

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.5853 OF 2015

1. Maharashtra State Road Transport Corporation,  
State Road Transport Office,  
Beed, District Beed,  
Through its Divisional Controller,  
Mr.Pitamber Bhimji Naik,  
Age-57 years, Occu-Service,  
R/o Beed, District : Beed

2. Depot Manager,  
Maharashtra State Road Transport Corporation,  
Beed, District : Beed.

PETITIONERS

VERSUS

Syed Saheblal Syed Nijam,  
Age-50 years, Occu-Service,  
R/o Shahanshah Nagar,  
Beed, Dist.Beed

RESPONDENT

Mr.D.S.Bagul, Advocate for the petitioners.  
Mr.R.B.Muley, Advocate for the respondent.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/08/2016

ORAL JUDGMENT :

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

2. The petitioner/Corporation is aggrieved by the judgment and order dated 31/10/2014 by which Complaint (ULP) No.12/2007 filed

by the respondent/employee has been allowed and the impugned order of punishment dated 12/03/2005 directing stoppage of 3 increments permanently, has been set aside. Costs of Rs.5,000/- has been awarded to the respondent.

3. I have heard Mr.Bagul, learned Advocate for the petitioner/Corporation and Mr.Muley, learned Advocate for the respondent at length.

4. The respondent/employee was working as a Driver with the petitioner/Corporation. He was charge sheeted on 06/09/2002 on the basis of a complaint that he had outraged the modesty of a lady passenger during the night journey in the bus. After conducting a departmental enquiry, the order imposing punishment was issued and the respondent was awarded the punishment of permanent stoppage of 3 increments. By order dated 12/03/2005, the first department appeal preferred by the respondent was partly allowed and the order of permanent stoppage of 3 increments was reduced to permanent stoppage of 2 increments. The respondent / employee preferred a second department appeal. By order dated 21/02/2006, the second appeal was rejected and the order passed on the first appeal of stoppage of two increments was sustained.

5. The respondent challenged the punishment before the Industrial Court by filing a ULP complaint under the MRTU and PULP Act, 1971. The enquiry as well as the findings of the Enquiry Officer were questioned.

6. By an earlier judgment dated 28/01/2013, the Industrial Court had allowed the complaint and had granted relief of restoring the respondent to his original pay scale by setting aside the order of punishment. The respondent had challenged the said judgment in WP No.3095/2013 before this Court. By judgment and order dated 03/05/2014, the petition was allowed and the judgment was quashed and set aside thereby directing the Industrial Court to frame 2 issues with regard to the fairness of the enquiry and the findings of the Enquiry Officer.

7. Pursuant to the said directions, the Industrial Court considered the grievance of the respondent and concluded by order dated 19/07/2014 that the findings of the Enquiry Officer are perverse. Consequentially, the enquiry stood watered down and the petitioner led evidence to justify the order of punishment. By the impugned judgment, the complaint was allowed and the order of punishment of stoppage of 2 increments was quashed and set aside.

8. The petitioners have strenuously contended that the Industrial Court has ignored the testimony of the Bus Conductor Mr.P.A.Karpe, who was travelling with the respondent in the same bus on 02/06/2002. It is submitted that the Industrial Court has refused to consider the evidence of Mr.Karpe only on the ground that he could not have remembered the incident which occurred 12 years ago and hence there is no reason to believe his affidavit filed in lieu of examination-in-chief.

9. The Industrial Court has virtually applied the principles of criminal jurisprudence to this case. Though it is legally acceptable and owing to the amended provisions of the CPC, filing of examination in chief by way of an affidavit is permitted, the Industrial Court, rather than looking at the matter before it, has brushed aside the testimony of the only witness of the Corporation.

10. Mr.Bagul further submits that the Industrial Court has erroneously concluded that the incident that is reported to have occurred, cannot possibly happen and hence the charge levelled upon the respondent does not appear to be truthful. He submits that there is no reason for the Industrial Court to apply such a logic when the entire evidence was before it and it could have dealt with the said

evidence as was permissible in law. He, therefore, submits that the impugned judgment is perverse and erroneous.

11. Mr.Muley, learned Advocate submits that the respondent/ Driver has already superannuated in 2014. He, in fact, retired prior to the date on which the impugned judgment was delivered.

12. He strenuously submits that the impugned judgment does not call for any interference for the reason that the alleged lady/ complainant and her husband did not depose before the Industrial Court. There were no eye witnesses. The Conductor Mr.Karpe himself has admitted in cross-examination that the lights in the bus were switched off as it was a midnight journey. He never saw the respondent outraging the modesty of the female passenger. The complaint was not immediately lodged. After passage of few days, the Conductor recorded his statement and hence, these factors upon being considered in their totality would establish that no such incident has ever occurred.

13. He has further submitted that in fact the two passengers namely Mr.Jadhav and his wife had tried to occupy the seat in the Driver's cabin. The respondent had refused permission to sit in his

cabin and he directed both of them to leave his cabin and occupy the space meant for the passengers. Both the passengers were travelling in a standing position and hence the charge levelled upon him is false and fictitious.

14. Mr.Muley has referred to the date of the journey and the date on which the statement of Mr.Karpe was recorded and therefore submits that the passage of few days in between the alleged incident and the recording of the Conductor's statement is fatal to the case. None of the charges are proved against him and hence the Industrial Court has rightly allowed the complaint. He further submits that as the respondent has already retired, this litigation deserves to be brought to an end.

15. Having considered the submissions of the learned Advocates, I have gone through the evidence recorded and the conclusions of the Industrial Court with their assistance.

16. Since the respondent has retired from service, this litigation could have been brought to an end by concluding that the matter is rendered of an academic interest. However, I am unable to accept Mr.Muley's submission for the reason that after the punishment was

imposed on the respondent, he has continued in service and has retired during the operation of the impugned order of punishment. Consequentially, he has earned his monthly wages minus the two increments. If this petition is disposed of, it would amount to causing no interference in the impugned judgment and as a result, the respondent would stand to earn the difference in wages on account of the punishment of stoppage of two increments having been set aside by the Industrial Court.

17. The other reason for dealing with this petition on its merits is on account of the peculiar conclusions drawn by the Industrial Court. If this petition is disposed of considering that the respondent has retired from service, the conclusions of the Industrial Court would stand sustained.

18. It is trite law that a misconduct can be held to be proved on the basis of evidence which could be directly available. In the event of there being no direct evidence, the circumstances leading to the levelling of the charges upon an employee could also be taken into account. In service jurisprudence, a misconduct can be proved on the principles of preponderance of probabilities. As such, if on the basis of some evidence available, the misconduct alleged is likely to

have been committed by an employee, the same can therefore be held to be proved even on the basis of hear-say evidence.

19. The Hon'ble Supreme Court in the matter of Workmen of Balmadies Estates Vs. Management, Balmadies Estates and others. [(2008) 4 SCC 517] has concluded in paragraph No.10 as under :-

*“10. It is fairly well settled now that in view of the wide power of the Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic Tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the Domestic Tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a Civil Court could do when a lis is brought before it. [The Indian Evidence Act](#), 1872 (in short the [Evidence Act](#)) is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility.”*

20. The Karnataka High Court in the matter of Le Meridian Vs. G.Srinivasa Murthy [2007(7) SLR 476] has held in paragraph Nos. 3

to 5 as under :-

*“3. The counsel for the petitioner Sri J. Kanikaraj would highlight this aspect, namely, that the said witness MW2 “Prashanth Kumar has not denied that the letter is duly signed by him at exhibit M5 which discloses that he was witness to the incident. This itself would indicate the pressure that he was facing in relation to the incident and subsequent to that, at the stage of evidence, in view of the inexplicable admission that it was signed by him but the contents were negated, which are circumstances which have been dealt with reference to strict rules of evidence. The labour court was dealing with the proceedings in a domestic enquiry and strict rules of evidence, as would be applicable to a criminal trial, ought not to have been insisted upon by the Labour Court. What was material was the strong probability of the case as could be made out and in the facts and circumstances and in cases of this nature, to hold that the charges have not been established for paucity of evidence of an eyewitness was not fair. The finding of the labour court was wholly arbitrary and perverse. The labour court has glossed over the circumstance of MW2 having at one point of time decline that respondent had committed this act of misconduct and possibly at the pressure and influence of the respondent had sought to retract the same half heartedly. This has been construed by the labour court as a circumstance to exonerate the respondent and therefore, would plead that given the meticulous standards that the petitioner would require to maintain at its establishment, the present respondent being foisted on it in the face of such*

conduct, which is not completely beyond suspicion. The award of the labour court would necessarily warrant interference.

4. *Per contra*, counsel for the respondent would submit that the findings of the labour court are findings of cannot be said that the findings are arbitrary or capricious, and ought to be sustained. But the finding that there are no eyewitnesses to the acts of misconduct on the part of the respondent, is a material finding and the allegations sought to be resisted on circumstantial evidence would not be held to have established the charges made against the workman. He would further contend that exhibit M5 which is sought to be relied upon as being a declaration of one of the workman who allegedly witnessed the incident, who has retracted the same and since the said witness had been treated as a hostile witness has not been cross-examined, it could not be held that the charges were proved on the basis of M5 or the statement of the eyewitness MW2. Though mere suspicion ought not to be taken as proved unless there was other plausible evidence in support of the allegations and coupled with this, respondent is a workman who was awarded the Best Room Boy certificate by the petitioner itself and this is a relevant factor in considering the alleged act of misconduct against the respondent, Further, even if this court were to take a different view or form a different opinion on the facts and circumstances, it does not warrant super imposing its opinion on the action of the labour courts, as the same is a reasoned award based on findings of fact. He would further plead that the workman is a

*family man and is in dire financial straits and any order of termination would cause hardship and injury. The fact that the workman has been reinstated pending this writ petition and has been discharging his duties with the petitioner without any further complaint and therefore this court should temper its order with mercy if in the event this court were to take a different view on the facts and circumstances.*

*5. On these rival contentions, the reasoning of the labour court in holding that the witness who had turned hostile has not been cross-examined and that there were no eyewitnesses, has overlooked the fact that the said witness who has been examined as a witness for the delinquent "workman and has been cross-examined in the proceedings. He has admitted the execution of M5 and he has not stated that there was pressure from any person at whose instance the same was written. The fact that there was no explanation as to the circumstances under which the same was written and sought to be indicated has been glossed over by the labour court. The labour court could not have imported the strict rules of evidence as would be applicable to a criminal trial, in considering the facts and circumstances in a domestic enquiry and the circumstances that the petitioners establishment is a five star hotel of repute and was concerned with the impeccable maintenance of the establishment with utmost discipline amongst its workman, has taken a strong view of the act of misconduct which possibly would not be viewed with the same gravity if it was committed in any other establishment engaged in other activity. This again*

*is the circumstance which has been overlooked by the labour court and the fact that the management stood to lose its classification as a hotel by virtue of an inspection team visiting the hotel on the very next day was yet another circumstance which has been lightly overlooked by the labour court. Therefore, the punishment of dismissal as has been imposed by the disciplinary authority in the circumstances, could not be held to be disproportionate to the act of misconduct. Even the circumstance and the fact that the respondent was awarded the "Best Room Boy" certificate would not absolve the act of misconduct which could be said to be probable in the circumstances of the case. "*

21. The Division Bench of this Court in the matter of Niraj Kumar Singh Vs. Union Bank of India and another [2008 I CLR 93], while dealing with a similar issue of sufficiency of evidence to hold that the charges are proved against an employee, has concluded in paragraph No.12 as under :-

*"12. Equally without merit is the contention raised on behalf of the petitioner that the Bank had filed a complaint with the police in which he had not been named and as such the departmental proceedings would be vitiated in law. Firstly, it may be noticed that, according to the Bank, they had made a general complaint to the police as they wanted the entire matter to be investigated. Furthermore, lodging of a police report is neither a bar to the commencement and conclusion of the departmental proceedings*

*nor any doubt can be created on these proceedings. The scope of a criminal trial, its limitations and standard of proof in criminal and departmental proceedings is entirely distinct and different. Strict rule of evidence are not applicable to departmental proceedings. The departmental proceedings would be covered on the ground of preponderance of probability, while in criminal trial it has to be proved beyond any reasonable doubt. In the case of [Lalit Popli v. Canara Bank and Ors.](#) (2003) 3 SCC 583, the Supreme Court clearly stated that nature of proof required in an enquiry is preponderance of probability and technical rules do not apply to them. Once there is sufficient evidence to come to a reasonable conclusion by a person of normal prudence that article of charges is established on the basis of preponderance of probabilities, then conclusion of guilt may not be interfered with.”*

22. The charge sheet indicates that on 02/06/2002, the bus driven by the respondent was travelling from Beed to Mumbai. Mr.Sarjerao Jadhav and his wife boarded the bus at Jamkhed for undertaking a journey to Mumbai. The seat behind the driver seat is a six seater bench. The driver and the passengers therefore sit back to back. After the bus travelled on the journey, the lights were switched off by the Conductor. Suddenly, when there was a loud shouting in the bus and a commotion, the Bus Conductor Mr.Karpe switched on the lights and noticed that the passenger Mr.Jadhav was in an agitated condition. He alleged that the bus driver had molested his wife and

had outraged her modesty. He had in fact switched the seat with his wife, the moment she first informed him about the conduct of the respondent. Since the respondent was not aware that Mr.Jadhav was then occupying the seat of his wife, he repeated his act and Mr.Jadhav caught hold of his hand on his chest and in that struggle, there were scratches and slight injuries on the hand of the respondent.

23. There is no dispute that neither Mr.Jadhav nor the Bus Conductor reached any nearby Police Station for lodging any complaint. However, subsequent to the journey, Mr.Jadhav had forwarded a written complaint by post and based on the said complaint, the statement of the Bus Conductor Mr.Karpe was recorded on 16/06/2002 pursuant to the complaint dated 11/06/2002.

24. There is no dispute that though the Industrial Court issued witness summons to Mr.Jadhav, he was not found on the two addresses that he had furnished in his complaint. As a consequence, Mr.Jadhav did not depose before the Industrial Court. Mr.Muley, therefore, strenuously submits that when the alleged victim did not lead any evidence before the Industrial Court, the offence cannot be

held to be proved. He further submits that even the wife of Mr.Jadhav has not led evidence either in the enquiry or before the Industrial Court.

25. The issue before this Court is as regards the conclusions drawn by the Industrial Court in paragraph No.6 of the impugned judgment, which reads as under :-

*“As referred above, during the night of the incident on 02/06/2002, respondents’ witness Mr.P.A.Karpe was on duty as Conductor. His statement was recorded previously and even during domestic inquiry he was examined. In his affidavit at Exh.C-27, Mr.P.A.Karpe has reproduced all the facts as they are appearing in his previous statement without any minor change. The incident had occurred on 02/06/2002. It cannot be believed that witness Mr.P.A.Karpe must be remembering every minute detail of the incident, which occurred about 12 years back. There is reason to believe that on the basis of his previous statement, his affidavit in lieu of evidence is prepared and produced.”*

26. It cannot be ignored that it is not the case of the respondent that any Officer of the petitioner/Corporation or the Bus Conductor Mr.Karpe had any previous enmity with the respondent. It is not the case of the respondent that the Corporation had created a false case

to implicate the respondent. It is also not the case of the respondent that any demands of the workers union were pending or as to whether he was representing any union of workers and hence the Corporation had developed antipathy towards him.

27. The principles of probabilities are to be kept in view while proving the charges in service jurisprudence. The effect of available evidence and circumstances is to be considered. If the analysis of the evidence leads to a conclusion that a particular misconduct may have been committed, a conclusion needs to be drawn that the said charges are proved, except only in such circumstances where previous enmity or animosity is established between the delinquent and the employer or in the case when there is no evidence at all.

28. It cannot be said to be unusual that Mr.Jadhav and his wife were not available for leading evidence before the Industrial Court after a passage of more than 12 years from the date when the incident is said to have occurred. It is quite probable that Mr.Jadhav may have preferred not to undergo court proceedings and moreso when the modesty of his wife was involved. It also cannot be ignored that the Corporation had received the complaint from Mr.Jadhav through post.

29. The Hon'ble Supreme Court, in the matter of Employers, in relation to the Management of West Bokaro Colliery of M/s. TISCO Ltd., Vs. Concerned Workman, Ram Pravesh Singh, [2008(II) CLR 220] has dealt with the issue of standard of proof in service jurisprudence and conclusions based on pre-ponderance on the principles of probabilities. The view on this issue is expressed by the Hon'ble Supreme Court in paragraph No.19 of the said judgment, which reads as under :-

*“19. Tribunal has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.”*

30. I find that the Industrial Court has erroneously concluded that the testimony of the Conductor deserves to be ignored since his

statement is identical to his earlier statement made in the enquiry. The Industrial Court could not have concluded that because Mr.Karpe has stated the details of the incident, which occurred 12 years ago in minute details, his affidavit deserves to be disbelieved. Such a conclusion is unsustainable in law and moreso in the light of the fact that Mr.Karpe had led his examination in chief through an affidavit that he had prepared and which was verified before the Industrial Court. With this backdrop, the Industrial Court was required to go through the entire deposition and cross examination of Mr.Karpe.

31. In his cross examination, Mr.Karpe has deposed on the basis of the incident that is said to have occurred during the journey. He has stated in details the circumstances in which the events occurred and the complaint of Mr.Jadhav. Though the respondent has tried to make out a case that the tickets of Mr.Jadhav and his wife were not attached to the complaint and therefore there is no proof of Mr.Jadhav and his wife having ever travelled in the bus, I do not find that the said contention deserves to be considered for the reason that in service jurisprudence, it has to be concluded on the basis of available evidence as to whether such an incident could have occurred. The Industrial Court should have taken into account the

circumstances like the postal complaint of Mr.Jadhav, the circumstances in which the bus had to be stopped owing to the shouting and commotion as Mr.Jadhav was resisting the behaviour of the respondent and the fact that the Bus Conductor Mr.Karpe had no animosity or previous enmity with the respondent.

32. Considering the oral and documentary evidence available, as was recorded before the Industrial Court, it clearly appears that the charge levelled upon the respondent has been proved.

33. The MSRTC has reduced the punishment from stoppage of 3 increments to stoppage of two increments. In fact, considering the charge that is proved against the respondent, the Corporation would have been justified in imposing a heavy punishment on the respondent since such a conduct on the part of the respondent raises an issue of the safety of lady passengers travelling in night journeys. Since the Corporation itself has not awarded heavy punishment, I do not find that the imposition of the punishment of stoppage of two increments could be said to be disproportionate punishment, much less shockingly disproportionate.

34. In the light of the above, the impugned judgment dated 31/10/2014 is quashed and set aside. Complaint (ULP) No.12/2007 stands dismissed. This petition stands allowed and Rule is made absolute in the above terms.

( RAVINDRA V. GHUGE, J.)