

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3597 OF 2004

Santoba s/o Bapurao Kadam,
Age 50 years, Occ. Nil,
R/o. Nanded Housing Society,
Vijay Nagar, Near Mahatma Phule
School, Nanded.

... **Petitioner.**

VERSUS

1. The Divisional Traffic Superintendent
(Default), Maharashtra State Road
Transport Corporation, Nanded Divn.
Nanded, At Post Tq. & Dist. Nanded.
2. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Nanded Division,
Nanded.

... **Respondents.**

...

Mr. P.L. Shahane, learned advocate for petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 08th May, 2018

JUDGMENT :

1. The petitioner/bus conductor is aggrieved by the concurrent judgments delivered by the Labour Court dated 25.10.2002 dismissing his Complaint (ULP) No. 147/1997 and dated 06.11.2003 delivered by the Industrial Court by which his Revision ULP No. 74/2002 had been dismissed.

2. I have considered the strenuous submissions of Mr. Shahane, learned advocate for the petitioner. I have gone through the grounds of challenge formulated by him in the memo of the

petition. He has placed reliance upon the judgments of this Court in the matter of Ramkrushna V/s. Maharashtra State Road Transport Corporation and others, **1997 MCR, 324** and in the matter of Bhojraj s/o Narayan Parate V/s. Divisional Controller, Maharashtra State Road Transport Corporation, **2010 (3) C.L.R. 895.**

3. None has appeared on behalf of the respondent MSRTC.

4. The petitioner is said to have joined the respondent as a conductor in 1975. On 09.05.1995 the petitioner was performing additional duty though he was on a weekly off. He was conducting the bus journey from Nanded to Parbhani. The spot statement recorded by the checking squad indicates that about 152 passengers were travelling in the bus. The spot statement was written down by the petitioner himself and bears his signature. It was noticed that 22 passengers were alighting at the Zero Phata and they were found to be without tickets. Several passengers were proceeding to Parbhani and Bharti Camp and they were also without tickets. About 35 and half passengers were found without tickets though they had paid the fare to the petitioner/conductor, who did not issue tickets to them. 55 passengers were holding tickets.

5. The petitioner was charged with having committed misappropriation of large amounts. The Corporation put forth a

case that the petitioner took undue advantage of the over-crowded bus and permitted about 35 to 40 passengers to travel ticket-less. After a departmental enquiry was conducted against him, he was held guilty of the charges and was dismissed from service by way of punishment on 23.09.1999. He approached the Labour Court by filing a ULP Complaint. The enquiry conducted against him was held to be fair and proper. To the extent of proportionality of the punishment, the Labour Court considered the oral and documentary evidence adduced before it and concluded that the punishment awarded was for misappropriation and hence it cannot be said to be shockingly disproportionate. The complaint was dismissed.

6. The petitioner approached the Industrial Court by filing a revision petition under section 44 of the MRTU & PULP Act, 1971. The Industrial Court once again went through the entire record and proceedings and noticed from the cross-examination of the petitioner conducted in the enquiry that he admitted that the distance between Basmat and Zero Phata is 20 k.m. and the checking squad had carried out a surprise check at Zero Phata. In that distance of 20 k.m., the petitioner could have issued tickets to all the passengers. However, about 22 passengers travelling from Basmat to Zero Phata were ticket-less. So also, it is unknown as to why the petitioner allowed 145 passengers to enter the bus when the

sitting capacity of the bus is 60 and 30 passengers are permitted to travel in a standing position.

7. Learned counsel for petitioner strenuously submits that the passengers in the bus who were found to be travelling ticket-less and who claimed to have paid the fare and were not issued with tickets, were not examined. He relies on the view taken by the Honble Apex Court in the matter of UPSRTC V/s. Mahesh Kumar Mishra, 2000 LABIC 1031, and contends that the passengers should be examined.

8. In the instant case, about 35 to 40 passengers were found to be travelling ticket-less and most of them have claimed to have paid the fare, and yet tickets were not issued. It would be quite difficult for the Corporation to locate all these passengers and bring them as witnesses in a domestic enquiry. It is settled law that a domestic enquiry is conducted by way of an in house mechanism and hear-say evidence is also admissible. It cannot be equated with a criminal trial and the principles applicable to a domestic enquiry are conceptually distinct and different than the principles applicable to a criminal trial.

9. The Hon'ble Apex Court in the matter of *KSRTC vs. B.S.Hullikatti*, (2001) 2 SCC 574 and *Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane*, (2005) 3 SCC 254 has concluded that non

examination of passengers in a domestic enquiry is not fatal to the case. If some evidence is available on record, the charges against the delinquent can be said to be proved on the preponderance on the principles of probabilities.

10. The Hon'ble Apex Court in the matter of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Nourarara Sangha*, **2000(7) SCC 517 : AIR 2000 SC 3129** and the learned Division Bench of this Court in *P.R.Shele vs. Union of India and others*, **2008 (2) Mh.L.J. 33**, have concluded that misappropriation of any amount attracts the punishment of dismissal from service. Whether the amount is small or large is not material. In this case, the Labour Court has perused the default card of the petitioner placed on record. He was punished on five occasions in between July 1982 to September 1990 for similar acts of misappropriation.

11. Considering the above, I do not find any reason to interfere with the concurrent judgments of the Labour Court and Industrial Court. This petition, being devoid of merits, is therefore dismissed. Rule is discharged.

(**RAVINDRA V. GHUGE, J.)**

mkd