

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7119 OF 2006

Jivan s/o Bhujangrao Bharti,
Age-48 years, Occu-Nil,
R/o Krishna Nagar,
Tq.Parli-Vaijnath, Dist.Beed

-- PETITIONER

VERSUS

1. M.S.R.T.Corporation,
Beed Division, Beed,
Through its Divisional Controller

2. The Divisional Transport
Superintendent (Offence)
M.S.R.T.C. Beed

-- RESPONDENTS

Mr.B.R.Survase, Advocate for the petitioner.
Mr.A.B.Dhongade, Advocate for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/12/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment of the Labour Court dated 23/11/2006 by which Complaint (ULP) No.33/2004 has been dismissed. The petitioner is further aggrieved by the judgment of the Industrial Court dated 03/07/2007 by which his Revision (ULP) No.52/2006 has been dismissed.

2. This petition was admitted by this Court on 13/03/2008.

3. Mr.Survase, learned Advocate for the petitioner has strenuously criticized the impugned judgments. Contention is that in the 22 years of service of the petitioner as a Bus Conductor, the charge of consuming alcohol while on duty has been levelled for the first time. He further submits that he cannot be held guilty of being intoxicated while on duty since medical tests, as required by medical science for proving presence of alcohol in the body of an individual, were not conducted. Placing reliance upon the medical examination by a doctor cannot be the basis of the conclusion that the petitioner was intoxicated. He further submits that an incompetent authority has conducted the enquiry under the Discipline and Appeal Procedure of the Corporation.

4. Mr.Dhongade, learned Advocate for the respondent/ Corporation has supported the judgments of the Industrial Court.

5. I have considered the submissions of the learned Advocates and have gone through the record available.

6. By the part I judgment dated 10/10/2006, the Labour Court concluded that the enquiry conducted against the petitioner was not vitiated and the findings of the Enquiry Officer cannot be termed as being perverse. Based on the said conclusions, the Labour Court,

thereafter proceeded to consider whether the punishment awarded was shockingly disproportionate to the gravity of the misconduct. By the judgment dated 23/11/2006, the Labour Court concluded that the punishment awarded was commensurate and an employee, who is intoxicated or is under the influence of liquor, cannot be kept in employment.

7. The petitioner filed Revision (ULP) before the Industrial Court and challenged the Part-I as well as the Part-II judgment. The Industrial Court revisited the entire record and proceedings before the Labour Court and concluded that the enquiry cannot be said to be vitiated since the principles of natural justice were followed.

8. In so far as the findings of the Enquiry Officer are concerned, the Labour Court as well as the Industrial Court relied upon the report of the Medical Officer, Rural Hospital, Shirur, Dist.Pune when the petitioner was subjected to medical examination since the bus was halted at Shirur. After examining the petitioner, the doctor opined that the petitioner's mouth and breath were smelling of alcohol, he was unable to speak properly and was incoherent, he was not able to maintain his physical balance and was swaying when he walked. He further opined that petitioner's eyes demonstrated that

he had consumed alcohol.

9. In the light of the above, I do not find any reason to interfere with the findings on facts arrived at by the Labour Court and confirmed by the Industrial Court. The petitioner has not pointed out any such factor which would convince me to upset these findings on facts.

10. In so far as the proportionality of the punishment is concerned, there can be no dispute that reporting for duties by consuming alcohol cannot be termed as being a minor misconduct. So also, the petitioner was punished on 8 occasions in the past for different misconducts. The past blemished service record is therefore an aggregating factor.

11. It is informed that the petitioner has been paid his retiral dues as well as gratuity. He has withdrawn his provident fund accumulations.

12. Considering the above, this petition being devoid of merit, is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)