry Officer are partly perverse while delivering its final judgment. This issue should have been dealt with by the Labour Court earlier so as to

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constitute its part one judgment. Nevertheless, the respondent – Corporation has not raised any grievance about this aspect.

14] The Labour Court has interfered with the punishment by concluding that 67 days of unauthorized absentism is a minor mis-conduct. I am surprised by the conclusion of the Labour Court in paragraph no.6 of its judgment, which reads thus:-

“Therefore, considering all these aspects and considering the admitted position of law that the absentism is not serious and severe, I am of the considered opinion that the punishment of dismissal imposed upon the complainant is shockingly disproportionate looking to the gravity of mis-conduct.”

15] It is undisputed that the Labour Court has not even referred to the past service record of the petitioner. It is also undisputed that the Industrial Court has considered the 35 mis-conducts committed by the petitioner as is demonstrated by the default card. The Industrial Court, therefore, rightly concluded that the past service record of the petitioner aggravates the gravity and the seriousness of the mis-conduct proved

against the petitioner.

16] In the light of the above, I do not find that the Industrial Court has committed any error in allowing the revision petition, in quashing the judgment of the Labour Court dated 8.12.2000 and in dismissing the Complaint (ULP) No.24/2000.

17] As such, this petition is devoid of merit and is, therefore, dismissed. No order as to costs.

(RAVINDRA V. GHUGE, J.)