

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2128 OF 2000

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon

-- PETITIONER

VERSUS

Nilkanth Trambak Chopde,
Age-Major,
R/o Sangvi Bk., Tal. Yawal,
Dist. Jalgaon

-- RESPONDENT

Mr.M.K.Goyanka, Advocate for the petitioner.
Mr.S.R.Barlinge, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/03/2018

ORAL JUDGMENT :

1. The petitioner / Maharashtra State Road Transport Corporation is aggrieved by the judgment and order passed by the Labour Court dated 15/10/1999 partly allowing Complaint (ULP) No.167/1994 filed by the respondent/employee. The Corporation is also aggrieved by the judgment of the Industrial Court dated 09/02/2000 rejecting Revision (ULP) No.870/1999. Consequentially, the respondent was reinstated in service with continuity as per the directions of the Labour Court. By way of punishment, he has been

deprived of the back wages.

2. On 06/06/2000, this Court issued notice and directed the petitioner / Corporation to reinstate the respondent in service. While admitting this petition, interim relief was not granted. The respondent has superannuated on 31/03/2014. Except the gratuity amount, all retiral benefits have been extended to the respondent. The gratuity amount has been deposited in this Court which is Rs.4,02,821/-. By order dated 08/05/2015 passed in CA NO.5142/2015, the respondent is permitted to withdraw Rs.2,00,000/-.

3. The learned Advocate for the Corporation has strenuously criticized the impugned orders. He submits that the domestic enquiry conducted against the respondent was sustained. The findings of the Enquiry Officer were upheld. The charge of temporary mis-appropriation was proved against the respondent since he had taken Rs.328.90 from the supplementary salary payment of a co-employee Mr.M.N.Pathan. Though he has refunded the entire amount, he was held guilty of mis-appropriation and the punishment of dismissal from service was awarded. He has been acquitted by the Court of Criminal Jurisdiction for the offence

punishable under Sections 409, 468 and 420 of the IPC. His past record of service is said to be blemished, though I do not find that the Labour Court has looked into the same.

4. Notwithstanding the strenuous submissions of the learned Advocate for the Corporation, I find that the impugned judgment of the Labour Court and the Industrial Court has been complied with. The respondent was reinstated in service and by granting him the continuity, he has superannuated from employment and is extended all retiral benefits, except gratuity. Learned Advocate for the respondent submits that for the last more than 23 years, ever since the issuance of the order of dismissal dated 05/12/1994, the Corporation has not passed any order directing the forfeiture of his gratuity amount. Without any order of forfeiture under the Payment of Gratuity act, 1972, there cannot be deemed forfeiture since such a forfeiture is to be effected by an order to be passed by the Management.

5. I do not find that the issue of gratuity is addressed to this Court in this matter. In the judgment delivered by the Hon'ble Apex Court in the matter of Jorsingh Govind Vanjari Vs. Divisional Controller, MSRTC, Jalgaon Division, Jalgaon [(2017) 2 SCC 12], the

Hon'ble Apex Court has concluded that unless an offence amounting to moral turpitude is not proved, gratuity cannot be forfeited. Since in the instant case, the issue of forfeiture of gratuity is not before this Court while exercising supervisory jurisdiction, which is akin to the revisional jurisdiction, I am not required to consider the said aspect.

6. Considering the concurrent findings of the Labour Court and the Industrial Court holding that there was no misappropriation because the respondent has repaid the entire amount of Rs.328.90 to the co-worker from whose account he had taken the money and keeping in view that this Court refused interim relief to the Corporation and directed reinstatement on 06/06/2000, this petition is left with an academic interest. The same is, therefore, disposed of as being infructuous. Rule is discharged.

7. Learned Advocate for the petitioner prays that this judgment may be stayed for a period of 6 weeks. He further prays that the remainder amount of gratuity which is lying in this Court, should not be disbursed to the respondent/employee as the Corporation desires to avail of a remedy before the Hon'ble Apex Court, notwithstanding that the impugned judgments have been implemented.

8. Considering the above, this judgment is stayed for a period of 6 weeks. Consequentially, there shall be no orders on CA No.5142/2015 by which the respondent prays for withdrawal of the remainder amount. The said civil application is disposed off.

(RAVINDRA V. GHUGE, J.)