

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 839 OF 2000

Divisional Controller,
Maharashtra State Road
Transport Corporation,
Nanded Division, Nanded.

..Petitioner

Versus

Maruti Vyankoba Jaybhaye,
Age 51 years, Occ. Service
R/o Digras (Bk), Tq. Kandhar
District Nanded.

..Respondent

...
Advocate for Petitioner : S/Shri M K Goyanka & Manoj Shinde
Advocate for Respondent : S/Shri G.L.Kedar h/f A.M.Karad
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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 20, 2018
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ORAL JUDGMENT:-

1. The petitioner / Corporation is aggrieved by the judgment and order dated 14.9.1999 delivered by the Industrial Court Jalna, by which, the Revision (ULP) NO. 47 of 1999 has been allowed and the judgment of the Labour Court dated 23.9.1998 delivered in Complaint (ULP) No.153 of 1995 has been quashed and set aside.

2. I have considered the strenuous submissions of the

learned Advocates for the respective sides. It is vehemently canvassed by the respondent / original complainant that this petition deserves to be dismissed with costs. It is further submitted that the respondent has attained the age of superannuation. This Court had refused interim relief to the petitioner while admitting this petition on 5.10.2000.

3. Learned counsel for the Corporation points out that LPA NO.1 of 2001 was filed before the learned Appeal Bench of this Court for challenging the order of the learned Single Judge and by judgment dated 10.1.2001, interim relief was granted to the Corporation and the order of reinstatement was stayed. Consequentially, the respondent was out of employment.

4. I have considered the submissions of the learned Advocates and have gone through the record available.

5. It is settled law that when an enquiry and findings of the Enquiry Officer are under challenge, the Labour Court has to frame two issues, by which, the original complainant has to prove that the enquiry is vitiated or that the findings of the Enquiry Officer are perverse. In either situation, the enquiry stands vitiated. In the instant case, the Labour Court framed such

an issue and concluded that the enquiry was fair and proper and the findings of the Enquiry Officer are not perverse. Reference can be had to the decisions of the Honourable Apex Court in the cases of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803], Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh - [1972 (1) SCC 595 = AIR 1972 SC 1031] and Workmen of Firestone Rubber and Tyre Company Vs. the Management and others [(1973) 1 SCC 813].

6. In the above fact situation, as the Labour Court had sustained the punishment of dismissal awarded to the complainant for his act of mis-appropriation, the complainant preferred a Revision Petition before the Industrial Court. In such circumstances, if the Industrial Court concludes that the enquiry was vitiated, it has to relegate the proceedings to the Labour Court for enabling the management / employer to conduct a de novo enquiry. In the instant case, by the impugned judgment dated 14.9.1999, the Industrial Court concluded in paragraph No.13 that the evidence recorded in the enquiry does not prove the charges levelled upon the complainant and hence the charge of mis-appropriation fails. While drawing such conclusions, the Industrial Court has practically declared the findings of the

Enquiry Officer as being perverse, which has an effect of vitiating the enquiry in the light of the judgment delivered by the Honourable Apex Court in the matter of Bharat Forge Company Ltd., Vs. A.B. Zodge and another [AIR 1996 SC 1556].

7. The case would then stand relegated to a position, as if no enquiry has been conducted and, therefore, the matter has to be relegated to the Labour Court for enabling the employer to conduct a de novo enquiry as a de novo enquiry cannot be conducted within the revisional jurisdiction of the Industrial Court under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Instead of doing so, the Industrial Court has set aside the enquiry as well as the dismissal order and granted reinstatement with continuity of service to the complainant.

8. In so far as the conclusions of the Industrial Court in setting aside the enquiry are concerned, I find that the Industrial Court has not even gone through the record and proceedings of the Domestic Enquiry while concluding that the charges are not proved against the complainant in the enquiry. The Industrial Court had concluded that since the cash was not checked while forming an opinion by the MSRTC that 18 passengers were given

invalid / used tickets, the charge cannot be held to be proved.

9. In my view, the Industrial Court has failed to note that it was considering a case under service jurisprudence and not dealing with a case of criminal trial, where the evidence has to be beyond reasonable doubt. In service jurisprudence, if there is some evidence on record, the charges can be held to be proved if the evidence indicates the act has been committed. On the preponderance on the principles of probabilities, the disciplinary authority can arrive at such a conclusion, as has been held in the cases of Workmen of Balmadies Estates Vs. Management [2008 LLR 231 (SC)] and Deputy Inspector General of Police Vs. Samuthiram [2013 I CLR 16].

10. Since I find that the conclusion of the Industrial Court that the charges are not proved are unsustainable as it has lost sight of the conceptual distinction between a criminal trial and a departmental enquiry, the impugned judgment of the Industrial Court deserves to be set aside and the revision proceedings deserve to be relegated to the Industrial Court for reconsideration on the basis of the record and proceedings of the departmental enquiry.

11. Considering the above, this petition is partly allowed. The impugned judgment of the Industrial Court dated 14.9.1999 is quashed and set aside and Revision (ULP) No.47 of 1999 is remitted to the Industrial Court, Jalna for reconsidering the revision proceedings keeping in view the observations in this order as well as the judgments cited.

12. Learned Advocates for the respective sides agree to appear before the Industrial Court on 22.4.2018. Formal notices need not be issued. The Industrial Court would consider the record and proceedings of the enquiry and the law as is laid down by the Honourable Apex Court and decide the revision proceedings afresh on its own merits. Since the proceedings are of the year 1998, the learned Advocates and the parties will cooperate with the Industrial Court without seeking unnecessary adjournments and the Industrial Court shall decide the proceedings as expeditiously as possible and in any case on/or before 31.12.2018.

13. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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