

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

WRIT PETITION NO. 3683 OF 2016

Pravin Barku Pawara.
Age : 45 years, Occupation : Nil,
R/o Chulwad, Tq. & Dist.Nandurbar.

...PETITIONER

-VERSUS-

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Dhule,
Tq. and Dist.Dhule.

...RESPONDENT

...
Advocate for Petitioner : Shri Deshpande C.R. and Shri H.V.Tungar.
Advocate for Respondent : Shri Bagul D.S..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th September, 2016

Oral Judgment :

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

2 On 22.08.2016 after considering the submissions of the
learned Advocates, I had passed the following order:-

"1. *Heard learned Advocates for the respective parties for
quite sometime.*

2. *In so far as the mis-conduct at issue is concerned, the charge of misappropriation of Rs.1,000/- has been proved. The department First Appeal, filed by the petitioner has been rejected. The past service record of the petitioner, over a period of 19 years of service, is extremely blemished. He was held guilty of 17 misconducts, out of which 10 misconducts are with regard to misappropriation and 4 are with regard to indiscipline. He was dismissed twice for his misconducts and on each occasion, a fresh appointment was issued by sustaining the dismissal. Stoppage of three increments, fine on eight occasions, bringing down the salary to basic scale on three occasions and recovery on one occasion are the punishments suffered by the petitioner.*
3. *After considering the strenuous submissions of the learned Advocates, the only arguable point put forth by the petitioner is as to whether the Depot Manager had the power and authority to issue the order of dismissal by way of punishment to the petitioner, who was a Traffic Controller.*
4. *Shri Bagul prays for time to consider the said aspect and address the Court on the next occasion.*
5. *S.O. to 2.9.2016. Matter to appear in the Supplementary Board."*

3 Shri Deshpande, learned Advocate for the Petitioner, has strenuously canvassed that the Depot Manager had no authority and power to issue the order of punishment and the Divisional Controller has power to do so.

4 Shri Bagul, learned Advocate for the Respondent/ Corporation, has placed on record the relevant Discipline and Appeal Rules in Marathi approved in 1981 thereby, indicating that as per clauses

18 and 19 appearing on the internal page 8, the Depot Manager had been granted authority under the Rules to issue the order of punishment to any employee under his authority who works in his depot. He has then relied upon the English version of the said clauses 18 and 19 which were published in 1989 after having been approved on 03.12.1986. He submits that there is no challenge to the said Rules in all these years and the Petitioner has been dismissed on 30.11.2007. His first department appeal and the second department appeal have also been dismissed.

5 I have considered the record available in the light of the submissions of the learned Advocates.

6 It, however, cannot be ignored that the Petitioner who was dismissed on 30.11.2007 and whose first and second department appeals were rejected on 09.06.2008 and 30.11.2009, filed Complaint (ULP) No.25/2013 on 14.08.2013, practically after four years. It is not in dispute that the power of the officer who issued the order of dismissal was not questioned and the Labour Court was not called upon to frame an issue concerning the authority of the signatory to the dismissal order.

7 The contentious issues as to whether, Schedule-C under clauses 18 and 19 would be applicable or Schedule D would be applicable

and as to who would be competent to issue the order of punishment, are now being raised before this Court in this petition which is practically after 09 years from the date of dismissal of the Petitioner.

8 Considering the above and coupled with the fact that the Petitioner has been punished for 17 misconducts out of which 10 misconducts are of misappropriation and he was dismissed earlier from service on two occasions followed by a fresh appointment by sustaining the dismissal, I do not find this to be a fit case to exercise my supervisory jurisdiction or writ jurisdiction for remanding the matter back to the Labour Court and for permitting the Petitioner to raise a fresh plea about competency of the authority signing the dismissal order.

9 As such, this Writ Petition is dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)