

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3071 OF 2001

Shri Deepak V. Gujar	...	Petitioner
Versus		
The General Manager, The BEST Undertaking And Others	...	Respondents

.....

Ms. Neeta Karnik for the Petitioner.
None for the Respondents.

.....

CORAM : PRASANNA B. VARALE, J.

DATE : 31 AUGUST 2017

JUDGMENT :

. Heard learned Counsel appearing for the Petitioner. The Petitioner challenges an order passed by the learned President, Industrial Court, Mumbai, thereby allowing the appeal challenging the order passed by the learned Judge, Labour Court dated 2 December 1999. Learned Counsel made an attempt to submit before this Court that the punishment awarded to the Petitioner was shockingly disproportionate and the learned Judge, Labour Court while considering the Application (BIR) No.44 of 1998, directed reinstatement of the Petitioner without back wages and the Petitioner was subjected to reduction in gradation. Perusal of the material placed on record show that the Petitioner had approached the Labour Court

through the union. It was the case of the Petitioner that he was working as Conductor with the Respondent-BEST undertaking. The charge-sheet was issued to the Petitioner for his habitual absence. The Petitioner was subjected to an enquiry and after conducting enquiry, the Petitioner faced the dismissal from services with effect from 27 June 1997. Learned Judge, Labour Court found that the absenteeism was on the grounds, namely, sickness of Petitioner's father. The leave i.e. sick leave for 30 days and 9 days casual leave was requested for, but the same was rejected. The learned Judge, Labour Court considering the service of the Petitioner as well as the age of the Petitioner, i.e. the Petitioner at the relevant time was of 40 years of age, passed the order dated 2 December 1999. The order passed by the learned Judge thus reads as under :

- “1. The opponent undertaking should reinstate the said employee Deepak V. Gujar without back wages but with continuity of service and said employee is reduced in grade by 2 steps permanently and opponent should review his case for releasing said two increments according to the regulations of the opponent undertaking.
2.
3.”

2 Being aggrieved by the said order, the Respondent-BEST undertaking filed an appeal. The learned President, Industrial Court, Mumbai, on perusal of the material found that the Enquiry Officer committed no error and the learned Judge, Labour Court failed to consider various aspects, namely, the punishment awarded to the Petitioner was not disproportionate. It was also found that there was no compelling reason available for the Petitioner so as to not even apply for the leave. The ground was raised of sickness of the father on one hand and on the other hand for the sickness of the Petitioner himself. Neither any material in the form of medical certificate in respect of father of the Petitioner nor in respect of the Petitioner himself was placed before the authorities. It also reveals from the perusal of the material that it was not solitary instance of absenteeism, but the Petitioner was having record of absenteeism for more than four occasions and in spite of leniency shown to the Petitioner, the Petitioner could not change his ways. The record also reveals that the Petitioner was absent for a long period of 82 days for the period from April 1996 to December 1996 without any permission. The learned President, Industrial Court also failed to consider the factual aspects, namely, in the case of **Kashinath Laxman Gawali Datta Prasad Vs. The General Manager of Hindustan Aeronautics Ltd¹**, on which reliance was placed.

1 1991-II-CLR-228

There was the medical certificate against the absenteeism, whereas in the case of the Petitioner, no such document was placed. The learned President also found that the absenteeism of the Petitioner resulted in making indiscipline in the undertaking and also inconvenience caused to the public at large. Considering all these aspects, the President, Industrial Court allowed the appeal and set aside the order passed by the learned Labour Court dated 2 December 1999.

3 In view of the above referred facts, in my opinion, no error is committed by the learned President, Industrial Court. The Petition being meritless, deserves to be dismissed and the same is accordingly dismissed.

(PRASANNA B. VARALE, J.)