

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2258 OF 1998

Maharashtra State Road
Transport Corporation,
Through its Divisional
Controller, Dhule.

..Petitioner

Versus

Bhai Das Bhanu Vanjari,
age major, Occupation -
ex-Conductor, R/o Sakri,
District Dhule.

..Respondent

...
Advocate for Petitioner : Shri D.S.Bagul
Advocate for Respondent : Shri S.B.Bhapkar

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

ORAL JUDGMENT:-

1. This matter was on the final hearing board dated 2.3.2017. When the matter was called out on 2.3.2017, none appeared for the parties. Shri Bagul, learned Advocate for the petitioner submits today that this matter is not entrusted to him, though it is shown on the board today. No counsel has appeared for the petitioner MSRTC, Dhule.

2. Instead of dismissing the matter in default, I am deciding the petition on its merits. I have heard the submissions of the learned Advocate for the Respondent.

3. The petitioner has challenged the judgment of the Labour Court dated 27.12.1993, by which, Complaint (ULP) No.330 of 1992 has been allowed and the petitioner is directed to appoint the respondent as a fresh employee. The petitioner is also aggrieved by the judgment of the Industrial Court dated 20.1.1997, by which, Revision (ULP) No.106 of 1994 filed by the petitioner and Revision (ULP) No.13 of 1996 filed by the respondent, have been dismissed.

4. The impugned order of the Labour Court reads as under:-

“ Respondent is directed to reinstate the complainant as a fresh candidate, immediately. ”

5. The impugned order of the Industrial Court reads as under:-

“ Revision Applicant in Revision Application (ULP) No. 106 of 1994 to implement the order and to reinstate the workman as a fresh candidate and to pay him all his legal dues as he was entitled to receive on the date of his termination, which was before the Labour Court in Complaint (ULP) No.330 of 1992.”

6. The respondent / workman was a Bus Conductor. On 19.5.1992, when the Bus was travelling from Indore to Khaper and was subjected to a surprise check at Dhamnod, 20 passengers were found travelling with used tickets. They stated that the respondent /

Conductor had issued those tickets after they had paid the fare of the journey. Pursuant to conducting a full-fledged domestic enquiry, the respondent was found guilty of mis-appropriation and was dismissed from service.

7. The respondent approached the Labour Court by filing a ULP Complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the said Act"). The Labour Court concluded that the enquiry was conducted in a fair and proper manner and was not an ex-parte enquiry and the findings of the enquiry officer are not perverse.

8. In the above backdrop, the Labour Court held that the proportionality of the punishment is to be decided in the said complaint. Though the Labour Court came to a conclusion that the respondent / employee had committed a mis-conduct of issuing 20 used tickets to the passengers after collecting the fare, it concluded in paragraph No.21 as under:-

"21. Nobody will dispute that, the punishment of dismissal from service be maximum punishment for any workman. It throws the workman and his family on road. It snatches bread and butter for his entire family In this, if workman debars from age, due to dismissal from service, then, again serious complications arise at his life, for maintaining his family. Number of times, it is considered that, "dismissal from

service” causes “economic death” of the workman.”

9. Based on the above conclusions, the Labour Court held that a heavy fine can be imposed on the Conductor so as to deter him from committing such a mis-conduct. With this view, it concluded that the petitioner / Corporation should reinstate the respondent as a fresh employee.

10. In the Revision proceedings, the Industrial Court concluded that the Labour Court has rightly exercised its powers under Section 11A of the Industrial Disputes Act, 1947 and hence the order of appointing the respondent as a fresh employee is just and proper.

11. It is now well settled that the act of a Bus Conductor of collecting fare and either not issuing tickets or issuing used tickets so as to mis-appropriate the amount of fare received, is held to be a corrupt act amounting to misappropriation.

12. The Honourable Supreme Court in catena of judgments and to cite one, in the judgment 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 concluded that the quantum of amount mis-appropriated is not relevant and if the act of mis-appropriation is proved, even for a small amount, the

punishment of dismissal from service is appropriate.

13. 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 acts of misappropriation and corruption are to be treated seriously and the punishment of dismissal is proportionate.

14. The Honourable Apex Court in the matter of Tata Engineering and Locomotive Company Limited Vs. N.K.Singh [(2006) 12 SCC 554], has concluded that the exercise of power under Section 11A of the ID Act is not meant to enable the Labour Court to show sympathy or leniency towards an employee. If the mis-conduct is of a grave nature, leniency shown would be unwarranted and this would encourage indiscipline.

15. The Honourable Apex Court in the matter of Damoh Panna Sagar Rural Regional Bank and another Vs. Munna Lal Jain [2005 (104) FLR 291], has concluded that if the punishment appears to be disproportionate, it would not warrant an interference until the punishment awarded appears to be shockingly disproportionate so as to shock to judicial conscience. Only if the punishment is shockingly disproportionate, the Court may reduce the punishment.

16. In the instant case, the charge of misappropriation was proved

and 20 passengers were found travelling with used tickets. Grant of reinstatement as a fresh employee on mis-placed sympathy is unsustainable.

17. In the light of the above, this petition is allowed. The impugned judgments of the Labour Court dated 27.12.2013 and of the Industrial Court dated 20.1.1997 are quashed and set aside. Revision (ULP) Nos.106 of 1994 and 13 of 1996 stand disposed off. Complaint (ULP) No. 330 of 1992 stands dismissed and the dismissal of the respondent w.e.f. 12.10.1992 is sustained.

18. Rule is made absolute in the above terms.

19. Before parting with this matter, it needs mention that in the event the petitioner / Corporation has implemented the impugned orders of the Labour and Industrial Courts and have granted service benefits or retiral benefits, if any, to the respondent / employee, the same may not be recovered from him. In the event, such benefits are not extended to him till the date of this judgment, the respondent would be dis-entitled to earn those benefits/reliefs.

(RAVINDRA V. GHUGE, J.)

...