

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 1737 OF 2000

Maharashtra State Road  
Transport Corporation,  
Through its Divisional Controller,  
Ahmednagar.

..Petitioner

Versus

Gitaram Rangnath Darekar  
Ded, Through L.Rs.

1. Ushatai Gitaram Darekar,  
Age 32 years, Occ. Household

2. Vaishali Gitaram Darekar,  
Age 13 years, Occ. Education,

3. Nita Gitaram Darekar,  
Age 11 years, Occ. Education,

4. Preeti Gitaram Darekar,  
Age 9 years, Occ. Education,

5. Prabhakar Gitaram Darekar,  
Age 5 years, Occ. Education,

All R/o Valawane Bahiroba,  
Tq. Parner, Dist. Ahmednagar

..Respondents

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Advocate for Petitioner : Shri M.K.Goyanka  
a/w Shri Manoj Shinde

Advocate for Respondents 1 to 5 : Shri Ajinkya Deshmukh  
h/f Shri V.D. Hon

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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 award dated 30.1.1999 delivered by the First Labour Court Ahmednagar, by which Reference (IDA) No.2 of 1994 has been partly allowed and the respondent has been granted an amount of Rs.2,50,000/- by way of compensation in lieu of reinstatement.

2. I have considered the submissions of the learned Advocates for the respective sides. Learned counsel for the respondent / deceased, appearing through L.Rs., has strenuously supported the impugned judgment and prays for the dismissal of this petition with costs.

3. I have considered the record available with the assistance of the learned Advocates.

4. There is no dispute that the deceased had joined employment on 5.4.1977 as a Driver and was eventually dismissed from service by order dated 26.5.1989. He has thus worked for about 12 years. His first and second appeals were rejected. By Part I award dated 11.3.1998, the Labour Court

upheld the enquiry.

5. The original default card of the respondent / driver has been shown to the Court and which is perused even by the learned Advocate for the respondent. In a period of 12 years of employment, the deceased was punished for unauthorized absenteeism on eight occasions. He was a driver with the MSRTC and such sudden absence cannot be countenanced. His dismissal from service was as a result of his absence from June 1988 till December 1988 over a period of 108 consecutive days, excluding the 20 days leave that he was granted.

6. From paragraph Nos.13, 14 and 15 of the impugned orders, it becomes apparent that the Labour Court has shown misplaced sympathy towards an employee, whose past service record with 8 punishments is highly blemished and the last act of misconduct was for 108 consecutive days of unauthorized absence. The Labour Court has concluded that the respondent had lost his parents due to illness and since he has children, the punishment is disproportionate.

7. It is settled law that unless a punishment appears to be shockingly disproportionate and shocks the judicial conscience of

the Court, no interference is called for. Misplaced sympathy cannot be a ground for interfering with an order of punishment.

8. It is informed that the Corporation has deposited Rs.20,000/- in this Court pursuant to the order of the Court dated 27.6.2001. The said amount was withdrawn on 16.12.2005 by the respondent.

9. Considering the above, I do not find that the impugned award could be sustained on misplaced sympathy when the past service record of the respondent has eight instances of punishment and the dismissal has occurred due to a long unauthorized absence. The impugned order, therefore, is perverse and deserves to be set aside.

10. This petition is, therefore, allowed. The impugned judgment and order dated 30.1.1991 is quashed and set aside. Reference (IDA) No.2 of 1994 stands rejected. Rule is made absolute.

11. It is however, made clear that as the deceased had withdrawn an amount of Rs.20,000/- deposited in this Court, the Corporation shall be restrained from recovering the said amount

from his L.Rs. In the event of any interest that has been accumulated in this Court, pursuant to the depositing of Rs.20,000/- in 2001, it shall be transmitted by the Registry of this Court to the Advocate Association's Bar Library of Bombay High Court, Bench at Aurangabad.

( RAVINDRA V. GHUGE, J. )

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