

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4945 OF 1997

Maharashtra State Road Transport
Corporation.
Through it's Divisional Controller,
Dhule.

...PETITIONER

-VERSUS-

Pandit Punju Wani,
Age : Major, Occupation : Ex-Conductor,
R/o Alankar Society, Plot No.55,
Vishwa Karma Nagar, Dhule.

...RESPONDENT

...
Shri D.S.Bagul, Advocate for the Petitioner.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd February, 2017

Oral Judgment :

1 The Petitioner/ MSRTC is aggrieved by the judgment of the Labour Court dated 30.11.1996 by which Complaint (ULP) No.23/1996 has been allowed and the Respondent/ Employee is directed to be reinstated in service immediately with continuity of service. The back wages are not granted.

2 The Petitioner is also aggrieved by the judgment of the Industrial Court dated 27.03.1997 by which Revision (ULP) No.4/1997 filed by the Petitioner/ MSRTC was allowed, but the Respondent/ Employee was granted a fresh appointment.

3 None appears for the Respondent despite the matter being shown on the final hearing board, which is taken up on every Thursday. I have heard the learned Advocate for the Petitioner, who strenuously criticized the impugned judgment.

4 I find from the record that the Respondent, who was working as the conductor from 25.02.1980, was dismissed from service from 04.09.1994 for having committed misappropriation. A full fledged departmental enquiry was conducted and the charges levelled upon the Respondent were held to be proved. After the dismissal, the Respondent preferred Complaint (ULP) No.23/1996 alleging that the enquiry is vitiated and the findings of the Enquiry Officer are perverse. The Labour Court concluded that the enquiry was fair and proper and the findings are proper.

5 There is no dispute that after the enquiry was sustained and the findings of the Enquiry Officer were accepted, the charge of

misappropriation stood proved. Despite the same, the Labour Court concluded that the punishment of dismissal for misappropriation of an amount of Rs.4.50 paise was shockingly disproportionate and hence, granted reinstatement with continuity of service to the Respondent. His purshis giving up back wages was accepted by the Labour Court.

6 The Honourable Supreme Court in the matter of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara Sangha*, **2000(7) SCC 517 : AIR 2000 SC 3129** and the learned Division Bench of this Court in *P.R.Shele vs. Union of India and others*, **2008 (2) Mh.L.J. 33**, have held that in the matters of dishonesty, corruption and misappropriation, the amount misappropriated is not significant so as to affect the proportionality of the punishment. It is settled law that the employees indulging in corruption and misappropriation deserve to be dismissed from service.

7 The Honourable Supreme Court, in the matter of *Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain*, **2005 (104) FLR 291**, has concluded that unless the punishment awarded to the employee is shockingly disproportionate, no interference in the punishment would be sustained. Even if the punishment appears to be disproportionate, there

can be no interference unless the Court comes to the conclusion that the punishment awarded shocks its judicial conscience.

8 In my view, showing leniency towards the employee in cases of misappropriation by considering the quantum of the amount involved, amounts to showing misplaced sympathy. For these reasons, the impugned judgment of the Labour Court deserves to be quashed and set aside.

9 I find that the Industrial Court has adopted a peculiar approach vide its judgment dated 30.11.1996. It has concluded that since the amount of misappropriation is small, a fresh appointment can be granted to the employee. It has accordingly, shown misplaced sympathy towards the employee and granted fresh appointment. For the reasons recorded above, this cannot be permitted. The Industrial Court has fallen in a grave error and the impugned judgment does not deserve to be sustained.

10 In the light of the above, this Writ Petition is allowed. The impugned judgment of the Labour Court dated 30.11.1996 is quashed and set aside. Complaint (ULP) No.23/1996 stands dismissed. The impugned judgment of the Industrial Court dated 27.03.1997 is also quashed and set aside and Revision (ULP) No.4/1997 stands disposed of.

11 However, in the event, the Respondent/ Employee has been reinstated in service during the pendency of this petition and in the event, he has retired from service and is paid his retiral benefits, this judgment shall not entitle the Petitioner/ MSRTC to recover the amounts already paid. However, if some retiral benefits have not been paid, the Respondent would not be entitled to the same considering this judgment.

12 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)