

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11685 OF 2014

1. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Kothla Road, Sarjepura,
Ahmednagar, Dist.Ahmednagar

2. The Divisional Traffic Superintendent,
Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Kothla Road, Sarjepura, Ahmednagar,
Dist.Ahmednagar

PETITIONERS

VERSUS

Sunil S/o Vishnupant Adhav,
Age-52 years, Occu-Service,
R/o 290, Civil Hudco, Ahmednagar,
District : Ahmednagar.

RESPONDENT

Mr.R.N.Jain h/f Mr.D.S.Bagul, Advocate for the petitioners.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/02/2016

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 25/03/2013. The same was delivered by the Labour Court by which complaint (ULP) No.21/2011 filed by the respondent was allowed, The petitioner has also challenged the judgment and order dated 05/02/2014 by which Revision (ULP) no.30/2013 filed by the respondent was allowed and Revision (ULP) No.51/2013 filed by the petitioner was rejected.

3. The petitioner contends as follows :-

- [a] The petitioner was a junior clerk with the respondent.
- [b] He was charge sheeted on 25/11/1998 and on 19/03/1999.
- [c] The first charge sheet and the second charge sheet, both mentioned an incident that occurred on the same date.
- [d] The narration in both the charge sheets is almost identical.
- [e] The clauses under the Discipline and Appeal Rules invoked in both the charge sheets were almost different.
- [f] The Labour Court was wrongly concluded that the respondent was punished twice for the same mis-conduct.
- [g] The Labour Court, however, rightly upheld the findings of the Enquiry Officer and sustained the enquiry.
- [h] The incident at issue occurred on 04/07/1995 and the enquiry was concluded in 2011.
- [i] Two co-employees namely Mr.V.N.Kale and Mr.P.L.Girme had participated in the Sports events alongwith the petitioner and had maintained the record of expenditure / bills concerning the said sports events.

- [j] The respondent alone was punished and Mr.Kale and Mr.Girme were exonerated.
- [k] Both these co-employees have been treated at par with the respondent.
- [l] The Labour Court has sustained the enquiry.
- [m] The Industrial Court, while dismissing the revision petitions of both the parties has lost sight of the fact that the respondent was guilty of misappropriation.
- [n] The respondent/employee has accepted the verdict of the Labour Court as well as the judgment of the Industrial Court.
- [o] The issue with regard to the fairness of the enquiry has been put to rest since the respondent/employee has not challenged the judgment of the Industrial Court.
- [p] Both the Lower Courts have lost sight of the fact that though both the charge sheets were with regard to the same event, the first charge sheet was with regard to the failure on the part of the respondent employee in maintaining the records for which he was awarded the punishment of stoppage of three increments and the second charge sheet was with regard to misappropriation of money though temporarily for which the respondent was awarded the punishment of dismissal from service.
- [q] The respondent has been reinstated only to avoid contempt of court.
- [r] Mr.Girme was exonerated of the charges levelled upon him and Mr.Kale was not held to be involved in any misappropriation as was the charge levelled upon the respondent.

4. Mr.Barde, learned advocate for the respondent has strenuously supported the impugned judgment of the Labour Court. He fairly states that though he may not be satisfied with the rejection of his revision petition by the Industrial Court, he has chosen not to carry the litigation any further as he was interested in putting an end to the litigation.

5. He relies upon his affidavit in reply filed on 23/02/2016 and prays for the dismissal of the petition. He has canvassed a host of factors in the hearing of this matter on 24/02/2016, 26/02/2016 and today, which I have considered.

6. After considering the entire submissions of the learned Advocates for the respective sides and upon going through the record available as well as the affidavit in reply of the respondent employee, I noticed that the Labour Court had fallen in a grave error in concluding that the respondent was punished on two occasions for the same misconduct.

7. It is evident from the charge sheet dated 25/11/1998 and 19/03/1999 that the charges were different and each case was dealt with separately by the petitioner/Corporation. With regard to the

charge of not maintaining the records of the sports events, the respondent was awarded a punishment of stoppage of 3 increments. For the charge of committing misappropriation of keeping the funds of the Corporation with himself for more than a year, the respondent was awarded the punishment of dismissal from service. The conclusion of the Labour Court that the petitioner awarded two punishments for the same misconduct to the respondent was apparently erroneous.

8. Considering the above, the learned Advocate for the respondent was confronted as to whether he would prefer to opt for a voluntary retirement so as to avoid an unceremonious / stigmatic removal keeping in view that he had 3½ years of employment prior to attaining the age of superannuation. The respondent has tendered an affidavit dated 28/02/2016 duly sworn on affirmation before a Notary stating therein that the respondent is willing to tender his resignation within a week's time which would be effective from 15/06/2016. It is requested that the resignation be accepted from 15/06/2016 on the condition that his retiral benefits would be protected.

9. Mr.Barde submits on instructions from the respondent present in the Court that if his retiral benefits are protected, the said purshis

tendered across the bar be accepted.

10. The learned Advocate for the petitioner submits that this Court may pass an order as may be deemed fit and appropriate.

11. Considering that the Labour Court had erred in interfering with the order of dismissal of the respondent on the ground of temporary misappropriation, the past service record of the respondent being unblemished and in the light of the purshis, I deem it appropriate to accept the purshis filed by the respondent so as to protect his retiral benefits and deprive him of further employment.

12. The purshis dated 28/02/2016 is, therefore, taken on record and marked as Exhibit "X" for identification.

13. In the light of the above, this petition is partly allowed and the impugned judgments stand modified in the following terms:-

- [a] The respondent shall file his application for voluntary retirement alongwith a resignation on or before 08/03/2016.
- [b] The petitioner shall accept the application and the resignation w.e.f. 15/06/2016.
- [c] The respondent will be granted notional continuity of service for the period 30/05/2011 till 17/05/2012, without back

wages.

- [d] The respondent shall be entitled for all retiral and pensionary benefits in the light of his employment tenure till 14/06/2016.
- [e] The respondent shall be precluded from reopening this issue before any Court or Authority in the light of Exhibit "X" and the above order.

14. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)