

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2805 OF 2000

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

-- PETITIONER

VERSUS

Arifuddin Chiraguddin Shaikh,
Age-Major, Occu-Driver,
R/o 5189, Panchpeer Chawadi,
In front of Police Club,
Ahmednagar

-- RESPONDENT

Mr.M.K.Goyanka, Advocate for the petitioner.
Mr.C.R.Deshpande, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/03/2018

ORAL JUDGMENT :

1. The petitioner/Corporation is aggrieved by the Part II award dated 12/05/1999 passed by the Labour Court by which Ref. (IDA) No.248/1994 was allowed and the respondent was granted reinstatement with continuity from 01/01/1993 and 50% back wages. There is no dispute that he has been reinstated on 27/07/1999. This Court, while admitting the petition, has granted interim relief to the extent of staying the payment of back wages.

2. Learned Advocate for the Corporation informs that the respondent has a highly blemished past service record. On 9 occasions, his increments were stopped. On 2 occasions, there was a punishment of reduction in pay scale. Prior to his dismissal at issue dated 01/01/1993, he was dismissed from service by way of punishment on 2 occasions. Subsequently, he has now been dismissed from service for committing misappropriation on 24/04/2017.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides. Considering the facts emerging from the record, I am not required to consider their entire submissions for reasons more than one. Firstly, that the Labour Court had delivered its Part I award dated 12/05/1999 and has concluded that the enquiry conducted by the Corporation against the respondent / employee was vitiated. This Part I award has not been challenged by the petitioner / Corporation in this petition. The enquiry is therefore watered down. Secondly, the petitioner / Corporation, despite having been granted the permission to conduct a *denovo* enquiry before the Labour Court as the original enquiry was vitiated, did not conduct a *denovo* enquiry. Thirdly, as the enquiry was vitiated, the case stands on a footing of "no enquiry" in the light

of the law laid down by the Apex Court in the matter of Bharat Forge Company Ltd., Vs. A.B.Zodge and another, AIR 1996 SC 1556. The employer was therefore obliged to conduct an enquiry if the charges were to be proved in the Court. When no such enquiry was conducted, the charges fail and the employee stands exonerated.

4. Considering the above, I do not find that the Labour Court has committed any error in setting aside the dismissal of the respondent for granting reinstatement with continuity in service. In so far as awarding of 50% back wages are concerned, the employee has not preferred a petition for enhancement.

5. As such, this petition, being devoid of merits, is therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)