

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

WRIT PETITION NO. 881 OF 2015

- 1 The Divisional Controller,
Maharashtra State Road Transport
Corporation/ MSRTC,
Division – Ahmednagar,
District Ahmednagar.
- 2 The Depot Manager,
Maharashtra State Road Transport
Corporation/ MSRTC,
Depot Parner,
Taluka Parner,
District Ahmednagar.

...PETITIONERS

-VERSUS-

Madhukar s/o Hari Darekar,
Age : 59 years, Occupation : Not Known,
R/o Parner, Taluka Parner,
District Ahmednagar.

...RESPONDENT

...
Advocate for Petitioner : Shri Deshmukh Bhausaheb S.
Advocate for Respondent : Shri Barde Parag Vijay.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th July, 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 impugned judgment dated 18.03.2014 delivered by the Industrial Court, Ahmednagar by which Revision (ULP) No.43/2012 filed by the Petitioner/MSRTC challenging the judgment of the Labour Court granting reinstatement with continuity and 50% back-wages, has been dismissed. The Petitioner is also aggrieved by the judgment of the Labour Court dated 31.12.2011 by which Complaint (ULP) No.6/2001 filed by the Respondent/ Employee has been allowed and his dismissal dated 16.01.2001 has been quashed and set aside.

3 It is informed that the Respondent/ Employee has attained the age of superannuation on 30.05.2012 and was not reinstated pursuant to the impugned judgment of the Labour Court.

4 I have considered the submissions of the learned Advocates for the respective sides.

5 The Respondent has been working as a Bus Conductor with the Petitioner/ MSRTC w.e.f. 26.12.1981. While on duty as a Bus Conductor, his bus was subjected to a surprise check on 07.03.1998 and an amount of Rs.131/- was found in excess at the time of checking. Two passengers were found travelling ticket-less. After conducting the

disciplinary proceedings by way of a departmental enquiry, the charges levelled upon the Respondent vide charge sheet dated 24.03.1998 were held to be proved and he was, therefore, dismissed from service w.e.f. 16.01.2001.

6 By part-1 judgment dated 06.01.2010, the domestic enquiry conducted by the Petitioner was held to be vitiated and hence, watered down. A de-novo enquiry was conducted. Evidence in oral and documentary form was adduced by both the sides. By the impugned judgment dated 31.12.2011, the Labour Court concluded that the charges are not proved against the Respondent and by setting aside his dismissal, he was awarded reinstatement with continuity and 50% back-wages. The revision petition filed by the Petitioner and the revision petition filed by the Respondent/ Employee praying for 100% back-wages, have been dismissed by the impugned judgment dated 18.03.2014.

7 Shri Barde, learned Advocate for the Respondent/ Employee, has strenuously defended the impugned judgment. He has made a valiant attempt to establish that there was no material before the Labour Court and on account of various deficiencies, his dismissal has been set aside. I am unable to accept his submissions for the reason that the impugned judgment of the Labour Court indicates that it has considered the case as

if the Corporation had to prove the offence against the Respondent/ Employee “beyond reasonable doubt”. It is settled position of law that in Service Jurisprudence, an act can be held to be proved by way of a misconduct on the preponderance on the principles of probabilities.

8 Rs.131/- were found in excess with the Respondent/ Employee when the bus was checked. It was noticed that two passengers had travelled ticket-less, though the said passengers were not available to record their statements. The bus checkers recorded their statements and on the basis of which the charge sheet was issued.

9 The Honourable Supreme Court 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**, has laid down the law that in cases of misconduct, committed by the Bus Conductors, of misappropriation of money, the ticket-less passengers or the passengers who have been issued with used tickets are not required to be produced as witnesses and merely on account of their absence, it cannot be said that the charges are not proved.

10 In the instant case, the Labour Court has allowed the complaint by noting that “*However, to show that there was deliberate*

attempt on the part of conductor to avoid issuance of ticket, corroborative evidence of passenger was necessary.” and “Except this witness, none other witness was examined by the respondent to bring home the guilt of misconduct against the complainant. It is my candid opinion that it is not a sufficient evidence.” It, however, cannot be overlooked that the Petitioner/MSRTC did not place before the Labour Court the reported judgments of the Honourable Apex Court in the matters of *B.S.Hullikatti and A.T.Mane* (supra). Had the said judgments been cited, the Labour Court would have realized that absence of passengers as witnesses would not be fatal to the case.

11 The Respondent/ Employee was charged with misappropriation. His past service record has been placed before the Court which indicates that there are 25 misconducts and he has been punished on several occasions with recovery of fine and withholding of increment. He was once dismissed from service, but reinstated under the orders of the Labour Court dated 28.07.1997. The said case is still sub-judice. As such, it is clear that the past service record of the Respondent/ Employee is highly blemished.

12 The Honourable 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** and the learned Division Bench of this Court in *P.R.Shele vs. Union of India and others*, **2008 (2) Mh.L.J. 33**, have held that in the cases of misappropriation, no sympathy should be shown towards the employee and the amount of misappropriation is not material. It was held that such employees deserve to be dismissed from service.

13 Shri Barde has canvassed that since the Petitioner's Advocate was not heard as he was not available, the matter could be remanded back to the Industrial Court for a rehearing. I am not inclined to accept the said submission for the reason that since the challenge to the Labour Court judgment dated 31.12.2011 has not been considered properly by the Industrial Court in the impugned judgment, both the said judgments are rendered unsustainable, being perverse and erroneous.

14 Considering the above and taking into account the basic principle of proving a misconduct in service jurisprudence being that of preponderance on the principles of probabilities and the blemished past service record of the Respondent, I deem it proper to quash and set aside the impugned judgments of the Labour Court and the Industrial Court.

15 The Petitioner/ MSRTC has deposited 50% back-wages, as were granted by the Labour Court, in this Court on 13.03.2015 which is an amount of Rs.7,85,501/-.

16 Considering the above, showing any sympathy or leniency towards the Employee would amount to rewarding the Employee inasmuch as it would set a wrong precedent.

17 As such, this Writ Petition is allowed. The impugned judgment of the Labour Court dated 31.12.2011 is quashed and set aside and Complaint (ULP) No.6/2001 is dismissed. Revision Petition No.43/2012 filed by the Petitioner/ MSRTC as well as Revision Petition No.54/2012 filed by the Respondent/ Employee are disposed of, by setting aside the impugned judgment of the Industrial Court dated 18.03.2014.

18 The amount deposited by the Petitioner/ MSRTC in this Court pursuant to the order dated 10.02.2015, shall be withdrawn by the Petitioner/ MSRTC with accrued interest.

19 Rule is made absolute in the above terms.