

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

WRIT PETITION NO. 2173 OF 1998

Sheshrao s/o Dinanath Kale,
(Age : Major, Occupation : Nil,
Ex-Conductor, Batch No.4829,
R/o C/o Shri Anil Dabadgaonkar,
Advocate, Jugjar Galli,
Majalgaon, Taluka Majalgaon,
District Beed.)

Since deceased through L.Rs. :-

- (a) Bhagwat s/o Sheshrao Kale,
Age : 58 years, Occupation : Service,
R/o B and C Colony, Gajanan Road,
Majalgaon, Taluka Majalgaon,
District Beed.
- (b) Kalyan s/o Sheshrao Kale,
Age : 48 years, Occupation : Agri,
R/o Dhangar Galli, At.Post.Sirsala,
Taluka Parali Vaijanath, District Beed.
- (c) Shivshankar s/o Sheshrao Kale,
Age : 38 years, Occupation : Agri,
R/o Dhangar Galli, At.Post.Sirsala,
Taluka Parali Vaijanath, District Beed.

...PETITIONERS

-VERSUS-

The Maharashtra State Road Transport
Corporation, Beed.
Through it's Divisional Controller,
S.T. Divisional Office, Beed,
District Beed.

...RESPONDENT

...

Advocate for the Petitioner : P.L.Shahane.

Advocate for the Respondent : Shri A.B.Dhongade.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th March, 2018

Oral Judgment :

1 The Petitioner/ Bus Conductor, deceased on 14.11.2012, is aggrieved by the judgment and award of the Labour Court dated 29.06.1996 by which, the Labour Court has rejected the Reference (IDA) No.130/1991. His L.Rs. are on record.

2 Shri Shahane, learned Advocate for the Petitioner, has strenuously criticized the impugned award. He has drawn my attention to the 14 grounds formulated by him in the memo of the petition. It is strenuously contended that as the bus was checked within a distance of about 3 to 4 kilometers from the boarding point, three passengers were found traveling ticket-less. The amount said to be misappropriated is Rs.3.60, which is a very meager amount. His specific contention in the statement of claim and the evidence adduced by him was not properly considered by the Labour Court. He had assailed the departmental enquiry as well as the findings of the Enquiry Officer, which were ignored and the enquiry was held to be fair and proper and the findings were also sustained.

3 The learned Advocate for the Respondent/ MSRTC has

strongly supported the impugned award. He has pointed out that the Petitioner was punished with penalties/ fines, strict warning, stoppage of increment on 14 occasions and on 11.09.1976 he was initially dismissed from service for a similar misconduct. The impugned dismissal is his second dismissal effected on 17.01.1984.

4 Having considered the submissions of the learned Advocates, I have gone through the petition paper book with their assistance.

5 The Petitioner had averred in the statement of claim that the enquiry was not properly conducted and his statement taken by the checking squad on the spot, was under duress and coercion. He was threatened by the Respondent/ Corporation that he would be handed over to the Police and hence, he admitted the charges levelled upon him when the spot statement was recorded on 31.10.1983. All these contentions have been considered by the Labour Court and it is noticed that the said defence has been taken purely for self serving purpose. He has specifically admitted in the spot statement that he had collected money from three passengers. He could not issue tickets because there was heavy rush. However, he admitted that there were 32 passengers in the bus and the normal sitting capacity of the bus is 60 passengers.

6 Insofar as the challenge to the enquiry is concerned, there was hardly any specific challenge since the charge sheet was served upon the Petitioner. He had replied to the charge sheet and he had participated

in the departmental enquiry. It is contended that he had requested for witnesses from the State Transport employees and the driver of the bus. His request to call them as witnesses on behalf of the Respondent/ Corporation was turned down. This cannot be a defence because, if the Petitioner desired to place reliance upon their testimony, he should have produced them as his witnesses. Seeking a direction that the State Transport Corporation should produce them as it's witnesses and turning down of the said request, cannot indicate that any prejudice was caused to the Petitioner as he could have produced them as his witnesses and could have adduced evidence through them.

7 The issue is as regards the proportionality of the punishment. The Petitioner had joined employment in 1966. Before he could be made permanent in service in 1970, he had already suffered four punishments, while on probation. In all, he has suffered 16 punishments out of which one pertains to his dismissal on 11.09.1976 and the last pertains to his present dismissal dated 17.01.1984. The past service record of the Petitioner is, therefore, highly blemished.

8 The Honourable Supreme Court in the matter of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara 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 the amount of misappropriation in a case is not important or significant. An employee guilty of misappropriation cannot be retained in service.

9 Considering the above and keeping in view that the past service record of the Petitioner is highly blemished, I do not find that the impugned award could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

10 Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)