

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4176 OF 1997

Maharashtra State Road Transport
Corporation, through its Divisional
Controller, Jalgaon.

..Petitioner

Versus

Baburao Raoji Shinde, deceased,
Through L.Rs. :-

1(a) Subhadra Baburao Shinde
age 53 years,

1(b) Sunil Baburao Shinde
Aged 31 years,

1(c) Pramod Baburao Shinde
Aged 28 years,

1(d) Pratibha Baburao Shinde
Aged 26 years,

1(e) Ujwala Baburao Shinde
Aged 24 years,

All R/o Shivaji Nagar, Jalgaon.

..Respondents

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Advocate for Petitioner : Shri Manoj Shinde
a/w Shri M.K.Goyanka

Advocate for Respondents 1-(b), (c) & (e) : Shri V.B.Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 22, 2017

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ORAL JUDGMENT :-

1. Unless the Court declares that the respondent has committed unfair labour practice under any item of the three Schedules to the

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the said Act") or under Schedule V of the Industrial Disputes Act, 1947, no relief can be granted to the complainant on misplaced sympathy, is the view taken in this judgment.

2. The petitioner / Corporation is aggrieved by the judgment of the Labour Court dated 20.8.1996, by which, though the Labour Court concluded that Complaint (ULP) No.40 of 1995 does not deserve to be entertained, has granted all terminal benefits to the deceased / respondent who was held guilty of mis-appropriation. The petitioner is also aggrieved by the judgment of the Industrial Court dated 13.12.1996, by which, Revision (ULP) No.165 of 1996 filed by the petitioner has been rejected with the further direction that the Corporation should implement the order of the Labour Court.

3. I have heard the learned Advocates for the respective sides.

4. This Court admitted the matter on 7.9.2000 and declined interim relief to the petitioner.

5. After considering the submissions of the learned Advocates for the respective sides and upon going through the record available, I find that this case is a glaring example of undue sympathy having

been shown by the Labour Court and the Industrial Court having failed to notice such perversity.

6. The deceased / original complainant had filed Complaint (ULP) No. 40 of 1995 before the Labour Court challenging his enquiry, findings of the enquiry officer, as well as the proportionality of the punishment. The enquiry was held to be fair and proper and the Labour Court proceeded to consider the contentions of the deceased / employee on the proportionality of the punishment.

7. While deciding the complaint, the Labour Court concluded in paragraph No.6 (*in verbatim*) as under:-

“.... After going through the material on record, I am of the considered opinion that Item 1(g) of Sche. IV of the said Act does not attract in the present case and punishment of dismissal is not shockingly disproportionate looking to the gravity of misconduct, looking to the age and fair argument advanced on behalf of the complainant, I am of the considered opinion that though the punishment of dismissal is not shockingly disproportionate looking to the gravity of misconduct, looking to the special circumstances involved in this case, it is necessary to convert the dismissal order into the termination with a direction to the respondent to pay all the terminal dues to the complainant.”

8. Despite coming to a conclusion that item 1(g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act ”) is not attracted and the punishment is not shockingly disproportionate, the Labour Court has passed the following order:-

“ ORDER

i. The complaint filed by the complainant is stands hereby disposed off with a direction to the respondent to pay all the terminal dues to the complainant within a month from the date of passing of this order. Prayer of the complainant for reinstatement with full back wages and continuity of service is stands hereby rejected.”

9. The petitioner approached the Industrial Court under Section 44. The Revision Petition was dismissed by the Industrial Court on the ground that no perversity is noticed in the order passed by the Labour Court. The Industrial Court further proceeded to hold that the gratuity be also paid to the deceased, when an independent machinery in the form of the Controlling Authority-cum-Labour Court and Appellate Authority-cum-Industrial Court is provided under the Payment of Gratuity Act, 1972.

10. The legal heirs of the deceased employee submit that the employee had attained the age of superannuation when the Complaint was pending before the Labour Court. A purshis at Exhibit

U/8 was filed declaring his superannuation. Another purshis was filed at Exhibit U/9 indicating that the deceased did not want to lead any oral evidence.

11. I find that as the Labour Court concluded that the enquiry is fair and proper and the findings are based on acceptable evidence and are not perverse, the only issue that was to be adjudicated upon was with regard to the proportionality of the punishment. The Honourable Apex Court in the matter of Damoh Panna Sagar Rural Regional Bank and another Vs. Munna Lal Jain [2005 (104) FLR 291], has concluded that even if the punishment may appear to be disproportionate, the Court cannot cause an interference in the quantum of punishment. The punishment must amount to being a shockingly disproportionate punishment and only when the judicial conscience of the Court is shocked, such punishment is to be interfered into.

12. It is settled law in the light of the judgment of the Honourable Apex Court in the matter of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [(2000) 7 SCC 517], and the learned Division Bench judgment of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33], that the quantum of amount misappropriated is not significant. Once the act of misappropriation

is proved, the only punishment available is of dismissal from service.

13. The Labour Court has placed reliance upon the judgment of this Court in the matter of Pandurang Kashinath Mali Vs. Divisional Controller MSRTC [1995 I CLR 1052], to conclude that this Court has shown sympathy and, therefore, the Labour Court was also showing sympathy towards the deceased employee.

14. By now, it is settled law that the act of misappropriation and theft of money by the Bus Conductor while collecting the fare and not issuing tickets with the intention of pocketing the said money, is an act of misappropriation and dishonesty. Such conduct in the light of ratio laid down in the judgments in the cases of Janatha Bazar (supra) and P.R.Shele (supra) cannot be dealt with lightly.

15. The past service record of the deceased is placed before the Court by the learned Advocate on 21.2.2017. Over a period of eleven years from 1984 to 1995 of service (the dismissal at issue is dated 15.1.1995), the deceased had committed 13 misconducts of misappropriation. He was penalized with fine of Rs.10/- on five occasions, Rs.20/- on two occasions, Rs.45/- on one occasion, suspension on one occasion, stoppage of increment for six months and for three years on two occasions and one dismissal from service in 1985. Copy of the said communication dated 21.2.2017 is taken on

record and marked as Exhibit “X” for identification.

16. With regard to the offence of moral turpitude being proved against an employee, the Honourable Apex Court in a recent judgment delivered in the matter of Jorsingh Vanjari Vs. The M.S.R.T.C. [2017 I CLR 526], has concluded in paragraph No.17 as under:-

“17. In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude.”

17. Considering the above, the impugned judgment of the Labour Court dated 20.8.1996 is quashed and set aside. Complaint (ULP) No.40 of 1995 stands dismissed. Consequentially, the judgment of the Industrial Court dated 13.12.1996 is quashed and set aside and Revision (ULP) No.165 of 1994 stands disposed off.

18. Learned Advocate for the legal heirs of the deceased has submitted that whatever legal dues have been paid to the deceased and considering the fact that he is no more, the said amount may not be recovered as a recovery will have to be ordered against the legal heirs of the deceased. To this extent, the request is accepted.

19. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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akl/d