

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 10410 OF 2014

Kundalik Kachru Dodke.

... Petitioner.

V/s.

Pimpri Chinchwad Municipal Corporation & Anr. ... Respondents.

Mr. S.S. Deshmukh for the Petitioner.

Ms. Anjali Purav for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 1 FEBRUARY, 2016.

ORAL ORDER :-

The Petitioner challenges the orders passed by the Labour Court and Industrial Court, Pune dated 3 February 2012 and 9 June 2014 dismissing the complaint and revision filed by the Petitioner, respectively.

2. The Petitioner was working with the Respondent – Transport Undertaking as a conductor. On 2 June 2001 when the Petitioner was on duty, the inspection squad checked the bus where the Petitioner was working and found that the Petitioner was in possession of an excess amount of Rs.14/-. Since the rules concerning the employees of the Respondent – Corporation

mandated that an amount in excess of Rs.5/- shall not be kept on person, the Petitioner was proceeded with departmentally. An enquiry was instituted. The misconduct of the Petitioner was proved, considering his past record of imposition of punishment eight times for various serious misconducts, the Petitioner was dismissed from service by order dated 6 June 2003. The Petitioner filed Complaint (ULP) No. 105 of 2006 in the Labour Court, Pune. Considering the evidence on record and deposition of witnesses before the Enquiry Officer, the Labour Court concluded that the charges against the Petitioner were proved and the Petitioner was rightly dismissed from service. Accordingly, by order dated 3 February 2012, the Labour Court dismissed the complaint. A revision filed by the Petitioner in the Industrial Court, Pune was also rejected. Hence, this Petition.

3. The learned Counsel for the Petitioner submitted that in the enquiry one of the witnesses, part of the inspection squad had categorically deposed that when he inspected the bus, he did not find any irregularities. He submitted that inspite of this position, the Enquiry Officer has held the Petitioner guilty and this fact has not been considered by both the Court. This submission cannot be accepted. This witness has not given the clean-chit to the Petitioner. He has stated that initially when the bus was checked, there was no irregularities, however, when the cash with the Petitioner was checked, it was found excess by Rs.14/-. The requirement of having maximum personal amount has to be

strictly adhered to as any latitude on this count gives scope for various defences when an employee caught on allegations of misappropriation. Both the Courts have therefore rightly upheld the finding of the Enquiry Officer on this count.

4. The learned Counsel for the Petitioner then contended that various other similarly situated employees have been given lesser punishment. The Petitioner has annexed copies of the orders passed in respect of these employees. The learned Counsel has drawn my attention to the case of one Ananta Jagtap who was punished nine times, yet was not dismissed from service. The order placed on record in respect of this employee shows the misconducts were regarding remaining absent and of such other minor nature. As far as the other orders are concerned, the employees are not been proceeded with for serious misconduct for eight times as in the case of the Petitioner. The learned Counsel relied upon the decision of the Apex Court in the case of *Rajendra Yadav v/s. State of Madhya Pradesh and Ors.* [(2013) 3 SCC 73] to contend that there has to be equality in the matter of imposition of punishment. In the case before the Apex Court, the case of Police Officers who were proceeded with on the charges of accepting bribe was under consideration. The Apex Court found that the constable who played as more serious role and demanded and received money was compulsorily retired while the appellant therein who played a passive role was dismissed from service. The Apex Court in these circumstances found that there was

disproportionate punishment and no parity between the delinquents. The case before the Apex Court also arose out of the same incident. In the present case nothing has been shown that any employee with more serious record than the Petitioner with more serious misconduct have been given a lighter punishment. Apart from this position, as long as it is shown that the Petitioner had committed serious misconduct eight time earlier, there is no error in the approach of the Respondent – authority and the Courts in considering the punishment of dismissal proportionate.

5. After the learned Counsel for the Petitioner had fully completed his arguments, the Petitioner who was present in the Court made a request to hear the matter further as there are other points. Accordingly, by way of indulgence the matter was taken up again.

6. The learned Counsel for the Petitioner then urged four more points. Firstly, he submitted that the bus was stopped not on any written complaint but on a suspicion. There is no merit in the submission that will hardly take the case of the Petitioner any further as there is nothing wrong in carrying out any inspection on suspicion and it will not dilute the finding of misconduct. It was then submitted that only one person from the squad was examined when there were eight members. As long as the Enquiry Officer has found the evidence of one witness cogent enough, the entire enquiry cannot be set aside on the ground when the other eight

members were not examined. The learned Counsel then contended that the guidelines specified that if there is a shortfall of Rs.15/-, then the same shall be taken into consideration. However, there is no merit in this contention as well as this clause refers to shortfall and not an excess amount. The learned Counsel then lastly submitted that the reference to Rs.5/- in excess and when Rs.14/- were found with the Petitioner, the amount in excess would be Rs.9/- but not Rs.14/-. As long as mandate not to have more than Rs.5/- and the same has been exceeded, this contention cannot be accepted. It was then sought to be again contended that some other employees with serious misconduct have been given lighter punishment. This submission has already been dealt with earlier. As long as the Court is satisfied that the Petitioner was given punishment for serious misconduct was not wrongly dismissed from service, keeping in mind the nature of duties, there is no warrant for interference by this Court. An employee who has committed eight misconducts in the past cannot be foisted on a public body by issuing directions in the equity jurisdiction of this Court, overruling the findings of the two Courts, on mere sympathy.

7. In view of this position, no error can be found in the impugned order. The Writ Petition is accordingly rejected.

(N.M. JAMDAR, J.)