

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10763 OF 2016

The Divisional Controller,
Maharashtra State Road
Corporation, Dhule.

..Petitioner

Versus

Devidas Kashiram Sonwane,
Age 57 years, Occ. Nil
R/o Plot No.54-A, Dhonde Colony,
Devpur, Dhule.

..Respondent

...
Advocate for Petitioner : Shri D.S.Bagul
Advocate for Respondent : Shri Shrikant S. Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 08, 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. While issuing notice on 22.11.2016, I had passed the following order:-

“1. The petitioner is aggrieved by the judgment and order of the Industrial Court dated 21.4.2016, by which, Revision (ULP) No. 36 of 2012 filed by the respondent has been allowed and the petitioner is directed to reinstate him in service with continuity upto his retirement and pay arrears of pay and allowances by setting aside his dismissal dated 21.4.2007.

2. Learned Advocate for the respondent prays for time on the ground that he needs to collect instructions from the respondent, who is indisposed.

3. Since the respondent requests that this matter be kept in January, 2017, S.O. to 23.1.2017.

4. The Industrial Court has caused an interference in the judgment of the Labour Court on the ground that the respondent has been acquitted from Regular Criminal Case no.244 of 2008. The charge levelled upon the respondent was of preparing false and fabricated bus tickets. The impugned order is a result of the conclusion that because the respondent has been acquitted in criminal trial, the disciplinary proceedings should be watered down.

5. It is crystallized law, that criminal proceedings and departmental proceedings are conceptually distinct and different. The probative value of evidence is different. Acquittal in criminal proceedings will not ipso facto lead to the exoneration in the enquiry. Considering the said, the impugned judgment dated 21.4.2016 shall stand stayed until further orders.”

5. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the record available.

6. There is no dispute that the Industrial Court considered the acquittal of the respondent in Regular Criminal Case No.244 of 2008. Since he was acquitted of the offence of preparing fabricated tickets punishable under Sections 420, 468, 471 read with 34 of the Indian Penal Code, the Industrial Court set aside the judgment of the Labour Court dismissing Complaint (ULP) No.15 of 2009 by its judgment dated 23.4.2012.

7. Shri Patil, learned Advocate has strenuously submitted that an ex-parte enquiry was conducted against him. He was not given a reasonable opportunity of defending himself. The findings of the Enquiry Officer are one sided. The defense of the respondent has never been considered. His acquittal from the criminal trial clearly indicates that he had not committed the offence alleged to have been committed by him.

8. He submits that had he got the opportunity of participating in the enquiry, he would have succeeded in proving that he has not committed any mis-conduct.

9. He has relied upon the following judgments:-

- i. Divisional Controller, KSRTC Vs. M.G.Vittal Rao
Civil Appeal No.9933 of 2011
- ii. Ramesh Rangnathrao Sonawane Vs. Maharashtra State
Electricity Distribution Company [2012 (4) Mh.L.J.224] and
- iii. S.Bhaskar Reddy Vs. Superintendent of Police
[(2015) 2 SCC 365].

10. The Honourable Apex Court, in catena of judgments has concluded that the probative value of evidence in criminal proceedings is not to be compared with the probative value of evidence recorded in a domestic enquiry. Both are conceptually distinct and different. In criminal proceedings, the mis-conduct has to be proved beyond any doubt. In contra-distinction, the charges levelled upon an employee or the circumstances due to which an employer has lost confidence in an employee, can be established on the basis of the of preponderance on the principles of probabilities.

11. Some of the judgments delivered by the Honourable Supreme Court concluding as above, are as follows:-

- i. U.P.State Road Transport Corporation Vs. Harish Chandra
2007 LLR 618
- ii. Dy. Inspector General of police Vs. S. Samuthiran -
2013 I CLR 16,

- iii. State of Karnataka vs. T. Venkataramanappa (1996) 6 SCC 455
- iv. State of A.P. vs. K. Allabakash, (2000) 10 SCC 177
- v. Divisional Controller, KSRTC vs. M.G.Vittal Rao, (2012) 1 SCC 442.

12. In the instant case, the Labour Court as well as the Industrial Court have concluded that though the respondent appeared before the Enquiry Officer and commenced his participation, he subsequently moved an application saying that the enquiry should be adjourned or suspended since the criminal proceedings are pending before the Criminal Court. On the plea that he does not desire to disclose his evidence, he did not participate in the enquiry and has virtually boycotted the enquiry. It is trite law that criminal proceedings and departmental enquiry can proceed at the same time. Since he boycotted the enquiry, the enquiry officer was left with no option but to proceed with the enquiry and on the basis of the material available, he was held guilty of the charges levelled upon him.

13. It is settled law that if an employee boycotts the enquiry, he is not permitted to question the fairness of the enquiry and the findings of the enquiry officer considering the fact that he did not participate in the enquiry and did not defend himself, of his own choice. An enquiry cannot be adjourned sine die. The delinquent is obliged to

appear in the enquiry and participate in his own interest. Having given up this opportunity and having failed to participate in the enquiry over a period of time, no fault can be found either with the enquiry officer or for completing the enquiry in the face of the boycott of the delinquent.

14. It needs mention that the respondent was working as a Bus-Conductor. In a surprise inspection of the bus from Dhule to Jalgaon, checked at Erandol, it was noticed that the respondent had issued fake tickets to the passengers. He was in possession of about 70 of such tickets, which were noticed by the checking squad to be bogus tickets. Some tickets, which were of Rs.10/- were manipulated and the price of the ticket was shown to be Rs.50/-.

15. On interrogation, the respondent stated that two more Conductors, namely, Shri Chaudhari and Shri Deshmukh are involved. Based on this information, the Dhule Police sent a wireless message and carried out a raid on the house of Shri Chaudhari. His house was searched in his presence and similar such tickets were found. The printer on which the conversion of such tickets was being done was also found. A raid on the house of the respondent also resulted in discovering several such tickets, which were to be used. It was on the basis of this evidence that the petitioner conducted an enquiry.

16. There is no dispute that the respondent has been acquitted in the criminal trial. It is equally undisputed that in these circumstances, the petitioner has lost faith, trust and confidence in the respondent. On considering the material available and the fact that the search of the house of the respondent revealed fake tickets, is in itself sufficient to conclude the involvement of the respondent since no bus conductor is permitted to carry unused tickets and store them in his residence.

17. In the backdrop of the enquiry being sustained and the findings of the enquiry officer having been upheld by the Labour Court as well as the Industrial Court, the only issue that remains to be considered is as to whether the punishment of dismissal from service awarded to the respondent was shockingly disproportionate or not. In so far as acquittal in the criminal proceedings are concerned, same would not ipso facto lead to the exoneration of the respondent. The aspect of acquittal in criminal proceedings cannot be equated and cannot be placed in juxtaposition with the respondent having been found guilty in departmental enquiry.

18. The Honourable Apex Court in Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourakana Sangha Etc. [(2000) 7 SCC 517], and 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 mis-conducts involving the element of mis-appropriation have to be dealt with sternly and with an iron hand. In my view, considering the boldness with which employees like the respondent commit acts of mis-appropriation, no sympathy can be shown towards such employees, lest it would indicate that such employees can get away with such acts. Fear is that like minded employees would become emboldened for committing mis-appropriation and embezzlement.

19. The matter was remanded to the Industrial Court by the earlier order of this Court dated 15.1.2016, by the consent of the parties. After remanding the matter to be decided afresh, the Industrial Court has interpreted the same by observing in paragraph No.10 that it is only to consider the acquittal of the complainant. The direction of this Court to “decide the matter afresh by considering the acquittal by judgment dated 24.1.2013” was misconstrued by the Industrial Court in paragraph No.11 that *“Thus, this Court has been directed only to consider the acquittal of the complainant in Regular Cri. Case No.244 / 2008.”*

20. It also cannot be ignored that the respondent was prosecuted for offenses punishable under Sections 420, 468, 471 read with 34 of the IPC. The enquiry was conducted on the ground that he has prepared false tickets, used fake tickets and as such, had collected

fare from the passengers who were not allotted authentic tickets. The aspect, therefore, that the passengers have virtually travelled ticket-less after paying the fare to the bus conductor could be considered even as a stand alone charge. For all these reasons, the enquiry officer concluded that the respondent was guilty of the charges levelled upon him.

21. In my view, cases of such nature in which the petitioner / Corporation has lost trust and confidence in such employees, cannot be treated lightly and on the basis of technicalities, no sympathy can be shown towards such employees.

22. For the above reasons, I am unable to accept the request of the respondent that his dismissal be converted into discharge and his retiral benefits and pensionary benefits be protected considering the reports cited above.

23. In the light of the above, this petition is allowed. The impugned judgment of the Industrial Court dated 21.4.2016, to the extent of concluding that because the respondent has been acquitted in criminal trial, his order of dismissal is unsustainable, stands set aside and quashed. The judgment of the Labour Court dated 7.3.2011 (Part I order) and the final judgment dated 23.4.2012 is restored and sustained.

24. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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