

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

Writ Petition No. 03899 of 2017

District : Osmanabad

Bhagwat Pralhad Shinde,
Age : 53 years,
Occupation : Labour,
R/o. Shivaji Nagar (Bavi),
Taluka : Vashi,
District : Osmanabad.

.. Petitioner.

versus

Maharashtra State Road Transport
Corporation,
Through its Divisional Controller,
Osmanabad,
Taluka & District Osmanabad.

.. Respondent.

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Mr. P.V. Barde, Advocate, for the petitioner.

Mr. A.B. Dhongade, Advocate, for the respondent.

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 03RD AUGUST, 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. Heard learned
counsel for the parties finally by consent.

02. The petitioner aggrieved by order of remand dated 25-01-2017 passed by Member, Industrial Court, Latur, in Revision/ULP/No.22 of 2015 and Revision/ULP/No.3 of 2016 is before this court.

03. After hearing learned counsel for the parties, the facts about which there is not much dispute and which are relevant in the writ petition can be summarized as given in next few paragraphs.

04. The petitioner had been alleged of absence during the period 03-10-2004 to 12-01-2005 without leave and prior permission of the respondent. Charge-sheet accordingly had been issued to the petitioner and enquiry had been conducted. The enquiry officer had held the charges to have been duly proved and show cause notice for dismissal was issued and services of the petitioner - complainant had been terminated. The petitioner's case had been that he had not been keeping good health and was ill and he had informed the same to one of the employees of the respondent and had also filed leave applications but those were not acknowledged.

05. Against the dismissal, the petitioner had approached labour court and as per evolved procedure, issues had been framed as to whether the enquiry conducted against the petitioner had been legal, fair, proper and in accordance with principles of natural justice

and whether findings by enquiry officer were perverse. The first issue had been answered in the affirmative holding the enquiry to be fair and the latter one had been answered in the negative, holding findings by enquiry officer were not perverse. Said decision of the labour court had been subject matter before the industrial court at the instance of present petitioner. The findings were confirmed by industrial court. A writ petition had been filed before this court bearing no. 9700 of 2014. The high court had disposed of writ petition without causing interference in the order of the labour court dated 15-03-2013 and the judgment of the industrial court dated 02-08-2014, directing the labour court to decide the complaint expeditiously.

06. In the complaint, two issues were framed, as to whether the respondent had been engaged in unfair labour practice under section 28 read with items 1(a)(b)(d)(f) and (g) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 [For short, "MRTU & PULP Act"] and the labour court answered said issue in the affirmative holding that dismissal of petitioner from service to be an unfair labour practice under schedule IV as referred to in the order and in respect of other issue regarding entitlement of the complainant to relief of reinstatement in service with continuity and back wages, the same had been partly answered in the affirmative.

07. The labour court under its judgment and order dated 17-04-2015 declared the respondent to have indulged into unfair labour practice and had directed it to cease and desist from indulging into the same and further directed to reinstate the complainant with continuity but without back wages.

08. The petitioner had been once again to industrial court under Revision/ULP/no.22 of 2015 against refusal to grant back wages. Respondent, as well, had filed Revision/ULP/No.3 of 2016 against granting of relief of reinstatement and continuity in service. Both the revisions were disposed of by a common judgment dated 25-01-2017 remanding the matter to labour court for fresh adjudication of issues below exhibit O-3 dated 05-09-2009, in Revision/ULP/No.3 of 2016 filed by present respondent and had dismissed Revision/ULP/No.22 of 2015 filed by present petitioner.

09. Mr. P.V. Barde submits that the industrial court has erred in not giving due consideration to facts involved in the matter. It has simply referred to case law without even referring to admitted position in the matter. He submits that although case law is discussed, facts and its effect and the implications have not been considered at all.

10. Mr. Barde, learned counsel for the petitioner, vehemently argues, while factual position emerges that there has been only a single default which had been enquired into and for the same punishment by way of dismissal had been awarded which had been shockingly disproportionate. The petitioner had not been keeping good health and further the leave applications could not receive proper acknowledgment and the corporation was under due intimation through head mechanic. He submits that the absence during relevant period had been properly accounted for.

11. Mr. Barde submits that while this is so, the labour court ought not to have refused payment of back wages and refusal to grant back wages is a punishment disproportionate to the period of absence, particularly having regard to that the absence had not been voluntary and had been forced under the circumstances. The petitioner's entire back wages had unduly been wiped out. The labour court in fact ought to have allowed the back wages.

12. He submits, the industrial court has not applied mind to vital aspects involved in the matter and has erred in dismissing revision/ULP/no.22 of 2015 and also in remanding the matter for re-consideration by order on revision/ULP/no.3/2016.

13. Mr. Barde submits that an extract from Hon'ble Supreme Court's decision in the case of *Delhi Transport Corporation Vs. Sardarsingh* (2004 SCC (L & S) 946 = (2004) 7 SCC 574) has been quoted in its judgment by the industrial court. However, the allegation against the petitioner had been in respect of a single period of absence and not the habitual ones as has been discussed in the decision of the Hon'ble Supreme Court. No analogy could have been drawn and applied to scenario in the present matter.

14. Mr. Barde further refers to a decision of Hon'ble learned single judge of this court dated 24-01-2012 in *writ petition no. 6424 of 2011 (Rajendra Bhalchandra Joshi Vs. Shaskiya Sevetil Abhiyantyanchi Patpedhi - Pat Sanstha Maryadit, Ahmednagar)* to support his contention that a remand cannot be ordered as a matter of course and the industrial court ought to have taken into account the material before it. In the present matter, it is not the case at all on either side that they want to lead any evidence other than which is already on record. He submits that the industrial court has only discussed the case law without reference to the factual position and has remanded the matter which is virtually for no reason as the labour court has in detail discussed the cases pleaded by the parties and the evidence on record and passed the order. Its correctness or

otherwise has been subjected to revisions. He, therefore, urges this court to set aside the order of remand and reinstate revision/ULP/No.3 of 2016 to the file of the industrial court.

15. Mr. A.B. Dhongade, learned counsel for the respondent, supports the order submitting that while the enquiry has been found to be fair, the labour court has committed error in setting aside the dismissal and holding that the respondent has been engaged in unfair labour practice. He submits that lot of inconvenience had been caused to the management over the absence and it had been revealed that absence was not justifiable. In accordance with rules, the termination of service of the petitioner had taken place. In the circumstances, dismissal cannot be said to be an unfair labour practice and the reinstatement as directed would not be proper. The industrial court had properly taken into account the same and with the aid of citations referred to in the order, has passed the order. It is an order supported by decisions in this field and as such, would not require interference with.

16. Perusal of order of the industrial court in respect of revision/ULP/No.3 of 2016 shows, a single issue had been framed as to whether order passed by the labour court requires interference and same had been answered in the affirmative.

17. In paragraph 09, industrial court had re-produced certain portions of judgment of the Hon'ble Supreme Court in the case of *Krushnakant B. Parmar Vs. Union of India & another in Civil Appeal No. 2106 of 2012* as well as judgment of this court in the case of *Deepak Bhimraj Kamble Vs. Kirloskar Oil Engine Ltd. in writ petition no. 5519 of 2012* dated 16th & 20th July, 2016.

18. The discussion shows that the industrial court had distinguished *Krushnakant B. Parmar's case (supra)* from *Deepak Bhimraj Kamble's case (supra)*. It was considered *Krushnakant B. Parmar's case (supra)* related to unauthorized absence from duty amounts to failure of devotion to duty and his behaviour was unbecoming of a Government servant, whereas in *Deepak Bhimraj Kamble's case (supra)* this court had dealt with the issue regarding absence without leave and as such, without further discussion the industrial court has considered that the case in hand is identical with the case of *Deepak Bhimraj Kamble's case (supra)*.

19. According to learned counsel Mr. Barde, *Deepak Bhimraj Kamble's case (supra)* is different from the one in the present matter as there were three consecutive charge-sheets issued to the employee concerned and in respect of each of them he had given

different explanation. No analogy, according to him, can be drawn from the same and applied to the present case.

20. Thereafter, as referred to above, industrial court adverted to *Delhi Transport Corporation's case (supra)* and quoted the observations thereunder in paragraphs 09, 10, 11 and 12 which can be conveniently re-produced herein below as under :-

"9. When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping

generalisation. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

10. *Great emphasis was laid by learned counsel for the respondent employee on the absence being treated as leave without pay. As was observed by this Court in State of M.P. v. Harihar Gopal ((1969) 3 SLR 274 (SC)) by a three-Judge Bench of this Court, even when an order is passed for treating absence as leave without pay after passing an order of termination, that is, for the purpose of maintaining correct record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employees in this case is nothing but irresponsible in the extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the governing Standing Orders unauthorised leave can be treated as misconduct.*

11. *Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made*

is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised.

12. The Tribunal proceeded in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave. "

21. It was with reference to above the industrial court purported to answer point no.01 in the affirmative.

22. While doing so, the industrial court in paragraphs no.12 and 13 has referred to that the petitioner is in employment of the respondent for about 20 - 21 years and had knowledge in respect of leave rules and had considered it to be burden on present respondent to prove that the complainant had wilfully remained absent from duty.

23. In paragraph 16, the industrial court observed that parties to the litigation are entitled to be given opportunity to address the labour court once again on the point whether interference with punishment proposed by employer is called for and if yes, proportionality of the same.

24. Thus, the court appears to have digressed from that what was to be considered was whether labour court had committed error in interfering with the proportionality of punishment dismissing the employee can be modified to reinstatement with continuity in service without back wages.

25. Looking at aforesaid, while the observations which appear to have weighed with the industrial court, those observations have emerged on the background of a case of habitual negligence and material was produced before tribunal, whereas in the case in hand, it appears that the allegations have been specific with regard to absence without leave for a period from 03-10-2004 to 12-01-2005 for which there has been explanation tendered and evidence is given in the matter. The petitioner whether having wilfully absented from duty has also been examined. It is upon that background, the proportionality of punishment is also addressed to and argued out. There is no demand from either side for any opportunity to produce evidence or documents. As such, it does not appear to be a case wherein a remand order passed by the industrial court in revision/ULP/No.3 of 2016 can be sustained having regard to the decisions which are relied on behalf of the petitioner particularly, the one in writ petition no. 06424 of 2011 (supra) and the other in the case of *Cricket Club of India & others Vs. D.R. Shyam & another* (2007 (6) Bom.C.R.356), as also decision of another Hon'ble learned single

judge of this court in the case of *Gangaram s/o. Rajaram Ingole (died through his L.Rs.) Vs. Malkarjun s/o. Gangadhar Hundekar & others (2011(1) ALL MR 874)*.

26. The writ petition is partly allowed.

The order dated 25-01-2017 passed by the Member, Industrial Court, Latur, relating to Revision/ULP/No.3/2016 stands quashed and set aside and Revision/ULP/No.3/2016 stands restored before the industrial court to be proceeded with expeditiously. It is expected that said revision would be decided preferably within a period of two months from the date of receipt of this order. The order in Revision/ULP/No.22 of 2015, however, stands untouched.

27. Rule made absolute in the above terms. In the circumstances, parties shall bear their own costs.

(Sunil P. Deshmukh)
JUDGE

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