

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3779 OF 2000

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

..Petitioner

Versus

Balkrishna Rajaram Thakur
Age major, Occ. Service,
Conductor (Now dismissed),
R/o Vaitagwadi, Mohadikar Plot,
Amalner, Dist. Jalgaon.

..Respondent

...
Advocate for Petitioner : Shri M.K.Goyanka
Advocate for Respondent : Shri V.Y.Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 22, 2017
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ORAL JUDGMENT :-

1. The petitioner / Corporation is aggrieved by the judgment and order dated 13.3.1995, by which, the Labour Court, Jalgaon has allowed Complaint (ULP) No.36 of 1994, filed by the respondent / employee and has granted re-employment as a fresh candidate as a Conductor without continuity and without backwages. The petitioner is also aggrieved by the judgment of the Industrial Court dated 13.7.2000, by which, Revision (ULP) No.180 of 1999 (Old No. 132 of 1995), filed by the petitioner has been dismissed.

2. While admitting this petition on 13.9.2000, the impugned judgments were stayed by way of interim relief.

3. I have considered the submissions of the learned counsel for the petitioner. Shri Patil, learned Advocate for the respondent has strenuously defended both the judgments and has prayed that this petition deserves to be dismissed with heavy costs. He submitted that when the Courts below have arrived at concurrent findings, this Court should be extremely slow in causing any interference in the judgments. He submits that the revisional jurisdiction of this Court is limited and findings on facts cannot be over turned. He, therefore, prays for reinstatement and continuity, pursuant to the judgment of the Labour Court.

4. With the assistance of the learned Advocates I have gone through the petition paper book. There is no dispute that as the respondent had challenged the enquiry proceedings and the findings of the Enquiry Officer before the Labour Court, the relevant two issues were framed by the Labour Court in the light of the law laid down by the Honourable Supreme Court in the matter of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803], Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh - [1972 (1) SCC 595 = AIR 1972 SC 1031] and Bharat Forge Company Ltd., Vs. A.B. Zodge and

another [AIR 1996 SC 1556 = 1996 II CLR 345].

5. The respondent was appointed as a Conductor in 1992. In less than two years, he was apprehended on 17.1.1994 during the bus journey from Erandol to Jalgaon by the flying squad, for having issued used tickets to the passengers and mis-appropriated Rs.171.75. On this charge, after conducting a full-fledged departmental enquiry, he was dismissed from service on 21.3.1994, which was subject matter of Complaint (ULP) No.36 of 1994 before the Labour Court. By the impugned judgment, the Labour Court concluded that the charge of mis-appropriation is proved, same is serious and there cannot be any reinstatement of the respondent. However, it concluded that he has fairly admitted his mistake and he had no bad intention of keeping Rs.171.75 with him, since he wanted to purchase edible oil for the engagement ceremony of his brother. On this count, the Labour Court granted him appointment as a fresh candidate. For the same reasons, the Industrial Court has upheld the judgment of the Labour Court and dismissed the Revision of the petitioner.

6. The Labour Court concluded that the enquiry was conducted in a fair and proper manner and the findings of the Enquiry Officer are not perverse. It is trite law that once the enquiry and the findings are sustained, no Court can proceed beyond the findings of the

Enquiry Officer and the charges levelled upon the delinquent stand proved. Neither the Labour Court, nor the Industrial Court could go into the conclusions of the Enquiry Officer, unless the decision of sustaining the enquiry and the findings is assailed by the delinquent. In the instant case, the respondent has not challenged these findings before any Court.

7. In the light of the above, the only issue that remains to be considered is the proportionality of the punishment. While considering the proportionality, the past service record of the delinquent is to be considered. If the past record is blemished, it would operate as an aggravating factor and if it is clean and unblemished over a considerable period of time, it would act as a mitigating factor, in the light of the judgment of this Court in the matter of Bajaj Auto Limited Vs. Kalidas Deoram Patil [1999 II CLR 1108].

8. The law on this count has been settled. Charges of misappropriation are per se serious and amount of money misappropriated is not an issue to be considered. 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], has held that it is inconsequential that the misappropriated amount is small or large.

Such employees do not deserve to be kept in employment.

9. 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], has concluded that once the charge of mis-appropriation is proved, an employee ought not to be kept in employment.

10. In the light of the above, the impugned direction of the Labour Court is not only perverse, erroneous and legally unsustainable, but is apparently an act of mis-placed sympathy. The Industrial Court failed to see the perversity and the error in the judgment of the Labour Court and has sustained the said judgment casually.

11. Learned counsel for the Corporation submits that due to the status quo order, in the light of the judgment of the Labour Court, the respondent was reinstated on 9.5.1995. He was again suspended on 21.1.1997 for having committed the same offence. On 5.5.1999, he was dismissed from service for having committed another offence of the same type and is not in employment since then.

12. This Court in the matter of Kalidas Deoram Patil (supra) has concluded that if the past record is clean over a short period, it would not operate as a mitigating factor as the clean service record over a long period would alone indicate the conduct and character of

an employee. In the instant case, in less than two years, the respondent was apprehended of having committed an act of misappropriation which in fact, amounts to moral turpitude. Misappropriation in itself is a grave and serious misconduct and there cannot be mitigating factors to reduce the gravity of an act of misappropriation.

13. Considering the above, this petition is allowed. The direction of the Labour Court in Clauses (2) and (3) of the impugned judgment is quashed and set aside. Complaint (ULP) No.36 of 1994 stands dismissed. Consequentially, the judgment of the Industrial Court dated 13.7.2000 would not survive and stands set aside.

14. Rule is made absolute in the above terms.

15. Needless to state, the salary paid by the petitioner to the respondent during the period of litigation, for the period during which he has worked, would not be recovered.

(RAVINDRA V. GHUGE, J.)

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