

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2129 OF 2000

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Jalgaon Division, Jalgaon.

..Petitioner

Versus

Kum. Pushpa Ramdas Zatake,
Age Major, Occ. Service as a
Clerk (now dismissed),
Resident of Indira Chowk,
Nashirabad, Dist. Jalgaon.

..Respondent

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Advocate for Petitioner : Shri. M.K.Goyanka
Advocate for Respondent : Shri Vijay Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 06, 2017

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ORAL JUDGMENT :-

1. This matter was heard on 16.6.2017, 29.6.2017 and today.

2. The petitioner is aggrieved by the judgment of the Labour Court dated 26.7.1999, by which, Complaint (ULP) No.44 of 1999, filed by the respondent was partly allowed. The order of her dismissal from 30.3.1999 was set aside and she was granted reinstatement with continuity in service. Backwages were denied.

3. The petitioner is also aggrieved by the judgment of the Industrial Court dated 2.2.2000, by which, Revision (ULP) No.805 of 1999, filed by the petitioner was dismissed.

4. This Court, by order dated 6.6.2000, recorded the statement of the Corporation that the respondent was reinstated in service. By order dated 18.10.2001, this petition was admitted.

5. There is no dispute that the respondent has been reinstated on 30.3.2000, was promoted as a Sr. Clerk in 2013, and as Office Superintendent on 1.6.2015. The amount of about Rs.15,000/-, which was said to be mis-appropriated by the respondent, has been recovered from her.

6. I have considered the submissions of the learned Advocates for the respective sides. Shri Patil, learned Advocate for the respondent has strenuously defended the impugned judgments. He submits that when the respondent had approached the Labour Court challenging her dismissal from service on 13.3.1999, the respondent had filed a joint purshis along with the petitioner, at Exhibit UC/1, indicating to the

Labour Court that they do not wish to lead any further evidence. The Labour Court accepted the purshis and in the impugned judgment concluded that the enquiry was fair and proper but the findings of the Enquiry Officer are partly perverse and partly legal.

7. Shri Patil, therefore, submits that the charges held to be proved against the petitioner are as regards indiscipline and gross negligence, resulting in serious loss to the Corporation or in-convenience to the public. Based on the said conclusions, the respondent has been reinstated.

8. I find from the record that in the first place, both the sides are guilty of filing a joint purshis, requesting the Labour Court to decide all the issues together. The law on this aspect has been settled more than 50 years ago in the matter of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803], and then in the judgments delivered by the Honourable Apex Court in the matters of Workmen of Firestone Rubber and Tyre Company Vs. the Management and others [(1973) 1 SCC 813], Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh - [1972 (1) SCC 595 = AIR 1972 SC 1031], Shambhu Nath Goyal

Vs. Bank of Baroda [1984 (4) SCC 491 = AIR 1984 SC 289],
and Bharat Forge Company Ltd., Vs. A.B. Zodge and another
[AIR 1996 SC 1556 = 1996 II CLR 345]. It is therefore, trite
that once the workman challenges the fairness of the enquiry and
the findings of the Enquiry Officer, only these two issues have to
be dealt with peremptorily. While considering these two issues,
no additional evidence is to be permitted to be recorded by the
Labour Court and these two issues are to be scrutinized strictly
on the basis of the R & P of the domestic enquiry [Maharashtra
State Cotton Growers Federation Vs. Vasant Ambadas Deshpande
- 2014 (3) Mh.L.J. 339 : 2014 I CLR 878].

9. It is equally trite that if the enquiry is vitiated or if the
findings of the Enquiry Officer are held perverse, it vitiates the
entire enquiry, as is held in Bharat Forge (supra). Once the
findings are held to be perverse, the entire enquiry stands
watered down. The Labour Court has failed to follow this well
settled procedure. Moreover, the petitioner has reserved its
right to conduct a *de novo* enquiry in paragraph No. 8 of its
written statement, dated 24.5.1999, which is in tune with the
law laid down by the Honourable Supreme Court (Five Judges'
Bench) in the matter of KSRTC Vs. Laxmidevamma [2001 II CLR
640 = AIR 2001 SC 2090 = AIR 2001 SCW 1981]. The

petitioner, therefore, should have been given a right to lead evidence at least to prove those charges, which have been held to be perverse.

10. I have perused the conclusions of the Labour Court below paragraph No.7, which run into six pages. Even the conclusion that the respondent was a new comer and hence she may not have the intention to mis-appropriate the amount, appears to be a conclusion based on mis-placed sympathy shown towards the respondent. The entire analysis of the evidence by the Labour Court that though the respondent is party to the preparation of the bills and their payments, it was concluded that she may have committed mistakes due to oversight as a new comer. These conclusions of the Labour Court, which are based on assumptions, would not be sustainable considering the record of the respondent, even after her reinstatement. She has been punished in 2000, 2001, 2002 (two occasions) and 2005 (three occasions). These punishments are with regard to the making wrong entries of the oil, interfering and obstructing the administration of the Corporation and with regard to the distribution of free passes.

11. 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 AIR SCW 3439 = AIR 2000 SC 3129 = (2000) 7 SCC 517] and the learned Division Bench of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33], have concluded that cases of mis-appropriation are not be scrutinized by showing sympathy or by considering the amount of money involved. In this backdrop, I find that the conclusion of the Labour Court of holding that the findings of the Enquiry Officer are partly perverse cannot be sustained. The Labour Court should not have expressed sympathy on the basis of assumptions, to conclude that the charge of mis-appropriation is not proved as the respondent was a newcomer and was just two years in service.

12. The above aspects should have been considered by the Industrial Court. The Revision Petition has been dismissed again on a wrong conclusion that 'the charges levelled upon the respondent are not proved beyond doubt and hence, it cannot be accepted that the respondent purposely and with dishonest intention has prepared false bills and caused a loss to the Corporation by making excess payments to certain individuals'. It is well settled that in service jurisprudence, charges on the basis

of available evidence are to be scrutinized on the preponderance on the principles of probabilities. The principles applicable to criminal jurisprudence requiring strict proof and evidence are not applicable to service jurisprudence.

13. Considering the above, this petition is partly allowed. The impugned judgments of the Labour Court dated 26.7.1999 and of the Industrial Court dated 2.2.2000 are quashed and set aside, being perverse and erroneous.

14. The petitioner has been reinstated in service in March 2000. Considering that she is in employment for the last 17 years, though the restoration of the Complaint (ULP) No. 44 of 1999 to the Labour Court, Jalgaon would technically restore the order of dismissal, I am not inclined to accept this submission of the petitioner. As the respondent is in employment for 17 years, though under fortuitous circumstances, it would be improper to cause her removal from service at this stage. She shall, therefore, continue to be in employment and the same would be subject to the result of the Complaint which is being restored to the Labour Court.

15. Consequentially, Complaint (ULP) No.44 of 1999 is

restored to the Labour Court, Jalgaon.

16. Learned Advocates for the respective sides request, on instructions, that the litigating sides would appear before the Labour Court on 5.8.2017. Request is accepted and they shall abide by the dates of hearing on which the matter is posted by the Court. Needless to state, the Labour Court shall first decide issue Nos.1 and 3, peremptorily, strictly on the basis of the record and proceedings of the enquiry, keeping in view the law laid down in the matter of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande [2014 (3) Mh.L.J. 339 : 2014 I CLR 878]. If the R & P of the enquiry in the original form is not filed before the Labour Court, the same shall be done within three weeks from the date of appearance before the Labour Court.

17. In the event, the Labour Court answers issue Nos.1 and/or 3 against the Corporation, which would result in vitiating the enquiry, the Corporation would be at liberty to conduct a de novo enquiry in the light of the right reserved in paragraph No.8 of its written statement. If the enquiry is sustained, the Labour Court shall then consider the proportionality of the punishment, keeping in view the crystallized position in law.

18. It is expected that the Labour Court shall decide Complaint (ULP) No.44 of 1999 as expeditiously as possible and preferably on/or before 31.3.2018.

19. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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