DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.479 OF 2002

Shri J. T. Khambaty
residing at Room No.49,
133/A, Beg Mohammed Chawl,
Babula Tank Road, 2nd Floor,
A-Block, J. J. Hospital,
Mumbai 400 009. .. Petitioner

Vs.

1. The Municipal Corporation of
Greater Bombay, a body corporate
constituted under the Bombay
Municipal Corporation Act, 1888,
having its office at Mahapalika
Marg, Bori Bunder, Mumbai 400001.

2. The General Manager,
Bombay Electric Supply &
Transport Undertaking,
having his office at
Electric House, Colaba,
Mumbai 400 001.

3. Shri Krishna S. Rathod
the Ex-Bus Conductor-90091
residing at Head Post Savali
Sadoba, Taluka – Arni
Dist. Yavatmal (M.S.) .. Respondents

....

Ms. Prachi Khandge i/by M.P. Vashi for Petitioner.
Mr. S.K. Talsani, Sr. Counsel a/w. Arsh Misra and Kavita Kanchan i/by M.V. Kini & Co. for Respondent No.2.

....

CORAM : A.A.SAYED AND M.S.KARNIK, JJ.

RESERVED ON : 4th AUGUST, 2017

PRONOUNCED ON: 9th OCTOBER, 2017

JUDGMENT (PER M.S. KARNIK, J.) :-

In this petition, filed under Article 226 of the Constitution of India, the petitioner challenges an order passed by the disciplinary authority dated 14/2/2001 dismissing him from the services of the respondents pursuant to the departmental inquiry conducted for the misconduct alleged against the petitioner. The petitioner has also challenged the consequential orders passed by the appellate authorities. The petitioner prays that he may be reinstated with full back-wages and continuity of service.

2. The facts in the nutshell are as under :-

The petitioner was employed with the respondent No.2 Bombay Electric Supply & Transport Undertaking (hereinafter referred as “the BEST” for short). The petitioner at the relevant time was working as Traffic Officer with the respondent no.2. On 14/10/1998, one Shri Chavan, STR No.708 handed over to the petitioner a packet containing ex-gratia bonus of Rs.6430/- to be handed over to respondent no.3 Krishna S. Rathod when he would come to collect the said payment. Respondent No.3 was ex-employee of the Best. Respondent No.3 went to the concerned department on 11/10/1999 to collect his ex-gratia payment and was informed about collection of the said amount by the petitioner. On or about 26/10/1999, the said Krishna S. Rathod-respondent No.3 went to the petitioner's house and collected the said payment vide Cheque No.209274 dated 26/10/1999 issued by the petitioner in favour of respondent No.3. On 26/10/1999, a statement of respondent No.3 – Krishna Rathod was recorded which reads thus :-

Date : 26-10-99

To,
STO (Worli Depot)

I the undersigned Krishna S. Rathod B.C. 190091 state below in writing that, I had resigned on 16.9.98 and had been to my native place. I have not collected any amount from the

> Undertaking such as Provident Fund and ex-gratia for the year 1998.
>
> On dated 11.10.1999, when I approached to enquire about my final dues, it was understood that, the ex-gratia payment for the year 1998 was collected by DO Shri Khambhati. When I asked him how my bonus payment was collected by him, when I have not informed him or any other to collect bonus amount on my behalf. I was informed to see Shri Khambhati, DO. Thereafter, I had visited Worli Depot on 26.10.99 and from there, I had gone to the resident of Shri Khambhati Saheb. When he confirmed that, the bonus amount has been collected by him and issued me a cheque of Rs.6,530/-.

3. The respondents therefore served on the petitioner charge-sheet dated 9/12/1999 alleging that the ex-gratia amount meant for respondent no.3 Shri Krishna Rathod, was taken by the petitioner by using his rights improperly. This charge-sheet is on the basis of the statement of Shri Kishore Bagwe, ATS, Worli. In the charge-sheet it is mentioned that the matter came to light when the respondent no.3 inquired about his ex-gratia payment for the year 1997-98. From the record it was revealed that ex-gratia amount was taken by Shri Chavan Starter No.708 which amount was drawn under his own

signature. It is alleged that the petitioner had asked Shri Chavan to bring the amount of ex-gratia payment belonging to respondent no.3 and as the amount of Rs.6430/- is in the petitioner's possession, he has usurped the amount. The following charges were levelled against the petitioner :-

> "1. Theft, fraud or dishonesty in connection with the business or property of the Undertaking ;
>
> 2. Habitual or gross neglect of work or habitual or gross negligence ;
>
> 3. Breach of any rules or regulations or instructions for maintenance and running of any department."

4. During the course of the inquiry several witnesses were examined. The Trying Officer found the charges as proved and accordingly imposed the punishment as dismissal from the services.

5. The Trying Officer has recorded that the service record of the petitioner is satisfactory. The petitioner had almost 11 years of service in his credit. It is on account of the act of dishonesty of the petitioner while working as a Senior Officer

Grade G-IX that the petitioner committed misconduct of collecting the ex-gratia payment of the staff who was working under him without his knowledge and that too by misusing his position as Depot Officer. The respondent No.3 on the date when the ex-gratia amount was collected on his behalf was no longer in service as he had tendered his resignation.

6. The appellate authorities dismissed the appeal filed by the petitioner. We have gone through the inquiry officer's report and the orders passed by the appellate authorities. We have heard learned Counsel for the parties. The record reveals that respondent No.3 had resigned on 6/9/1998 and had not collected ex-gratia payment for the year 1998. On 14/10/1998, ex-gratia payment of Rs.6430/- belonging to respondent no.3 was collected on the instructions of the petitioner. The petitioner has not disputed that the amounts were lying with him and that he had collected the same on behalf of the respondent no.3. On the summary sheet Shri Chavan, Bus Starter No.708 had signed and collected the amount which was handed over to the

petitioner. Respondent no.3 on 11/10/1999 went to the office of the BEST (Pay Department) for collecting his final dues when he was informed that the ex-gratia for the year 1998 was collected by the petitioner. He, therefore, visited the residence of the petitioner when the petitioner confirmed that the bonus amount was collected by the petitioner and the petitioner issued a cheque Rs.6530/- to the respondent no.3.

7. We find that the proceedings are initiated against the petitioner not on the basis of the complaint made by the respondent no.3 but on the report that was submitted by Shri Fernandes consequent upon the respondent no.3 approaching the office of the respondents for collecting his ex-gratia amount.

8. The record therefore indicates that what is really established is that on the instructions of the petitioner ex-gratia amount of Rs.6530/- has been collected by the petitioner and retained with him without any written authority. When the respondent no.3 approached his office to collect the said amount he is informed that the said amount has been collected

by the petitioner. The petitioner issued a cheque of Rs.6530/- when respondent No.3 went to his residence. It is in these circumstances we have proceeded to examine whether this act on the part of the petitioner in collecting the amount on behalf of the respondent no.3 and retaining the same with him and handing it over to the respondent no.3 immediately when demanded would constitute a serious misconduct. Admittedly no complaint against the petitioner has been made by the respondent no.3 and in fact his statement would indicate that as soon as he went to the petitioner's residence a cheque of Rs.6530/- was issued by the petitioner to him. The petitioner has at no point of time denied receipt of the said ex-gratia amount though the record receiving the payment does not bear the signature of the petitioner but is that of Starter Shri Chavan. Even from the statement of the respondent no.3 it is apparent that the petitioner confirmed that he had collected the bonus amount on behalf of respondent No.3 and issued a cheque of Rs.6530/-.

9. In the peculiar facts of the present case we are unable to persuade ourselves that merely collecting the amount on behalf of the respondent no.3 and retaining the same with the petitioner till it was actually handed over to the respondent no.3 would amount to a serious misconduct of theft, fraud or dishonesty in connection with the business or property of the undertaking. In the absence of there being any complaint of the respondent no.3 and/or without examining the respondent no.3 during the course of the inquiry, holding the petitioner guilty of the charge of theft, fraud, dishonesty in connection with the business or property of the respondents, in our opinion is unsustainable.

10. We are conscious of our limitations to interfere with the findings of facts recorded by the inquiry officer in a disciplinary proceedings. We find that the petitioner had collected the amount on behalf of the respondent no.3 which has been handed over to the respondent no.3 about which respondent no.3 does not have any grievance. Having regard to

the facts and circumstances of the case, according to us the finding of the Trying Officer holding the petitioner guilty of the charge of theft, fraud and dishonesty in connection with the business or property of the undertaking as proved is perverse and unreasonable. As indicated earlier the petitioner does not dispute that he had collected ex-gratia amount of the respondent no.3 and that respondent no.3 himself has stated that the said amount was handed over to the respondent no.3 by the petitioner by issuing a cheque. In these circumstances, the finding of the Trying Officer that the petitioner has committed theft or fraud or dishonesty, in the absence of there being any complaint by the respondent no.3, is harsh and unsustainable. In these circumstances, we find that the punishment imposed is not at all proper and is shocking. It is not as if the allegations against the petitioner are that he has indulged in similar acts in respect of other employees also. In this view of the matter we set aside the impugned orders. The petitioner is out of service since the date of his dismissal from 15/2/2001, therefore, the following order in our opinion will meet the ends of justice :

ORDER

(i) The impugned order of dismissal dated 14/2/2001 passed by the Disciplinary Authority is quashed and set aside.

(ii) The order dated 8/5/2001 of the First Appellate authority and order dated 23/7/2001 of the Second Appellate Authority are set aside.

(iii) The respondent Nos.1 and 2 are directed to reinstate the petitioner in service with continuity of service with all the consequential benefits but without backwages.

(iv) Rule made absolute on the above terms with no order as to costs.

(M.S.KARNIK, J.) **(A.A.SAYED, J.)**

Upon pronouncement of the order, the learned Counsel for the Respondent No.2 seeks stay of the operation of this order. Learned Counsel for the Petitioner opposes the request for stay. Considering the fact that Petitioner is out of service since the date of his dismissal i.e. February 2001, we are inclined to stay the operation of the order for a period of eight weeks from today. Order accordingly.

(M.S.KARNIK, J.) **(A.A.SAYED, J.)**