

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 500 OF 2000

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

..Petitioner

Versus

Suresh Namdev Pagare
Near Prakash Talkies
Pachora, Dist. Jalgaon.

..Respondent

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Advocate for Petitioner : Shri S.K. Goyanka
Advocate for Respondent : Shri B.S.Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 08, 2017

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ORAL JUDGMENT :-

1. The petitioner Corporation is aggrieved by the judgment of the Labour Court-cum-Controlling Authority dated 25.5.1999, thereby allowing the Gratuity Application No. 7 of 1995 filed by the respondent. The petitioner is also aggrieved by the judgment of the appellate authority dated 27.8.1999, by which, the appeal preferred by the petitioner has been rejected.

2. Learned counsel for the respondent submits that he cannot continue to espouse the cause of the respondent as he has been

empaneled by the MSRT Corporation and now he represents the Corporation in other matters.

3. While admitting this petition on 15.10.2001, this Court directed the petitioner to deposit the entire gratuity amount of Rs.14550/- to be invested in the Nationalized Bank. On the condition of depositing the amount, the impugned directions were stayed. The said amount has been deposited on 20.12.2001 in this Court.

4. I have considered the strenuous submissions of learned counsel for the petitioner and have gone through the petition paper book and record available.

5. The following factors are undisputed:-

(a) The respondent was a Bus Conductor.

(b) He was apprehended in a surprise check, having reissued used tickets and having mis-appropriated the ticket fare collected from the passengers.

(c) After conducting a departmental enquiry under the Discipline and Appeal Rules of the Corporation, the respondent was issued with the order of dismissal from service dated

7.10.1991, as punishment for proved misconduct of misappropriation.

(d) On 9.10.1991, the respondent preferred a first department appeal, praying for reviewing the order of dismissal.

(e) By order dated 1.9.1992, the first appellate authority set aside the order of dismissal and substituted the punishment with stoppage of three increments.

(f) Despite the above order, the respondent did not report for duties.

(g) The petitioner issued letters on 30.9.1992, 4.1.1993, 13.2.1993, 8.4.1993 and 11.6.1993 calling upon the respondent to report for duties.

(h) On 26.9.1993, the first appellate authority itself recalled its order dated 1.9.1992 and restored the order of dismissal dated 7.10.1991.

(i) The respondent did not challenge the re-imposition of the order of dismissal and has accepted it.

(j) The respondent preferred application PGA No.7 of 1995 before the Controlling Authority praying for payment of gratuity, which has been allowed by the impugned judgment. Said judgment has been sustained by the appellate authority.

6. Shri Goyanka has strenuously submitted that when the dismissal order was restored, it was on account of the stigma of dishonesty and which amounts to moral turpitude. Once an employee is dismissed for moral turpitude, he would not be entitled for gratuity in view of the judgment of the Honourable Supreme Court in the matter of Jorsingh Govind Vanjari Vs. Divisional Controller [2017(3) Mh.L.J. 407 = 2017 (152) FLR 127 = 2016 (12) SCALE 511].

7. While considering the case of the petitioner and the vehement submissions of Shri Goyanka, I have called upon the learned counsel to indicate from the Discipline and Appeal Rules as to whether the first appeal authority, which has passed the order dated 1.9.1992, had the powers to review its own decision and restore the decision of the disciplinary authority. Shri Goyanka could not point out from the said Rules that the first appeal authority had the power to review its own order suo moto or even on an application.

8. In the light of the above, the first appellate authority of the

Corporation did not have the power and authorization to review its own order and restore the order of dismissal. If the respondent has not reported for duties, though the order of dismissal was set aside, it would be a case of abandonment of service, for which the Corporation could have initiated disciplinary proceedings for proving unauthorized absenteeism. Nevertheless, the said issue does not survive after 25 years since the respondent has approached the controlling authority under the Payment of Gratuity Act seeking gratuity on the count that he is not in employment. He, therefore has, by his conduct, established that he did not desire to report for duties. It is informed by Shri Goyanka that the date of superannuation of the respondent was 28.2.2012 and he did not report for duties after 1.9.1992 till 28.2.2012.

9. It is undisputed from the records that the gratuity of the respondent has been calculated till he had last worked with the petitioner. These are peculiar facts and circumstances, wherein, the respondent by his conduct declined to report for duties and proceeded on the presumption that he has been dismissed whereas the petitioner's first appeal authority had reinstated the respondent.

10. Shri Goyanka submits that the respondent has not raised any other claim against the Corporation in last 25 years, save and except these gratuity proceedings. It cannot be over-looked that the

petitioner has not passed an order of forfeiture of gratuity.

11. In the light of the above and considering the scope of the D & A Rules of the Corporation, the order of the first appeal authority could not be reviewed by the same authority and as such, the action of recalling the punishment of stoppage of three increments cannot be sustained. The first appeal authority had no jurisdiction to recall or review his order.

12. With this position being established squarely based upon the D & A Rules of the Corporation, the order of dismissal for moral turpitude stands set aside by the first appeal authority. Once the order of dismissal is held to be set aside and replaced by the punishment of stoppage of three increments, the respondent could not be deprived of gratuity. It is an altogether different issue that the respondent did not have the desire to continue in the employment of the petitioner and hence did not report for duties. This cannot be a ground for presuming that the appellate authority could review its order without having any power to do so under the D & A Rules.

13. Shri Goyanka then has raised the issue of interest at the rate of 9% p.a. granted by the Labour Court from the date of its judgment. It cannot be ignored that since the petitioner /

Corporation had set aside the order of dismissal and had replaced the same with the punishment of stoppage of three increments, there was no occasion to pay gratuity to the respondent. It is in peculiar facts of these case that the respondent himself had abandoned his employment and sought gratuity. So also the amount of gratuity has been deposited in this Court on 20.12.2001.

14. Considering the above, this petition is disposed off. The judgment of the Labour Court stands implemented by the order of this Court dated 15.10.2001. Rule is, therefore, discharged.

15. The respondent is, therefore, at liberty to withdraw the entire amount deposited in this Court, along with accrued interest, by tendering an application, duly identified by an Advocate and supported with a recent photograph, copy of the Election Commission Voter Id card and recent address proof.

(RAVINDRA V. GHUGE, J.)

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