

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8104 OF 2015

Maharashtra State Road Transport Corporation,
Dhule Division, District Dhule,
Through the Divisional Controller

PETITIONER

VERSUS

Bharat Prabhu Patil,
Age-54 years, Occu-Service,
R/o Ganesh Budhaval, Tq. Taloda,
District Dhule.

RESPONDENT

Mr.R.N.Jain h/f Mr.D.S.Bagul, Advocate for the petitioner.
Mr.Shrikant S.Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/02/2016

ORAL JUDGMENT :

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

2. The petitioner had charged the respondent Clerk, who was working with the petitioner from 1985, of having involved in an act of mis-appropriation of an amount of Rs.1,46,700/-. The respondent was working as a Clerk in the concerned Accounts Department when the said act of mis-appropriation occurred. In all 6 persons including the petitioner were said to have been involved.

3. The petitioner submits that in Reg.Criminal Case No.12/2006, all these 5 employees namely Dasu Shela Gavit, Yashwant Kashiram Gavit, Uttam Bhagatsingh Padwi, Mangesh Jemja Wasave, and Shrikant Shantaram Gavande alongwith the respondent Bharat Prabhu Patil were held guilty. They were sentenced to undergo simple imprisonment for 3 months and pay a fine of Rs.5,000/-. The order of conviction dated 09/10/2013 was subsequently challenged in regular criminal appeals and the conviction and sentence was stayed.

4. In the meanwhile, a show cause notice dated 06/11/2013 was issued to the respondent under Regulation 81 applicable to the petitioner/Corporation. Similar notices were issued to all the convicted employees. All of them preferred Complaint (ULP) Nos.16/2013 to 20/2013 and 24/2013 before the Labour Court. Notices were issued by the Labour Court in all these matters to the Corporation. Except the respondent alone, the petitioner has not terminated the services of the other convicted employees, despite the ground of the conviction and moral turpitude having been established.

5. The petitioner submits that the complaint filed by the

respondent was allowed and he was reinstated with continuity of service and full back wages. The Revision (ULP) No.5/2015 filed by the petitioner was dismissed and costs of Rs.10,000/- were imposed upon the petitioner. It is further stated that the respondent has been reinstated in employment on 11/04/2015 i.e. prior to the decision of the Industrial Court.

6. Mr.Patil, learned Advocate has supported the impugned judgments. Contention is that the respondent alone was picked and chosen for termination. All the other employees who were similarly convicted, were similarly served with notice of termination owing to their conviction and who had similarly filed complaints before the Labour Court, were left untouched despite the Labour Court granting them no interim relief against the proposed termination. He, therefore, submits that the principle of legal and factual victimization alongwith discrimination is squarely attracted in this case. He, therefore, prays for the dismissal of this petition.

7. I have considered the submissions of the learned Advocates.

8. It is trite law that an employee can be terminated from service without hearing and without conducting a domestic / departmental

enquiry if he has been convicted of an offence by the Court of Criminal Jurisdiction. It is also trite law that such a terminated employee cannot be reinstated until his conviction is set aside and is acquitted. The Labour and the Industrial Court has protected the service of the petitioner since his conviction and sentence has been stayed in his criminal appeal which is pending.

9. In the instant case, the conviction of none of the employees stated above, has been set aside by the Appeal Court. Barring the respondent, the petitioner protected all the other convicted employees.

10. Moral turpitude is a conclusion to be drawn considering the misconduct proved against an employee. If the respondent was to be held guilty of moral turpitude owing to his conviction, all the other employees were equally guilty of moral turpitude and they also deserved to be treated equally as like the respondent. This conduct of the petitioner of indulging in discrimination and victimization cannot be countenanced.

11. In the light of the above, considering the peculiar facts and circumstances of this case, I am not interfering with the order of

reinstatement in favour of the respondent. However, the order of costs and back wages impugned, is quashed and set aside. The issue of back wages from the date of termination till the date of reinstatement of the respondent shall be subject to the outcome of the pending criminal appeal.

12. It is made clear that pursuant to the decision of the appeal pending before the Criminal Court, in the event conviction of the respondent and all other employees is sustained, the petitioner would be at liberty to deal with their cases in accordance with law, provided all the convicted employees are treated equally and are subjected to the same action that the petitioner may propose to take.

13. This petition, is therefore, partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)