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

WRIT PETITION NO. 10604 OF 2015

Mr. Sudhir Sharad Wale.

... Petitioner.

V/s.

Maharashtra State Road Transport Corporation. ... Respondents.

Mr. Abhijeet Desai a/w. Ms. Vrushali Maindad for the Petitioner.

Mr. G.S. Hegde for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 11 JANUARY, 2016.

P.C. :-

By this Petition, the Petitioner challenges the order passed by the Labour Court dated 13 November 2014 in Complaint (ULP) No. 22 of 2012 and order passed by the Industrial Court in Revision (ULP) No. 38 of 2014 dismissing the Complaint and the Revision, respectively.

2. The complaint was filed by the Petitioner challenging the action of the Respondent – State Road Transport Corporation in connection with a show cause notice issued by the Respondent on 16 June 2012 with a prayer that the Respondent shall not act

upon the said show cause notice and the enquiry held thereafter and impose punishment of dismissal on the Petitioner. The Petitioner was found guilty in the enquiry instituted by the Respondent – Corporation. The Enquiry Officer came to the conclusion that on 15 February 2010, when the Petitioner was on duty he committed breach of the provisions of Annexure A Clause 7C, 10, 12-B, 22 and 32 of the Rules of Conduct applicable to the employees of the Respondent – Corporation. The Petitioner was found in possession of excess amount and had collected an amount of Rs.38/- from one of the passengers and did not issue him the ticket. The passenger was examined. He deposed to that effect. The explanation of the Petitioner was not found satisfactory and considering the fact that the Petitioner had committed a similar misconduct earlier on 9 July 2009, punishment of dismissal was proposed. Thereafter, the complaint was filed by the Petitioner. Both the Courts, after ascertaining the facts on record, held that the Petitioner was guilty of the misconduct as alleged and dismissed the complaint and the revision.

3. Mr. Desai, the learned Counsel for the Petitioner submitted that the enquiry was vitiated as the authority who issued the charge-sheet to the Petitioner himself was the Enquiry Officer. He submitted that this was clear breach of principles of natural justice. The learned Counsel relied upon the decision of the learned Single Judge of the Karnataka High Court in the case of *B. Viswanatha Rao v/s. Management of Canara Bank [(2005) 1*

Kar LJ 562]. He submitted that the person who issued a charge-sheet could not have acted as an Enquiry Officer and therefore, the enquiry is ought to have been held as initiated. He submitted that an issue was framed by the Labour Court as to the fairness of the enquiry and this point was taken by the Petitioner in the pleadings and also been rebutted by the Respondent – Corporation. This contention cannot be accepted. The perusal of both the orders show that at the time of oral arguments this point was not been urged in both the Courts as it is not referred to at all in both the decisions. If the Petitioner had argued this point and according to him it was of importance, efforts should have been made to get the orders corrected. Since no effort has been made, the presumption has to be drawn that this point was not advanced before the Labour Court. A litigant may take various grounds in the pleadings but may not choose to press them at the time of hearing. Having not advanced this submission before the Courts below, it is not possible to appreciate this submission first time in writ jurisdiction. Furthermore, the Petitioner participated in the enquiry without making a grievance. In the case cited by the learned Counsel, this position as mentioned above did not exist.

4. Mr. Desai, then submitted that there is no charge of misappropriation and no finding can be arrived at that the Petitioner has misappropriated the amount, and submitted that the Petitioner was found in excess amount for which he had explanation that the amount was given to him by his friend. The

passenger has been examined. He deposed categorically that the Petitioner took money for two tickets and issued on ticket. Nothing is shown as to why the passengers, completely independent would deposed against the Petitioner. The amount has been found with the Petitioner. The Petitioner tried to advance an argument that there was misunderstanding between the passenger and him because he does not follow Kannada. This was completely false statement as in his service record he had given his mother tongue as Kannada. He was well conversant with the Kannada language. As theory was given that the money was given to him by his friend, except a one sentence in the reply it was not put forth as a defence in both the Courts.

5. Mr. Desai then submitted that the Enquiry Officer has been influenced by the past conduct of the Petitioner to ascertain the guilt in the present matter which is not correct and relied upon the decision of the learned Single Judge of Andhra Pradesh High Court in the case of *N. Chinnaiah v/s. The Depot Manager, APSRTC & Anr. [(1996) 1 ALD 516]*. The perusal of the enquiry report shows that the past conduct has been referred to by the Enquiry Officer at the time of ascertaining the suitable punishment. The finding of the guilt is upon the assessment of record. The learned Counsel submitted that leading questions have been put to the witnesses and which ought to have been examined as the Petitioner's witnesses. The disciplinary enquiry is neither a civil suit nor a criminal trial. The witnesses have been examined. They

have deposed to certain state of affairs. The Petitioner had full opportunity to cross-examine them. Both the Courts have rightly held that adequate opportunity was given to the Petitioner.

6. Last submission of Mr. Desai is that the punishment is disproportionate. Both the Courts have found that considering the tendency that the Petitioner has displayed he not fit to remain in public service especially the one which involves collection of cash. The Petitioner has admitted that he was earlier proceeded with for misconduct which was serious

7. In the circumstances, the finding of both the Courts cannot be faulted with nor there is any jurisdictional error nor any perversity. The Writ Petition is accordingly rejected.

8. The learned Counsel for the Petitioner seeks continuation of the interim relief. I find no reason to continue the interim relief for the reasons stated above. However, the issuance of the order of dismissal by the Respondent will be after period of two weeks from today.

(N.M. JAMDAR, J.)