

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11252 OF 2016

NANDKUMAR HANUMANTRAO BHOSALE
VERSUS
MSRTC, AHMEDNAGAR

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Advocate for Petitioners : Shri Barde Parag Vijay

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 30, 2017
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PER COURT :-

1. The petitioner is aggrieved by the judgment of the Controlling Authority / Labour Court dated 9.9.2014, by which, Application (PGA) No.33 of 2013, filed by the petitioner under the Payment of Gratuity Act has been rejected. The petitioner is also aggrieved by the judgment of the appellate authority dated 18.6.2016, by which, Appeal (PGA) No.10 of 2014 has been dismissed.

2. The petitioner submits that by order dated 30.3.1999, the petitioner was dismissed from service for the proved mis-conduct of mis-appropriation. He was a Conductor with the respondent - Corporation. It was mentioned in the said order that his gratuity would be forfeited since the proved mis-conduct for which he is dismissed from service amounts to moral turpitude.

3. The abovesaid dismissal was stayed by the Labour Court. The

petitioner was, therefore, reinstated. For committing the same misconduct of mis-appropriation, he was once again dismissed from service on 19.1.2013. Thereafter, he was issued with a notice dated 6.5.2013, calling upon him to explain as to why his gratuity should not be forfeited. The petitioner replied to the said notice on 14.5.2013 and thereafter, the order of forfeiture of gratuity, dated 20.5.2013 was passed.

4. The petitioner challenged the said order before the Labour Court / Controlling authority. The said application was dismissed by the impugned judgment after concluding that the petitioner was heard through a notice and since his dismissal is on account of a misconduct or mis-appropriation, the decision of forfeiting the gratuity would not call for interference. For the same reasons, the appellate authority has dismissed his appeal.

5. Despite the strenuous submissions of Shri Barde, I do not find that this is a fit case for considering his objection as regards the procedure before forfeiting the gratuity. It cannot be ignored that the Complaint (ULP) No.29 of 2012 (New Number) for challenging his first dismissal dated 30.3.1999 has been dismissed by the Labour Court by judgment dated 24.10.2014. It was concluded that the charges are proved and considering his blemished past service record, the punishment was held to be proportionate. According to

Shri Barde, learned Advocate, no Revision has been filed assailing the said decision.

6. Since he was reinstated earlier, it led to his second dismissal from service on 19.1.2013 for the same type of mis-conduct of mis-appropriation. On this count he was served with a notice of forfeiture and after hearing him and considering his reply, the gratuity was forfeited

7. The Honourable Apex Court, in the matter of Jorsingh Govind Vanjari Vs. Divisional Controller [Civil Appeal No.11807 of 2016 - decided on 6.12.2016], has observed in paragraph No.17 as under:-

“17. In order to deny gratuity to an employee, it is not enough ha the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry There must be termination on account of the alleged misconduct, which constitutes and offence involving moral turpitude.”

8. It is, therefore, apparent that when the mis-conduct involving moral turpitude is met with the punishment of dismissal from service, it would amount to dismissing an employee for an offence involving moral turpitude and his gratuity could then be forfeited.

9. Considering the above, I do not find that the Controlling Authority as well as the Appellate Authority have committed any error. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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