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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3836 OF 2016

Subhash Balu Kokani

...Petitioner

vs

Divisional Traffic Controller,
Maharashtra State Road Transport Corporation
Kolhapur Division, Kolhapur.

...Respondent

.....

Mr. Kedar Pralhad Lad, for the Petitioner.

Mr. C.M. Lokesh, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED: MARCH 31, 2016

P.C. :

. Not on board. Mentioned. Taken on board.

2. The petition challenges an order of dismissal of Complaint (ULP) 118 of 2007 by the Labour Court, Kolhapur which order was confirmed in revision by the Industrial Court No.1, Kolhapur. The Petitioner works as a conductor with the Respondent Corporation. On 6 May 2007, whilst he was on duty on a bus on route Vallabhnagar (Chinchwad) to Kolhapur, the bus was checked by the flying squad of the Respondent. The squad found three resold tickets with a group of passengers travelling from Vallabhnagar (Chinchwad) to Kolhapur. The squad also found that a group of passengers, who were travellers from Swargate to Satara, had four tickets of a denomination lesser by Rs.10/- than the applicable fare. The squad also found that the Petitioner was in

possession of an excess amount of Rs.131.50. It was also found that the Petitioner had sold tickets which were already sold on an earlier date. The flying squad recorded the statements of passengers. On the basis of the statements and a report made in that behalf, a charge-sheet was issued to the Petitioner on 9 June 2007 for misconduct under clauses 7E, 7J, 12B, 22 and 32 under Schedule "A" of Discipline and Appeal Procedure of the Respondent. The Petitioner replied to the charges, denying the same. The Respondent Corporation, thereupon, initiated enquiry proceedings, at the conclusion of which, all charges levelled against the Petitioner were held to be proved. On the basis of the findings of the Enquiry Officer, the Petitioner was given a final show cause notice calling upon him to show cause why he should not be dismissed from service. At that stage, the Petitioner carried the matter before the Labour Court at Kolhapur in a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("Act"). On this complaint, the Labour Court framed two issues, namely, (1) whether the enquiry was not conducted following the principles of natural justice? and (2) whether the findings of the Enquiry Officer were perverse? After hearing the parties, the learned Judge of the Labour Court decided both issues in the negative, holding the findings recorded by the Enquiry Officer as just and proper. This order was carried in revision by the Petitioner before the Industrial Court No.2 at Kolhapur. By its order and judgment dated 20 August 2013, the revision was dismissed by the Industrial Court. The Labour Court, Kolhapur was directed to decide the complaint within six months from the date of receipt of R and P. The Labour Court, thereupon, heard both parties on the remaining issues. By its final order dated 18

December 2013, it decided all issues against the Petitioner and dismissed the complaint. This order was challenged by the Petitioner in revision before the Industrial Court, Kolhapur. By order dated 2 March 2016, the revision application was dismissed by the Industrial Court. The Court directed the order to take effect on and from 1 April 2016. The order of dismissal of the complaint confirmed by the Revisional Court is in challenge in this petition.

3. Learned Counsel for the Petitioner submits that the Petitioner did not have adequate opportunity to prosecute the complaint. It is submitted that the Petitioner's Advocate chose not to lead any evidence in respect of Issue Nos. 3 to 7; that both the Petitioner and his Advocate were absent on the dates of hearing fixed by the Court and had no opportunity to argue the matter. It is submitted that there was a lapse on the part of the Petitioner's Advocate and that the Petitioner ought not to be punished for such lapse. Secondly, it is submitted that the conclusion of the Labour Court, whilst passing the Part I award, namely, that the enquiry was not vitiated by want of natural justice or that the findings recorded by the Enquiry Officer were just and proper, suffers from perversity. It is submitted that the Respondent Corporation did not lead evidence of the concerned passengers in corroboration of the evidence led by the officer of the flying squad.

4. The petition does not disclose any case that the Petitioner actually intended to lead any evidence before the Labour Court or that because of the lapse on the part of his Advocate he could not do so. That the Petitioner actually wanted to lead evidence before the Labour

Court or could not lead such evidence by reason of lapse on the part of his Advocate are matters of fact. In the absence of pleadings in that behalf, this Court cannot countenance these submissions.

5. As far as the conclusion of the Enquiry Officer is concerned, it may be seen from the report of the Enquiry Officer that the conclusion is supported by adequate evidence on record. The officer of the flying squad was examined before the Enquiry Officer. Merely because corroborative evidence of the concerned passengers was not produced before the Enquiry Officer, it cannot be suggested that the conclusion is either perverse or not supported by any evidence. The dismissal order issued by the Respondent Corporation is supported by a duly conducted enquiry in which the Enquiry Officer has come to a conclusion which is supported by evidence. Two courts below have, by their concurrent findings, upheld the legality and propriety of the conclusion drawn by the Enquiry Officer. Nothing is shown to this Court to indicate that the conclusion drawn is perverse or impossible.

6. Learned Counsel for the Petitioner also submits that a paltry amount was involved in the alleged misconduct. As held by our Court in the case of **D.C., M.S.R.T.C., Satara Division vs. Prabhakar Bajirao Pawar**¹ a misconduct which involves pilferage of public revenue (by means of receipt of money from passengers without issuing tickets) is a mis-conduct of a serious nature and misappropriation of public funds is not to be taken lightly and that even one instance of such misconduct warrants punishment of dismissal irrespective of the amount, whether

¹ (2005 III CLR 1008)

meager or large, particularly so when the complainant himself was a public servant and the misconduct was committed whilst in such employment. The observations of the Division Bench in that case squarely apply to the facts of the present case. Besides, it is also to be noticed from the report of the Enquiry Officer that the past service record of the Petitioner indicated similar instances of misconduct.

7. In sum, the impugned orders of the Labour Court and the Industrial Court do not suffer from any illegality and there is no warrant for interfering with them. The writ petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)