

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1475 OF 2001

Shri Sampat A. Mohite.	]	
191, Shivaji Chowk, Saswad,	]	
Taluka - Purandar, District - Pune.	]	... Petitioner

Versus

1. Maharashtra State Road Transport	]	
Corporation,	]	
Pune Division, Shankarsheth Road,	]	
Pune - 411 037.	]	
2. Labour Court, Pune.	]	
3. Industrial Court, Pune.	]	... Respondents

Mr. S. R. Nargolkar for Petitioner.
 Ms. P. M. Bhansali i/b Mr. G. S. Hegde for Respondent Nos.2 & 3.

CORAM :- G. S. KULKARNI, J.
DATE : 07 MARCH 2017

JUDGMENT :-

1. This Writ Petition challenges the legality of the order dated 27/03/1997 passed by the learned Judge, Labour Court, Pune in Complaint (ULP) No.430 of 1987, as also the order passed by the learned Member, Industrial Court at Pune dated 19/03/1998 in Revision Application (ULP) No.40 of 1997. By the order passed by the Labour Court, the complaint application as filed by the petitioner came to be dismissed and the same was confirmed by the orders passed by the Industrial Court.

2. In nutshell, the facts are :-

The petitioner was working with respondent no.1 - Maharashtra State Road Transport Corporation, (for short, 'MSRTC') as a Clerk. A charge-sheet was issued to the petitioner on the ground that he was absent since March 1986 to May 1986 for total 39 days. The petitioner had remained absent without permission or authorization. A charge-sheet was issued to the petitioner and an enquiry was conducted on charges as contained in the charge-sheet. The Enquiry Officer recorded his findings that the charges leveled against the petitioner stood proved. The disciplinary authority accepted the findings of the Enquiry Officer and imposed the punishment of termination of petitioner from services. The petitioner had filed a departmental appeal challenging the punishment, however, the same also came to be rejected.

3. The petitioner, in these circumstances, approached the Labour Court by filing the complaint in question alleging that the respondent no.1 was guilty of unfair labour practice under Item 1(a), 1(b) and 1(f) of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

4. The case of the petitioner before the Labour Court was that a false charge-sheet was issued to the petitioner and that the findings of the Enquiry Officer were perverse and in breach of the principles of natural justice. The petitioner contended that there was a property dispute in his family and he had to remain away from work and therefore there was a justifiable reason for his absence. It was further contended that the punishment was disproportionate and unduly harsh.

5. The respondent no.1 appeared before the Labour Court and filed a Written Statement, *inter alia*, contending that the punishment awarded to the petitioner was appropriate and it was not at all disproportionate as contended by the petitioner. Respondent no.1 further contended that the Enquiry was conducted by following the principles of natural justice and the findings of the Enquiry Officer were also not perverse and were based on evidence. It was also contended that the charges against the petitioner were falling under Items 10, 22 and 38 of the Discipline and Appeal procedure of the respondent no.1 and the same were duly proved in the enquiry proceedings.

6. The learned Judge of the Labour Court, on the above rival pleas, heard the parties. Both the parties did not lead any oral evidence. The Labour Court has recorded a finding that the petitioner has admitted in the enquiry that he had not submitted any leave application as his mind was disturbed. It was observed that the petitioner also admitted that he had not given reply to the charge-sheet and he had also remained absent previously in the year 1983 and was dismissed for the same, however, subsequently, he was reinstated. It was observed that the petitioner admitted that on earlier several occasions, he was awarded punishments i.e. in June 1985, and in November 1985 and the increment of the petitioner was also stopped for six months. It was also observed that the petitioner admitted that between the period from 28/07/1986 to 11/08/1986 he had remained absent without permission. It is observed that in the enquiry proceedings, it was proved that the petitioner was absent for 6 days in March 1986, 22 days in April 1986 and 11 days in May 1986, totaling to 39 days, without any prior permission. As regards the unlawful absence from duties, it was observed that a lawful enquiry was conducted

following the principles of natural justice and the misconduct of unauthorized absence from duty of the petitioner being proved, as also taking into consideration the past conduct of the petitioner, the learned Judge of the Labour Court, in the impugned Judgment, came to a conclusion that the action of the respondent to terminate the services of the petitioner was appropriate and accordingly dismissed the complaint of the petitioner holding that there was no unfair labour practice on the part of respondent no.1 as alleged by the petitioner.

7. In a revision filed by the petitioner against the above order of the Labour Court, the learned Member of the Industrial Court examined the contentions of the petitioner which were similar in nature as urged before the Labour Court and did not find any error or perversity as recorded by the Labour Court and dismissed the revision application.

8. Learned Counsel for petitioner, in the respondent's challenge to the impugned orders, has principally urged two issues. Firstly, that there was a justifiable cause / reason for the petitioner to remain absent, inasmuch as, there were some civil suits which were being pursued by him and therefore, the petitioner was not in a mental state to report for duty or even to make an application for leave. Secondly, he contended that the punishment is disproportionate and harsh as compared to the charges levelled against the petitioner.

9. On the other hand, learned Counsel for respondent no.1 - MSRTC has supported the findings recorded by the Labour Court and confirmed by the Industrial Court. It is submitted that the charges against the petitioner amounted to a misconduct and only after

following the due procedure satisfying the test of law, the punishment in question came to be awarded. It is submitted that there is no perversity in the findings of both the forums below and thus, the Writ Petition do not deserve any interference.

10. I have heard the learned Counsel for parties as also I have perused the impugned Judgment of the Labour Court and the Industrial Court.

11. The case of respondent no.1 against the petitioner in the departmental proceedings concerned his unauthorized absence from duties. The petitioner had remained absent between the period from March 1986 to May 1986, totaling to 39 days without prior permission. There is no dispute that an employee remaining absent unauthorizedly, would amount to a misconduct. The respondent no.1, therefore, issued a charge-sheet and held an enquiry against the petitioner. The petitioner did not reply to the charge-sheet. Even before the Industrial Court, the petitioner did not lead any oral evidence. In fact, the petitioner admitted that he had not submitted any leave application as his mind was disturbed. He also admitted that he had remained absent unauthorizedly in the year 1983 for which he was dismissed from services. He further admitted of similar acts in June 1985 and November 1985. Also from 28/07/1986 to 11/08/1986, he had remained absent without permission (though not relevant here). Further, the petitioner did not produce any material to show that there was any litigation and that had disturbed his mental health. There are no details of litigation on record or any other medical material brought by the petitioner in the enquiry proceedings or before the Labour Court to substantiate his defence that the absence can be for a justifiable reason.

12. Now coming to the petitioner's next contention that the punishment is disproportionate, the submission, in my opinion, deserves to be rejected. This is for the reason that, admittedly, the conduct of the petitioner of remaining unauthorizedly absent, was not the first instance. In fact, he was dismissed for the similar reasons in the year 1983. However, he was subsequently reinstated by respondent no.1. The petitioner, however, did not improve his conduct and had remained absent even subsequently in the year 1985, as noted above. It is, therefore, clear that the petitioner was habitual in remaining absent without seeking prior permission. The respondent no.1, therefore, was justified in coming to a conclusion the petitioner was guilty of such misconduct and in accordance with the rules, punishment came to be awarded. I am, therefore, of clear opinion that in the facts and circumstances, the punishment of termination from services as imposed on the petitioner cannot be called to be disproportionate and, in fact, was clearly justified. It is clear that respondent no.1 - MSRTC had adopted a lawful procedure of holding an enquiry in compliance with the principles of natural justice and accordingly based on the findings of the enquiry report, imposed the punishment of termination.

13. It is a settled principle of law that a delinquent officer in failing to report for duty and remaining absent without obtaining leave will be considered to have acted irresponsibly and unjustifiably and on a finding of the enquiry officer that the charges are proved, that the delinquent remained absent without obtaining leave in advance, termination of the services would be justified. Further, it is also settled principle of law that an employee who is a habitual absentee without seeking leave does not deserve any sympathy from the Court (See **Om**

***Prakash Vs. State of Punjab & Anr.*¹ and *State of M.P. Vs. Harihar Gopal*²).**

14. In view of the above discussion and having perused the findings of the Court below, I do not find any perversity or illegality in the findings arrived by the Labour Court and the Industrial Court, so as to interfere in exercise of the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. It is well-settled principle of law that in exercise of the jurisdiction under Article 226 and 227 of the Constitution the Court would not wield powers of an Appellate Court so as to disturb the findings of fact.

15. In the circumstances, the Writ Petition is devoid of merits and is accordingly rejected. There shall be no order as to costs.

(G. S. KULKARNI, J.)

¹ 2011 (1) SCALE 258

² 1969 SLR 274 (SC)