

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12150 OF 2015

Kadu Bhagaji Kangare,
Age 55 years, Occ. Retired,
R/o Prasad Nagar,
Post Shivajinagar,
Rahuri Factory, Rahuri,
District Ahmednagar.

..Petitioner

Versus

Zilla Parishad, Ahmednagar
Through the Chief Executive
Officer.

..Respondent

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Advocate for Petitioner : Shri Barde P.V.
Advocate for Respondent : Shri Shelke S.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 28, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the judgment of the Labour Court dated 2.5.2015, by which, Reference (IDA) No.13 of 2009 has

been answered in the negative and the termination of the petitioner w.e.f. 29.11.2001, has been sustained.

5. The petitioner has strenuously criticized the impugned award. Submission is that after joining duties on 1.3.1986 till 3.7.1999, he had worked diligently as an Attendant in the Veterinary Hospital. His wife passed away and hence he remained unauthorizedly absent from 3.7.1999 till 7.6.2000. Punishment of stoppage of one increment was inflicted upon him for the said absence. Thereafter he again remained absent from 13.8.2000 till 29.11.2001. As the petitioner admitted his guilt and the mis-conduct of remaining unauthorizedly absent, he was terminated w.e.f. 29.11.2001.

6. The petitioner after eight years of termination, raised an industrial dispute for challenging his termination in 2009. The reference was registered with the Labour Court. The Labour Court concluded that since the petitioner had admitted his misconduct, the enquiry was dispensed with. Consequentially, the Reference was entertained only to the extent of the proportionality of the punishment.

7. Shri Barde submits that for the first spell of unauthorized absence from 3.3.1999 till 7.6.2000, he was punished with stoppage of one increment for the absence of 15 months and 4 days. His

second spell of unauthorized absence from 13.8.2000 till 29.11.2001 is also 15 months and 15 days and which should be considered independently. Termination from service is a disproportionate punishment. He has stated to the employer, in writing, that though he admits all the charges levelled upon him, leniency should be shown and he should be pardoned.

8. He placed reliance upon the following judgments in support of his case:-

- (i) Depot Manager APSRTC and another Vs. Surender - 2008 AIR SCW 5446,
- (ii) Collector Singh Vs. LML Ltd. Kanpur - 2015 ALL SCR 21,
- (iii) Chhel Singh Vs. M.G.B.Gramin Bank Pali - 2014 AIR SCW 6539,
- (iv) Maharashtra State Road Transport Corporation Vs. Sultana Parveen and others - 2014 (7) ALL MR 10,
- (v) Moni Shankar Vs. Union of India - 2008 AIR SCW 2067,
- (vi) Defence Research Education Society Vs. Prescribed Authority (2014) 143 FLR 203 = (2014) Lab IC 2256.

9. He further submits that the applicability of Rule 47(1) of the Maharashtra Civil Services (Pension) Rules, 1982 (“Rules of 1982”) would amount to double jeopardy and imposition of double punishment. His past service cannot be forfeited and hence this petition needs to be allowed.

10. Shri Shelke, learned Advocate for the Zilla Parishad has supported the impugned order. He submits that the punishment of termination from service instead of dismissal was inflicted after considering the request of the petitioner. The punishment imposed upon him is under Rule 4(6) of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (“Rules of 1964”). The effect of Rule 47(1) under the 1982 Rules is not a punishment and it applies independent of the punishment.

11. To meet the contention of the petitioner that the punishment is disproportionate, he has relied upon the judgment of the Honourable Apex Court in the matter of Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu - [(2014) 4 SCC 108].

12. Having considered the submissions of the learned Advocates, I have gone through the reports cited.

13. There is no dispute that for the first spell of absence of 15 months and 4 days, the respondent pardoned the petitioner and by showing leniency awarded the punishment of stoppage of one annual increment. The petitioner reported for duties on 8.6.2000 and worked till 12.8.2000, which is a period of about nine weeks. Thereafter, he again remained unauthorizedly absent from 13.8.2000 till 29.11.2001, which is a period of 15 months and 15 days. He admitted the charges levelled upon him on the ground that he was not in proper mental state owing to the death of his wife.

14. It appears that the petitioner is contending that for a period of three years, he was mourning the death of his wife. This is a long period. Notwithstanding the tragedy that he has suffered, he could have moved an application seeking leave or even seeking leave without wages, if he desired to take some rest. The first spell of unauthorized absence of 15 months and 4 days, was treated leniently by the respondent. Leniency can not be frequently shown. The petitioner had joined duties for about nine weeks from June to August 2000. It was more than one and half years that have passed ever since the passing away of his wife. If he once again wanted to take leave, he could have made an application rather than remaining unauthorizedly absent for the second spell of 15 months and 15 days. Such conduct cannot be countenanced.

15. In the case of Depot Manager, APSRTC (supra), the duration of absence is not mentioned in the said order, which runs into two paragraphs. In the matter of Collector Singh (supra), the appellant was held guilty of using filthy language and throwing cotton waste balls at a foreman. He was shown leniency by the Honourable Apex Court. In Chhel Singh (supra), the Honourable Apex Court noted that a medical certificate was submitted and that was disregarded and hence an opportunity to improve was granted to the appellant after he had remained absent for about 10 months and 15 days. In the MSRTC case (supra), the employee was absent for 99 days after obtaining leave for 93 days. He was shown leniency by this Court. Similar are the views in the other judgments relied upon by the petitioner.

16. In the matter of Chennai Metropolitan case (supra), considering the absence of 1 year and 7 months, the Honourable Apex Court concluded that the punishment of dismissal from service was commensurate. In the matter of Chairman and the Managing Director Vs. Gopalraju Sri Prabhakara Hari Babu [2008 II CLR 338], the Honourable Apex Court concluded that quantum of punishment cannot be reduced on the basis of sympathy and sentiments and the High Court should not have overturned a legal order passed by the disciplinary authority. The absence in the said matter was of about 15 days and the employee was a probationer.

17. 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 unless the punishment appears to be shockingly disproportionate, no interference is called for only on the ground that a second view was possible or that the punishment may appear to be slightly disproportionate.

18. Considering the above, after the first act of leniency, pursuant to the absence of the petitioner for 15 months and 4 days, for the second act of unauthorized absence for a period of 15 months and 15 days, I do not find that the respondent has committed any illegality by awarding the punishment of termination. The refusal of the Labour Court to interfere in the quantum of punishment under Section 11-A of the Industrial Disputes Act cannot be faulted.

19. The contention of the petitioner is that the effect of Rule 47 of the 1982 Rules amounts to two punishments being imposed.

20. Rule 47(1) and (2) read as under:-

“47. Effect of interruption in service.

(1) An interruption in the service of a Government servant entails forfeiture of his past service, except in

the following cases:-

- (a) authorized leave of absence;*
 - (b) unauthorized absence in continuation of authorized leave of absence so long as the post held by the absentee is not filled substantively;*
 - (c) Suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of superannuation while under suspension.*
 - (d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest;*
 - (e) joining time while on transfer from one post to another.*
- (2) Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.”*

21. It is evident that exceptions are carved out. The petitioner would not fall under clause (b) of Rule 47(1) since his unauthorized

absence was not preceded by an authorized leave.

22. Considering the phraseology of Rule 47, the same cannot be interpreted to mean a form of punishment. It is purely an effect of the provision applicable to the employees, by which, forfeiture of their past service would flow from Rule 47(1). However, the petitioner can take recourse to Rule 47(2), whereby, he could make a representation to the petitioner for commuting the interruption, notwithstanding the result of this petition.

23. Though Shri Barde contends that Rule 47(1) has an effect of a harsh punishment, though it is not defined to mean a punishment, this contention cannot be gone into unless the validity of Rule 47 is challenged and which had not been done in this case. I am, therefore, not required to deal with the said issue and the said issue is, therefore, left open.

24. Considering the above, I do not find that the impugned award could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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