

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2732 OF 2018

SUDHIR GANGARAM WANKHEDE
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION, AHMEDNAGAR DIVISION,
AHMEDNAGAR AND ANOTHER

Advocate for Petitioner : Mr. P.V. Barde.
Advocate for Respondents : Mr. B.S. Deshmukh.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 21st March, 2018

PER COURT :

1. The petitioner/Bus Conductor working with the respondent/MSRTC is aggrieved by the order of the Labour Court dated 16/01/2018, by which, application Exhibit U-2, seeking interim relief in Complaint (ULP) No. 16/2016, has been rejected. He is, further, aggrieved by the judgment of Industrial Court dated 27/02/2018, by which, his Revision (ULP) No. 08/2018 has been rejected.

2. I have considered the strenuous submission of the learned advocates for the petitioner and the respondents.

3. Since, Complaint (ULP) No. 16/2016, is still

pending before the Labour Court and the petitioner is before this Court against the interlocutory order of refusing interim relief to the petitioner. I am not adverting to the entire submissions of the learned advocates for the respective sides, since it is likely that the observations of this Court would affect the litigating sides.

4. Suffice it to say that the MSRTC has now introduced an Electronic Ticket Printing Machine, by which, tickets are printed and sold to the passengers during the journey on that day. It is only when, in a situation when such an Electronic Ticket Printing Machine becomes non-functional and develops a snag, that tickets are manually issued. In the instant case, *prima facie*, there is no evidence that the Electronic Ticket Printing Machine had developed any defect.

5. Issue is as regards the petitioner having accounted for the electronic tray of tickets and failed to clear the accounts of the manual ticket tray on 06/03/2013. He, therefore, retained Rs. 807/- with him over night.

6. On 14/03/2018, I had recorded the brief submissions of the learned advocates and I had called upon the learned counsel for the Corporation to take instructions, as to how the Corporation deals with the cases of delayed clearance of accounts or temporary misappropriation.

7. Learned counsel for the Corporation submits that when it comes to a misappropriation of any nature, be it temporary or for longer duration, the Corporation views such misconduct seriously. He indicates from the default record of the petitioner that he has been punished on several occasions for similar type of misdeeds. His date of appointment is 08/05/2010 and he suffered the first dismissal for unauthorized absenteeism on 21/02/2011. By sustaining his dismissal, he was granted reappointment as afresh employee on 22/05/2012.

8. The issue is as regards temporary misappropriation of money that belongs to the employer. The Hon'ble Apex Court in the matter of State Bank of India and Others Versus S.N. Goyal [AIR 2008 SCW 4355] has dealt with a similar issue with

regard to a misconduct which would amount to temporary misappropriation. The observations of the Hon'ble Apex Court in paragraph No. 28 read as under :

"28. At the relevant point of time the respondent was functioning as a Branch Manager. A Bank survives on the trust of its clientele and constituents. The position of the Manager of a Bank is a matter of great trust. The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank. Any misappropriation, even temporary, of the funds of the Bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment. When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower's account. If the matter is to be viewed lightly or leniently it will encourage other Bank employees to indulge in such activities thereby undermining the entire banking system. The request for reducing the punishment is misconceived and rejected."

9. Considering the above, I do not find that the impugned order passed by the Labour Court refusing to grant protection to the petitioner on account of his act of temporary misappropriation, could be termed as

being perverse or erroneous. This petition being devoid of merits, is therefore, dismissed.

10. Since, the petitioner has not yet replied to the second show cause notice dated 09/03/2016, by which, he is called upon to explain whether he should be awarded any punishment or not for the proved misconduct, the petitioner shall ensure that he would tender his reply to the respondent/Corporation on/or before 5.00 p.m. on 23/03/2018. Since, this order is dictated in open Court, the petitioner shall not hold back his reply till receiving the copy of this order. If he fails to submit his reply as directed, the respondent/Corporation would be at liberty to pass an appropriate order of punishment after 5.00 p.m. on 23/03/2018. If a reply is tendered within the said time, the Corporation would consider the said reply and would pass a reasoned order as regards its decision on the second show cause notice.

(RAVINDRA V. GHUGE, J.)

S.P.C.