

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

WRIT PETITION NO. 7651 OF 2016

Baban Balkurshna Kadam,
Age : 58 years, Occupation : Nil,
R/o At Post Bhanashivre,
Tq.Newasa, District Ahmednagar.

...PETITIONER

-VERSUS-

1 Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Sarjepura, Kotla, Ahmednagar.
Through its Divisional Controller.

2 Divisional Traffic Officer,
Maharashtra State Corporation,
Ahmednagar Division,
Sarjepura, Kotla, Ahmednagar.

...RESPONDENTS

...
Advocate for Petitioner : Shri Barde Parag Vijay.
Advocate for Respondents : Shri Deshmukh Bhausheb S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th November, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the judgments of the Labour Court dated 30.12.2010 and 17.09.2011 thereby, dismissing his Complaint (ULP) No.36/2009 and the judgment of the Industrial Court dated 16.12.2015 by which Revision (ULP) No.79/2011 has been dismissed.

3 Shri Barde, learned Advocate for the Petitioner, has strenuously submitted that the enquiry conducted against the Petitioner with regard to the charge of allegedly allowing four passengers to travel ticket-less thereby, resulting into loss of Rs.200/- to the Respondent/ MSRTC, suffers from non observance of the principles of natural justice. He further submits that evidence recorded in the departmental enquiry cannot be said to be sufficient to hold the Petitioner guilty of the alleged misconduct under the various clauses of Schedule-A of the Discipline and Appeal procedure of the Respondent Corporation.

4 Shri Barde submits that the Petitioner joined in 1979 as a Bus Conductor with the Respondent Corporation. He was dismissed from service on 18.09.2009. He challenged his dismissal before the Labour Court vide Complaint (ULP) No.36/2009. By the part-1 judgment dated 30.12.2010, the enquiry was held to be fair, legal and proper and the findings of the Enquiry Officer were sustained. This judgment is perverse and deserves to be quashed and set aside.

5 He further submits that the judgment dated 17.09.2011 by which the Labour Court has dismissed the complaint is perverse and unsustainable. The punishment of dismissal from service amounts to civil death and cannot be sustained on the ground of alleged misappropriation of Rs.200/-. The Industrial Court lost sight of the error and perversity in both the judgments of the Labour Court and has erroneously dismissed the revision petition without proper application of mind.

6 Shri Barde has taken me through the facts of the case in much details and has vehemently prayed that this petition deserves to be allowed and the Petitioner deserves to be granted continuity in service with full back wages from the date of dismissal till the date of his attaining the age of superannuation.

7 Shri Deshmukh, learned Advocate for the Respondent/MSRTC, has supported the impugned judgments.

8 With the assistance of both the learned Advocates, I have gone through the petition paper book and the impugned judgments.

9 Insofar as the challenge of the Petitioner to the part-1

judgment dated 30.12.2010 is concerned, the Labour Court has noted from the record and proceedings of the enquiry that the Petitioner was granted a reasonable opportunity to defend himself in the enquiry. The documents placed on record in the enquiry were supplied to him. The Petitioner was assisted by his defence representative. In the entire enquiry, the Petitioner has not raised any grievance of failure on the part of the Enquiry Officer in giving him an opportunity to defend himself. These findings were considered by the Industrial Court and which concluded that there is no perversity. As such, the enquiry cannot be said to have been conducted in violation of the principles of natural justice.

10 Insofar as the evidence on record is concerned, it is settled law that there should be some material before the Enquiry Officer by which he can reasonably conclude that the charges levelled upon the delinquent are proved. In the instant case, the Labour Court has considered the entire evidence recorded in the enquiry from paragraph 6 onwards. It was also taken into account that the defence representative of the Petitioner, who was said to be experienced in defending the delinquents in departmental enquiries, has fully participated in the enquiry. The Labour Court also considered that the Petitioner had admitted that two passengers travelling in a group from Newasa to Pandharpur, had made a statement that the Petitioner had collected an

amount of Rs.326/-, but had failed in issuing tickets for an amount of Rs.200/-. In this backdrop, the Labour Court concluded that there was evidence before the Enquiry Officer to hold the Petitioner guilty of having misappropriated Rs.200/-.

11 The Honourable Supreme Court has crystallized the law in the matters of *Karnataka SRTC vs. B.S.Hullikatti*, **AIR 2001 SC 930 : 2001 (2) SCC 574** and *Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane*, **(2005) 3 SCC 254**, that passengers who have made a statement at the time of the spot inspection of the bus, need not be examined in the departmental enquiry and their non appearance would not, in any manner, affect the result of the enquiry. As such, in my view, the Labour Court has rightly concluded that the enquiry was conducted in a fair manner and the findings of the Enquiry Officer are not perverse. The Industrial Court has, therefore, rightly rejected the contention of the Petitioner on this count.

12 It is settled law that once the enquiry is sustained, the charges stand proved before the Court. The issue that remains for adjudication of the Labour Court would be as regards the proportionality of the punishment. 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 Honourable Division Bench of this Court in *P.R.Shele vs. Union of India and others* reported in 2008 (2) Mh.L.J. 33, have laid down the law that quantum of misappropriated amount would have no bearing on the charge of misappropriation having been proved. Whether, the amount is small or large would not make any dent on the decision of the employer to dismiss an employee for having indulged in misappropriation. In the instant case, the charge of misappropriating Rs.200/- has been proved.

13 It has come on record before the Labour Court and the Industrial Court that the past service record of the Petitioner is substantially blemished. He was guilty of misappropriation on a few occasions and was given an opportunity to improve his conduct. Despite several opportunities, the Petitioner was apprehended in the act at issue which occurred on 20.10.2007 and the charge of misappropriation was proved.

14 In the light of the above, I do not find that the Labour Court or the Industrial Court have committed any error in concluding that the punishment awarded to the Petitioner is commensurate to the gravity and

seriousness of the misconduct proved. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)