

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5384 OF 2016

VIJAY NARAYAN SARWADE
VERSUS
THE DIVISIONAL CONTROLLER, MSRTC, BEED

...
Advocate for Petitioner : Shri Shinde Prakash M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 25, 2016
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PER COURT :-

1. The petitioner is aggrieved by the award dated 24.8.2015, by which, the Labour Court, Aurangabad has rejected Reference (IDA) No.13 of 2012.

2. I have heard Shri Shinde, learned Advocate for the petitioner at length. He has seriously criticized the impugned judgment.

3. It is not in dispute that;

(a) The petitioner, who was appointed as a Driver on 27.12.1989, was issued with a show cause notice of dismissal dated 1.12.1999 and thereafter was dismissed on 27.12.1999.

(b) The petitioner challenged his dismissal by filing Complaint (ULP) No.1 of 2000 before the Labour Court.

(c) By judgment and order dated 14.1.2008, the complaint was partly allowed by concluding that though the enquiry and the findings are fair and proper, the order of punishment is shockingly disproportionate.

(d) The MSRT Corporation preferred Revision (ULP) No.32 of 2008 before the Industrial Court.

(e) By judgment dated 19.9.2008, the Revision was allowed and the judgment of the Labour Court dated 14.1.2008 was quashed and set aside.

(f) The petitioner filed Writ Petition No.6238 of 2008 and this Court, by its judgment dated 27.4.2010, dismissed the Writ Petition .

(g) The petitioner then filed LPA (St) No.19182 of 2010. On 1.7.2011, he has withdrawn the LPA, which was dismissed as withdrawn.

(h) It is not disputed and as has been recorded by this Court in its judgment dated 27.4.2010 that the petitioner did not dispute the correctness of the validity of the departmental

enquiry and by filing a purshis Exhibit U/21, he declared that he did not wish to question the domestic enquiry.

(i) His statement that he has been acquitted of the criminal proceedings was considered seriously by this Court. The petitioner who had beaten up an employee of the Corporation, namely, Shri A.B.Gavde, was in fact, convicted by the criminal court and the said conviction dated 6.8.2003, rendered by the Magistrate was confirmed by the appellate Court.

(j) This Court, therefore, referred to the judgment of the Honourable Supreme Court in the case of Dalip Singh Vs. State of UP [(2010) 2 SCC 114] and noting that the petitioner has acted unethically, dismissed the Writ Petition.

4. It now appears that the petitioner has raised an industrial dispute under Section 2A of the Industrial Disputes Act, 1947 and the said dispute was referred to the Labour Court as Reference (IDA) No.13 of 2012. The said reference is said to have been initiated on the ground that the pending departmental appeal of the petitioner has been dismissed and his dismissal has been sustained. It is in this backdrop that the impugned award rejecting the reference has been delivered.

5. I am quite surprised that the concerned Labour Department has referred the Industrial Dispute to the Labour Court under Sections 10 and 12(5) of the ID Act. When the entire issue of dismissal, by way of punishment, was dealt with by the Labour Court, the Industrial Court, this Court and the Appeal Bench, merely because the departmental appeal was rejected, would not mean that the petitioner could reopen the entire issue of dismissal on the plea that another workman has not been awarded the same punishment.

6. In the light of the above, while sustaining the impugned award, I find that the petitioner herein has demonstrated yet another act, which can be squarely covered by the observations of the Apex Court in the case of Dalip Singh (supra) as well as the judgment delivered in the case of Kishore Samrite Vs. State of U.P. [(2013) 2 SCC 398]. This is, therefore, a fit case for imposing costs of Rs.25,000/- while dismissing the petition.

7. Shri Shinde, learned Advocate submits, on instructions from the petitioner, that the petitioner is tendering an unconditional apology and therefore, costs may not be awarded. It is on account of the apology tendered that I am not saddling the petitioner with costs.

8. This petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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