

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3285 OF 2017

Mohd. Mukhtar Mohd. Wakaroddin,
Age 66 years, Occ. Retired S.T.
Conductor, Badge No.7224,
MSRTC Parbhani Division,
District Parbhani, r/o Bamni Plot,
Jintur, Dist. Parbhani.

..Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Transport Department,
Mantralaya, Mumbai 32.

2. Divisional Controller,
MSRTC, Parbhani.

..Respondent

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Advocate for Petitioner : Shri Mukul Ambekar
h/f Shri A.A.Kokad,

Advocate for Respondent 1 : Deleted

Advocate for Respondent 2 : Shri Govind Kulkarni
h/f Shri B.S.Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.

Dated: March 10, 2017

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ORAL JUDGMENT :-

1. Since, respondent No.1 State was not a party to Complaint (ULP) No.45 of 2007 and Revision (ULP) No.54 of 2011, filed by the petitioner, there is no necessity for impleading it as a respondent in these proceedings. As such, respondent No.1 shall stand deleted.

2. Heard learned Advocates for the respective parties.

3. Rule.

4. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

5. The petitioner has challenged the judgment of the Labour Court dated 1.10.2008, thereby dismissing Complaint (ULP) No.45 of 2007, filed by him, for challenging his proposed punishment of dismissal from service dated 20.11.2007. He is also aggrieved by the judgment of the Industrial Court dated 2.9.2016, by which, his Revision (ULP) No. 54 of 2011 has been dismissed.

6. The petitioner was manning the Bus as a Bus Conductor from Jintur to Kawda on 6.7.2007. In a surprise check, the Checking Squad noticed that there were 15 passengers with used tickets. Rs.195/- in cash, were found in excess. After issuing a charge sheet, a departmental enquiry was conducted. The past service record of the petitioner contains 15 minor punishments. He was held guilty in the enquiry.

7. A second show cause notice dated 20.11.2007 proposing the punishment was issued to the petitioner. He approached the Labour

Court by filing a Complaint and prayed for interim relief. By order dated 29.11.2007, the respondent was directed by the Labour Court not to issue the order of punishment. The petitioner, therefore, continued in service on account of the ad-interim order of the Labour Court and he attained the age of superannuation on 31.12.2008.

8. The Labour Court concluded that the enquiry was conducted in a fair and proper manner. The findings of the enquiry officer are based on the evidence recorded and cannot be branded as perverse. The petitioner himself filed a purshis declaring before the Labour Court that he does not desire to challenge the legality and validity of the enquiry and the findings of the enquiry officer. In the light of the purshis, the Labour Court did not formally answer the issue about the enquiry and the findings.

9. On the issue of quantum of punishment, it was proved against the petitioner that some passengers were travelling on sold tickets and hence, the petitioner had mis-appropriated Rs.195/-. The past service record was also considered and as it amounted to an aggravating factor, the Labour Court concluded that the complaint does not deserve to be entertained as the punishment proposed does not appear to be shockingly disproportionate.

10. For similar reasons, the Industrial Court has dismissed the

Revision Petition.

11. Learned counsel for the petitioner has strenuously contended as under:-

(a) The order of punishment dated 9.1.2010 is issued after his retirement on 31.12.2008 and is, therefore, unsustainable in law.

(b) He has put in about 31 years in employment.

(c) He is now entitled for all retiral benefits including gratuity.

12. Learned counsel for the respondent submits that the order of dismissal could not be issued only because the Labour Court restrained the respondent from issuing the order of punishment.

13. It is trite law that the Labour Court should be extremely cautious while granting ad-interim relief in matters where the disciplinary proceedings have been conducted. Apparently, the Labour Court while granting interim relief on 29.11.2007 restraining the respondent from awarding punishment, lost sight of the view expressed by the Honourable Apex Court in paragraph No. 54 of the

judgment delivered in Hindustan Lever Vs. Ashok Vishnu Kate [AIR 1996 SC 285 = 1995 (6) SCC 326], which reads as under:-

“ 54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of chargesheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.”

14. There is no dispute that the respondent could not have issued the order of punishment since the Labour Court had restrained it from doing so. There is no challenge to the enquiry and the findings of the enquiry officer and the complaint of the petitioner is dismissed on the ground of the punishment being commensurate to the gravity and seriousness of the misconduct.

15. The learned Single Judge of this Court in Bajaj Auto Limited Vs. Kalidas Deoram Patil [1999 II CLR 1108], and the learned Division Bench of this Court in the matter of Bajaj Auto Limited Vs. Kalidas Deoram Patil [1999 (3) Mh.L.J. 857], has concluded that a blemished past service record is an aggravating factor. Fifteen misconducts committed by the petitioner prior to the misconduct at issue, is certainly an aggravating factor.

16. The Honourable Apex Court in the matter Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourarana 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 held that the mis-appropriation or corruption of any amount, deserves the punishment of dismissal. The littleness of the amount mis-appropriated is not germane and significant.

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 held that unless the punishment awarded appears to be shockingly disproportionate and shocks the judicial conscience of the Court, no interference is called for.

18. In the light of the above, I do not find that the Labour and Industrial Courts have committed any error in concluding that the punishment of dismissal from service is commensurate to the misconduct committed by the petitioner. In addition thereto, the past record operates as an aggravating factor.

19. The issue, therefore, is as to whether the order of dismissal dated 9.1.2010, after the petitioner retired on 31.12.2008, could be sustainable. It is trite law that protection acquired by a litigant due to the orders of the Court would not create equities in favour of the litigant. In the present case, as the Labour Court granted protection to the petitioner and restrained the respondent from issuing the order of dismissal, the petitioner continued in employment till his retirement under fortuitous circumstances. This would not create equities in his favour.

20. In these peculiar facts of the case, the order of dismissal dated 9.1.2010 after the complaint was dismissed by the Labour

Court, would have its effect from the last day of working of the petitioner, by applying the *Doctrine of Relation Back*. Merely because, under fortuitous circumstances, the petitioner continued in employment till his retirement, would not give him the benefit of exoneration and more so, when he is found guilty of misappropriation and there are 15 misconducts committed by him prior thereto.

21. As such the order of dismissal dated 9.1.2010 shall have its effect from 31.12.2008, which is the last day of working of the petitioner, keeping in view that the petitioner has worked till his last day in employment.

22. In so far as the claim for gratuity is concerned, I am not required to deal with the said issue since the aspect of forfeiture of gratuity is within the domain of the respondent / employer and the claim for gratuity is yet to be raised by the petitioner before the Competent Court. As the said issue is not before this Court, the request of the petitioner for gratuity under orders of this Court, cannot be entertained since the Labour Court and the Industrial Court, have to deal with such claims under the Payment of Gratuity Act.

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23. This petition being devoid of merits is, therefore, dismissed.
Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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