

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13278 OF 2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.Meelan Topkar for the petitioner
Mr.G.K.S.Hegde for the respondent

CORAM : K. K. TATED, J.
DATE : JANUARY 17, 2017

P.C.:

- 1 Heard the learned counsel for the parties.
- 2 By this petition under Article 227 of the Constitution of India the Petitioner challenges the concurrent finding of fact recorded by both the courts below.
- 3 In the present proceedings, petitioner was charge sheeted on 14.9.2011 for misappropriation of sum of Rs.53/- when she was on duty as a Conductor on a bus from Mahad to Pune.
- 4 The Apex Court in the matter of ***Divisional Controller, N.E.K.R.T.C. vs. H. Amaresh, (2006) 6 SCC 187*** held that when an employee is found guilty of pilferage or of mis-appropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal.

In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. Paragraph 18 reads thus:

“18. In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in **Karnataka State Road Transport Corporation v. B.S. Hullikatti**: (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of passengers of vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This

act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.”

5 Considering the concurrent finding of fact recorded by both the courts and the question of misappropriation of fund, I do not find any reason to entertain the present Writ Petition.

6 Writ Petition stands rejected.

JUDGE