

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

WRIT PETITION NO. 3212 OF 2015

**DWARKANATH RAMCHANDRA SOMVANSHI
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION,
AHMEDNAGAR AND ANOTHER**

...
Advocate for Petitioners : Shri Barde Parag Vijay.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th January, 2016

Per Court:

1 The Petitioner is aggrieved by the judgment and order dated 10.08.2012 delivered by the Labour Court dismissing Complaint (ULP) No.112/2000 and the judgment of the Industrial Court dated 09.10.2014 by which his Revision (ULP) No.81/2012 has been dismissed.

2 Shri Barde, learned Advocate for the Petitioner/ Employee, has strenuously criticized the impugned judgment. The contention is that the Petitioner who had put in 25 years of service as a Bus Conductor has been dismissed from service in peculiar circumstances.

3 He submits that on 25.02.1999, the Petitioner was performing his duties as a Bus Conductor in the Bus travelling from Taluka Kopargaon to Wadangali. A place called Chas happens to be a stop earlier to the destination Wadangali. The road from village Chas to village Wadangali was bad. It was, therefore, orally communicated to the Petitioner that the tickets be issued to the passengers traveling from Kopargaon to Wadangali, only for the journey from Kopargaon to Chas. If the bus could travel from Chas to Wadangali, fresh tickets be issued to those passengers who desire to travel on the said sector.

4 He further submits that the said Bus was subjected to a surprise check before Chas. The passengers stated that they were travelling upto Wadangali and the tickets were issued upto Chas. It was, therefore, construed that there were ticket-less passengers.

5 Shri Barde then submits that the past record of the Petitioner contains certain orders of punishment which are presently subjudice. The punishments awarded to the Petitioner in the past pertain to similar misconducts which the Petitioner denies even till today.

6 He submits that after conducting a domestic enquiry as per the Discipline and Appeal Rules, the Respondent/ MSRTC dismissed the

Petitioner from service on 27.11.2000. He challenged the same by preferring Complaint (ULP) No.112/2000 before the Second Labour Court at Ahmednagar. By the part-1 judgment dated 21.02.2003, the Labour Court concluded that the enquiry is conducted in a fair and proper manner. By another part-1 judgment dated 26.07.2012, the Labour Court concluded that the findings of the Enquiry Officer are not perverse and are sustainable. By its final judgment dated 10.08.2012, the Labour Court held that the punishment awarded to the Petitioner was not shockingly disproportionate. The complaint was, therefore, dismissed.

7 The Petitioner preferred Revision (ULP) No.81/2012 before the Industrial Court at Ahmednagar and challenged the final judgment of the Labour Court dated 10.08.2012. The grievance is that the grounds set out by the Petitioner in the revision petition have not been properly considered by the Industrial Court. By the impugned judgment dated 09.10.2014, the Industrial Court has mechanically rejected the revision petition.

8 I have considered the submissions of Shri Barde.

9 It is not in dispute that the past record of the Petitioner is blemished. It is also not in dispute that the enquiry was upheld by the

judgment of the Labour Court dated 21.02.2003 and the findings of the Enquiry Officer were upheld by its judgment dated 26.07.2012. Both these judgments which are final conclusions on the fairness of the enquiry and the findings of the Enquiry Officer, have not been challenged in the revision petition before the Industrial Court. It is only the final judgment of the Labour Court dated 10.08.2012, which is a pronouncement on whether, the punishment awarded to the Petitioner was shockingly disproportionate or not, that was subjected to the revisional jurisdiction of the Industrial Court.

10 As such, since the pronouncements of the Labour Court on the fairness of the enquiry and the findings of the Enquiry Officer were not challenged by setting out a prayer for seeking quashing and setting aside the said judgments dated 21.02.2003 and 26.07.2012, the Industrial Court was left with a limited jurisdiction under its revisional powers flowing from Section 44 of the MRTU & PULP Act, 1971. The only issue to be considered and decided was as to whether, the punishment awarded was shockingly disproportionate or not?

11 The charges proved against the Petitioner in the enquiry are with reference to the ticket-less passengers travelling in the Bus and the Petitioner having resold used tickets. The past record of the Petitioner is

also blemished.

12 The Apex Court in the case of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara Sangha*, **2000(7) SCC 517 : AIR 2000 SC 3129** has held that misappropriation either of a small amount or a big amount is insignificant. Misappropriation in itself is a grave and serious misconduct. The Apex Court in paragraphs 3, 6 and 8 has in fact concluded that once the charge of misappropriation is proved, the Employer as well as the Courts should not even consider the clean past service record of the Employee since it cannot mitigate the seriousness and gravity of the charge of misappropriation.

13 The Division Bench of this Court in the case of *P.R.Shele vs. Union of India and others* reported in **2008 (2) Mh.L.J. 33**, dealing with the issue of misappropriation, has concluded that the quantum of misappropriation is not a matter of consideration. The amount is not material.

14 Considering the above and the fact that the Labour Court has arrived at a finding on facts, which has been sustained by the Industrial

Court as noted above, I do not find that this petition deserves to be entertained.

15 The Writ Petition is, therefore, dismissed.

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(RAVINDRA V. GHUGE, J.)