

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2893 OF 1998

Karbasappa S/o Kashinath Yerate

Petitioner

Versus

The Divisional Controller,
Maharashtra State Road
Transport Corporation, Osmanabad and others

Respondents

Mr. A.S. Shelke advocate for the petitioner
Mr. A.B. Dhongade advocate for Respondents

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 30th June, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the Judgment of the Labour Court dated 27.9.1989, by which Complaint ULP. No.1/82 filed by him for challenging his dismissal from service, has been dismissed. The petitioner is also aggrieved by the Judgment of the Industrial Court dated 9.9.1992, by which his Revision ULP. No. 35/82 has been dismissed.

2 The petitioner was engaged as a conductor in 1968. On 11.10.1980, he was apprehended, while on duty, by the flying squad at Sadashiv Peth in Andhra Pradesh. It was found that some passengers were traveling ticket-less. He was suspended on 25.11.80 and thereafter was dismissed on 12.5.1981 after

conducting a full-fledged enquiry. He preferred a Complaint before the Labour Court, which was allowed by the Judgment dated 14.1.1986, Revision ULP. No.104/86 filed by MSRTC was allowed on 30.11.1988 and the matter was remanded back.

3 By an order dated 2.8.1984, the enquiry conducted by the Corporation was quashed and set aside as being vitiated. A *de novo* inquiry was conducted before the Labour Court. By the impugned Judgment dated 27.9.1989, the Labour Court concluded that, the charges are proved in the *de novo* enquiry. Unpunched tickets were found with the passengers, which were an evidence that, the petitioner desired to reuse the said tickets. Charge of misappropriation was therefore proved. The past service record of the petitioner indicated that, he was punished on few occasions for committing the same misconduct with stoppage of increments.

4 Since a *de novo* enquiry was conducted before the Labour Court, issue is as to whether there was sufficient evidence before the Labour Court and whether on the basis of such evidence, the charge against the petitioner can be proved. It is trite law that the charges against a delinquent, in service jurisprudence are to be considered on the basis of available evidence and on the preponderance on the principles of probabilities. Unlike criminal

proceedings, the charges are not required to be proved beyond any doubt. The Labour Court considered the material on record and the evidence led by the parties and concluded that the charges have been proved.

5 Mr. A.S. Shelke has strenuously contended that the bus was checked at about 3' o'clock in the morning. The light in the bus was very dim and there was some injury to one hand of the petitioner. He was also in a disturbed state of mind, since he had lost his wife some time ago. He further stated that the act of using the unpunched tickets in another journey has not been proved and hence, clause 12(b) of the Discipline & Appeal Procedure can neither be attracted, nor it has been proved as the act of actual fraud or misappropriation

6 The Labour Court has considered in details the manner in which the way bill was filled in and blank spaces in the ticket numbers that were left by the petitioner. Some of the ticket numbers were correctly mentioned. With regard to tickets at issue, the last digit numbers of the tickets were left blank. When the tickets were issued at Zahirabad, the way bill ought to have been properly filled in.

7 In so far as the unpunched tickets which were issued to two passengers are concerned, one of the passengers Ishwarsingh Kishansingh had submitted a statement on the date of the surprise check on 11.10.1980 that, the two tickets along with other tickets were given to them at Bidar itself. However, two tickets were unpunched and rest of the tickets were punched.

8 It has emerged in several cases of such kinds pertaining to State Road Transport Corporations that, the modus operandi of the bus conductors is, of issuing tickets and then collecting the same tickets when the passengers are alighting at their destinations. For the said purpose, the digits in the way bills are left blank so that after taking back the tickets and especially those which are unpunched, the conductor creates an evidence that the said tickets were never sold. The said tickets are then used in a subsequent journey, thereby pocketing the fare received in the earlier journey. Another modus operandi is of punching the tickets while issuing to the passengers and collecting the said tickets while they alight. Such tickets are then used in a subsequent journey and the passengers believe that they have been issued with properly punched tickets. If the bus is not subjected to a surprise check, such conductors get away with the said modus operandi.

9 In so far as the contention of the petitioner that the bus passengers were not examined either in the enquiry or before the Court are concerned, this issue is no more res-integra. The Honourable Apex Court in the matter of K.S.R.T.C versus B.S. Hullikatti (AIR 2001, SC 930) & Divisional Controller, K.S.R.T.C. Versus A.T. Mane (2005, III SCC 254) has concluded that, it is not possible to keep the passengers present before the enquiry officer for recording their statements. Non-examination of the passengers is not fatal to the enquiry. If the statement is recorded and the person recording the statement is examined to identify the statements, it would be enough to consider it as a piece of evidence.

10 Mr. A.S.Shelke learned Advocate has strenuously tried to persuade the Court that the petitioner is innocent. He contends that, the act of misappropriation was never committed. I am unable to accept his submission for reasons more than one. Firstly, the petitioner was apprehended just prior to the probable act of misappropriation and such has always been the modus operandi of the bus conductors, which is seen by the Courts in hundreds of cases. Secondly, the petitioner has been punished earlier for misconducts by withholding his increments. Contention is that, it can be for any other misconduct. The Labour Court has

recorded, on the basis of the default card that, the petitioner has been so punished. As such, the contention of the petitioner that he had no intention to misappropriate the amount, has to be disbelieved considering his earlier conduct.

11 The Honourable Apex Court in the matters of **Syed Yakoob versus K.S. Radhakrishnan and others** (AIR 1984 SCC 447) & **Surya Dev Rai versus Ram Chander Rai** (2003 6, SCC 682) has held that, merely because a second view is possible, cannot be a reason to set aside the impugned order, unless the impugned order appears to be perverse and erroneous and is likely to cause gross injustice.

12 On the point of proportionality of the punishment, Mr. A.S. Shelke has submitted that, it was a minor misconduct which, at the most can be said to be an act of negligence, keeping in view that the light inside the bus was dim. He relied on the testimony of the bus driver as regards the quality of the light inside the bus.

13 I find that the Labour Court and the Industrial Court have rightly discarded the said testimony since, it cannot be believed that the petitioner never had time to fill in the way bill. If he could enter the first digits of the tickets in the bus, the last digits would not have been left blank un-intentionally. In so far as the

unpunched tickets are concerned, the chain of events would indicate that if the bus was not subjected to a surprise check, the petitioner would have succeeded in collecting the unpunched tickets from the bus passengers while they alighted and would have then pocketed the fare of the tickets collected from them.

14 The Honourable Apex Court in the matter of **Jantha Bazar (South Canara Central Cooperative Wholesale Stores Limited) versus The Secretary, Sahakari Noukarana Sangha** (AIR 2000 SC 3129) and the learned Division Bench of this Court in **P.R. Shele versus Union of India** (2008 (2) Mh L.J. 33) have laid down law that, the amount of misappropriation cannot be a ground for considering the proportionality of the punishment. An act of misappropriation in itself is grave enough and warrants dismissal from service.

15 Considering the above, I do not find that the impugned Judgments of the Labour Court and the Industrial Court can be termed as being perverse or erroneous.

16 This petition being devoid of merit, is, therefore, dismissed.

17 Rule is discharged.

(RAVINDRA V. GHUGE , J)