

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4262 OF 1997

Maharashtra State Road Transport
Corporation, Through its
Divisional Controller, Parbhani – PETITIONER

VERSUS

Limbaji Shankarrao Thite,
Age-Major, Occu-Ex-Conductor,
R/o Kranti Krushi Vikas Kendra,
Station Road, Parbhani – RESPONDENT

WITH
WRIT PETITION NO.7725 OF 2006

1. Divisional Traffic Superintendent,
Maharashtra State Road Transport
Corporation, Parbhani Division,
Parbhani, Dist.Parbhani,
2. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Parbhani Division,
Parbhani, Dist.Parbhani,
3. Members of the Second Appellate
Committee,
Maharashtra State Road Transport
Corporation, Parbhani Division,
Parbhani, Dist.Parbhani. – PETITIONERS

VERSUS

Limbaji S/o Shankarrao Thite,
Age-59 years, Occu-Service,
R/o Shivram Nagar, Vasmat Road,
Behind Mantri Mangalkaryalaya,
Parbhani – RESPONDENT

Mr.A.D.Wange, Advocate for the petitioners.

Mr.P.N.Surwase Patil, Advocate for the respondent (**Absent**).

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/01/2017

ORAL JUDGMENT :

1. The petitioner/Corporation is aggrieved by the judgment dated 22/10/1993 by which the Labour Court has granted reinstatement with continuity of service without back wages and further directed stoppage of two increments. The petitioners are also aggrieved by the judgment of the Industrial Court dated 07/08/1996 by which Revision (ULP) No.188/1994 filed by the petitioners has been dismissed.

2. This Court has admitted this petition by order dated 24/11/1997 and granted interim relief in terms of prayer clause "D" thereby staying both the impugned judgments.

3. Though appearance is entered by two advocates on behalf of the respondent, none has remained present on 22/12/2016, 05/01/2017 and even today. This petition is pending last 20 years.

4. I have considered the submissions of the learned Advocate for the petitioners and have gone through the evidence on record.

5. The Labour Court has concluded that the respondent / employee was guilty of not issuing tickets to four passengers who were found travelling ticket less. Despite having concluded that these persons were travelling ticket less and there was a misappropriation of Rs.5/-, it has shown sympathy towards the respondent and concluded that the punishment of dismissal is shockingly disproportionate.

6. The Hon'ble Supreme Court in the matter of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [(2000) 7 SCC 517] and the Division Bench of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33] have laid down the law that the amount of money misappropriated is not significant and whether such misappropriated amount is a very small amount or not, would not impact the punishment of dismissal from service.

7. When 4 passengers were travelling ticket less and a statement is made that the money was paid to the respondent/Conductor, such

an act of misappropriation cannot be overlooked or ignored. For the said reason, the judgment of the Labour Court cannot be sustained. Naturally, the judgment of the Industrial Court would be unsustainable, moreso in the light of the fact that on few occasions earlier, the respondent/employee was punished with warning and fine for similar acts of misappropriation.

8. Pursuant to the judgment of the Labour Court, the respondent was reinstated in service. His second dismissal is a subject matter of the second WP No.7725/2006. Considering the above and the fact that the respondent has superannuated on 31/12/2004, he having been paid his retiral benefits, except 50% of the PF accumulations and his gratuity, I am not interfering in the impugned orders. The first petition is, therefore, dismissed and Rule is discharged.

9. In the second petition, the issue of the second dismissal of the respondent is at issue. The respondent was once again apprehended on 12/07/1998 when he had resold used tickets to the passengers. In doing so, he had misappropriated Rs.68/-. He was charge sheeted and after proving the charges in the enquiry, he was dismissed on 28/08/1999. He preferred first appeal against the order of the punishment which was rejected by the Appellate Authority of the

Corporation on 11/03/2000. His Second Appeal was allowed by the further Appellate Authority of the Corporation and he was shown sympathy and was issued with a fresh appointment order dated 02/06/2001. It is quite surprising that the MSRTC has leniently treated such a corrupt conductor.

10. After accepting the fresh appointment vide letter dated 02/06/2001 and after joining duties, just prior to his retirement, the respondent preferred Complaint (ULP) No.23/2004 before the Industrial Court. By the impugned judgment dated 30/08/2005, the Industrial Court concluded that the enquiry and the findings of the Enquiry Officer are sustainable. However, the fresh appointment was interfered with on the ground that there can be no punishment of the nature of fresh appointment.

11. I find that the Industrial Court has failed to apply its mind to this case. A fresh appointment is never a punishment. After the punishment of dismissal is sustained, the MSRTC in its discretion, granted an opportunity to the respondent and issued him a fresh appointment order thereby wiping out his entire past service. Unless the dismissal is sustained, there cannot be a break in service and only after a break in service, can an employee be appointed under a

new appointment.

12. This Court has dealt with an identical case in the matter of Anil Vaijnath Arbad Vs. The Divisional Traffic Superintendent and others in WP No.6699/2007 dtd.21/01/2016 wherein reliance has been placed upon the juridical pronouncements of the Apex Court in the case of State of Punjab Vs. Krishan Niwas, AIR 1997 SC 2349. It was concluded by this Court as follows :-

“18 The Apex Court in the case of State of Punjab (supra) has concluded in paragraphs 2 to 5 as under:-

“2. *This appeal, by special leave, arises from the judgment of the Punjab & Haryana High Court made on March 7, 1996 in Second Appeal No.2662/95.*

3. *The admitted facts are that the respondent was charged for an offence under Section 302 I.P.C. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 I.P.C. was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to*

undergo rigorous imprisonment for 1-1/2 years. After undergoing the imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated March 1, 1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back-wages. The respondent accepted it and joined duty on June 5, 1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The Trial Court dismissed the suit. On appeal; the Addl. District Judge reversed the judgment of the trial Court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.

4. Learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the

order of the appellate authority and joined the post on June 5, 1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil Court would not have gone into the merits and decided the matter against the appellants.

5. Accordingly, the appeal is allowed. The orders of the High Court and the appellate Court stand set aside and that of the trial Court stands confirmed. No costs.”

(Emphasis is supplied).

19 In the light of the ratio laid down by the Apex Court in the case of the State of Punjab (supra), the Petitioner would, therefore, be precluded from questioning the fairness of his fresh appointment once he has accepted it without any protest or murmur and has joined duties. If he was aggrieved with the order of fresh appointment and imposition of punishment of dismissal from service, he could have questioned his order of dismissal before the Labour Court. The Industrial Court did not have jurisdiction to deal with the order of dismissal in the light of the powers vested in it.

20 The powers of the Labour Court and the Industrial Court are defined in Sections 4, 5, 6 and 7 of the MRTU & PULP Act, 1971, which read as under:-

“4. Industrial Court

- (1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.*
- (2) The Industrial Court shall consist of not less than three members, one of whom shall be the President.*
- (3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:*

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

- (4) Every member of the Industrial Court shall be a*

person who is or has been a Judge or a High Court or is eligible for being appointed a Judge of such Court :

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

5. Duties of Industrial Court.

It shall be the duty of the Industrial Court:-

- (a) to decide an application by a union for grant of recognition to it;*
- (b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;*
- (c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;*
- (d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;*
- (e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;*
- (f) to decide references made to it on any point of*

law either by any civil or criminal court and
 (g) *to decide appeals under Section 42.*

6 *Labour Court*

The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts;

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

7 *Duties of Labour Court*

It shall be the duty of the Laour Court to decide complaints relating to unfair labour practices described in Item I of Schedule IV and to try offences punishable under this Act.”

21 As such, even if it is presumed that the order of

the Appellate Authority granting re-appointment/ fresh appointment is to be set aside, the Petitioner would be relegated back to the earlier order which is an order of dismissal. At best, the Industrial Court, if were to allow the complaint, could have set aside the order of the Appellate Authority thereby, relegating the Petitioner to the order passed by the first Appellate Authority confirming the order of dismissal. In any case, if the order of fresh appointment is to be set aside, the Petitioner will have no option, but to challenge the order of dismissal which is a stage prior to the passing of the order by the second Appellate Authority.

22 In the light of the above and the law laid down by the Apex Court in the case of State of Punjab (supra), the Petitioner could not have questioned his fresh appointment after having accepted it and joined duties without any protest and without reserving a right to challenge the orders of the second Appellate Authority, the first Appellate Authority and the order of dismissal passed by the competent disciplinary authority and that too before the Industrial Court.”

13. It is, therefore, trite law that an employee after accepting a fresh appointment without any protest or murmur and having worked on the basis of the appointment for a few years, is precluded

from challenging the said appointment. On this Count, the impugned judgment of the Industrial Court cannot be sustained.

14. So also, even if it is presumed that the fresh appointment deserves to be set aside, the respondent would be relegated back to the stage prior to receiving the fresh appointment. In this case, the respondent was dismissed from service on 28/08/1999. He was issued with a fresh appointment order on 02/06/2001. As such, even if the impugned judgment is sustained, he would be relegated back to the position of being a dismissed employee. The Industrial Court does not have the jurisdiction to deal with the punishment of dismissal under Item 9 of Schedule IV of the MRTU and PULP Act, 1971. Said jurisdiction rests with the Labour Court under Item 1 of Schedule IV in the light of Sections 4 to 7 of the 1971 Act. On this count as well, the judgment of the Industrial Court cannot be sustained.

15. As such, the second WP No.7725/2006 is allowed. The impugned judgment dated 30/08/2005 delivered by the Industrial Court is quashed and set aside and Complaint (ULP) No.23/2004 stands dismissed.

16. It is informed that the respondent has retired on 31/12/2004 after joining duties w.e.f. 06/06/2001 by virtue of the fresh appointment order dated 02/06/2001. Since he has not worked for 5 years in continuous service with the petitioners, he would not be entitled for gratuity concerning the provisions of the Payment of Gratuity Act, 1972. However, his PF accumulations cannot be taken away and the petitioners shall therefore pay the 50% PF accumulations retained by it to the respondent/employee within a period of 12 weeks from today, failing which the Divisional Controller shall pay interest on the said amount @ 6% from 01/01/2005 from his own salary and the interest amount shall not be paid from the coffers of the MSRTC or the State Government.

17. Rule is made absolute in the above terms. Pending civil applications do not survive and are disposed of.

(RAVINDRA V. GHUGE, J.)