

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 55 OF 2000

Divisional Controller,
Maharashtra State Road
Transport Corporation,
Osmanabad.

..Petitioner

Versus

Ashok Vitthalrao Salunke,
Age 47 years, Occ. Nil,
R/o In front of Motor Services,
Khaja Nagar, Osmanabad.

..Respondent

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Advocate for Petitioner : Shri A.B.Dhongade
Advocate for Respondent : Shri Sarang P.Joshi

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WITH

WRIT PETITION NO. 3461 OF 2005

Ashok Vitthalrao Salunke,
Age 50 years, Occ. Nil,
R/o In front of Motor Services,
Khaja Nagar, Osmanabad.

..Petitioner

Versus

Divisional Controller,
Maharashtra State Road
Transport Corporation,
Osmanabad.

..Respondent

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Advocate for Petitioner : Shri Sarang P. Joshi
Advocate for Respondent : Shri A.B.Dhongade

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CORAM : RAVINDRA V. GHUGE, J.

Dated: May 10, 2016

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ORAL JUDGMENT:-

1. The first petition is filed by the MSRT Corporation against the employee, namely, Ashok Vithalrao Solunke. The second petition is filed by the said employee against the MSRT Corporation.

2. In both these petitions, the same judgment and order dated 31.8.1999, delivered by the Industrial Court in Revision (ULP) No.15 of 1998 has been challenged.

3. The first petition was admitted on 20.1.2000 and the impugned judgment was stayed by way of interim relief.

4. I have heard Shri Dhongade, learned Advocate for the Corporation and Shri Joshi, learned Advocate for the employee at length.

5. The MSRTC has challenged the order of reinstatement with continuity of service as is granted by the Industrial Court. The employee has challenged the refusal of the Industrial Court in granting backwages.

6. The issue raised in this petition is only as to whether the

unauthorized absenteeism of the employee for about 150 days in between November, 1987 and August, 1988 could be termed as being a minor mis-conduct and covered by item 1(g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”). Item 1(g) reads as under:-

“ 1. To discharge or dismiss employees:-

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.”

7. The employee had joined as a Bus-Conductor in 1971. He has been dismissed from service after conducting a domestic enquiry on 10.12.1988. His last misconduct which has occasioned his dismissal is of remaining unauthorizedly absent for 150 days as noted above. The Industrial Court has concluded that the past service record of the employee is blemished and he had the habit of remaining absent without obtaining prior permission from time to time. It is stated that on several occasions, the employee had been punished for his acts of unauthorized absenteeism prior to his dismissal for the misconduct of absenteeism for 150 days.

akl/d

8. In the light of the above, I do not find that unauthorized absenteeism for 150 days in a span of about ten months could be termed as being a misconduct of a minor or technical character.

9. It is trite law that the employer has to decide the quantum of punishment by considering the seriousness and the gravity of the misconduct as well as in the light of the past service record of the employee (Read : Managing Director, ECIL, Hyderabad etc. V/s Karunakar etc. [AIR 1994 SC 1074 = (1993) 4 SCC 727],.). It is equally well settled that if the past service record is blemished, it would operate as an aggravating factor and a clean past service record would operate as a mitigating factor. Item 1(g) of Schedule IV mandates an employer to consider the past service record before deciding the quantum of punishment.

10. In the instant case, the past service of the employee is blemished and operates as an aggravating factor.

11. As such, I find that the interference by the Industrial Court in the impugned judgment amounts to showing mis-placed sympathy to employee. It is crystallized law that merely because the punishment appears to be disproportionate, would not be a ground for causing

interference in the punishment. The said punishment, after considering the seriousness and gravity of the misconduct proved and the past service record, must appear to be shockingly disproportionate.

12. In the instant case, the gravity of THE misconduct proved and the blemished past service record would clearly indicate that the Industrial Court has committed a grave error in showing misplaced sympathy to the employee, by setting aside the order of punishment and granting reinstatement in service with continuity without back wages.

13. In the light of the above, the petition filed by the Corporation succeeds. The impugned judgment of the Industrial Court dated 11.8.1999 is quashed and set aside. Revision (ULP) No.15 of 1998 filed by the employee stands dismissed. Rule is, therefore, made absolute in the first petition.

14. Consequentially, the second petition, which is filed by the employee fails and is dismissed. Rule is discharged.

15. Needless to state, since the employee has not been held guilty of a misconduct involving moral turpitude, he would be entitled to

retiral / pensionary benefits, strictly in accordance with the Rules, Regulations and the policy of the Corporation. If such retiral benefits inclusive of gratuity have not been paid to the employee, the same shall be paid within a period of ten weeks from today.

(RAVINDRA V. GHUGE, J.)

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