

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

WRIT PETITION NO. 9478 OF 2018

**BABURAO DADARAO YEDAKE AND OTHERS
VERSUS
AGAR VYAVASTHAPAK MAHARASHTRA RAJYA MARG
PARIVAHAN MAHAMANDAL OSMANABAD.**

...
Advocate for the petitioners : Shri D. A. Mane h/f.
Shri N. G. Talekar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th AUGUST, 2018.

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PER COURT :

1. The legal heirs of the original workman are the petitioners in this petition who seek to challenge the judgment of the Labour Court dated 14/12/2015, dismissing the complaint (ULP) No. 14/2007 and the judgment of the Industrial Court dated 07/02/2018, dismissing Revision (ULP) No. 11/2016.

2. I have heard the extensive submissions of the learned Advocate for the petitioners and have gone through the record available with his assistance.

3. The deceased workman Baburao was engaged as a bus conductor by the respondent- corporation in 1986. He was charged with having committed temporary misappropriation of amounts of Rs. 7280/- (Rs. Seven Thousand Two Hundred and Eighty only) and Rs. 6591/- (Rs. Six Thousand Five Hundred Ninty one), in two different incidents. The charge levelled against him was of receiving the ticket fares from passengers and instead of depositing the said amounts immediately upon reaching the depot, he had deposited the said amounts after a span of 5 (five) days and 3 (three) days respectively with regard to the two incidents.

4. Two Departmental Enquiries were initiated against the deceased under the Discipline and Appeal Rules of the Corporation. The deceased had preferred complaint (ULP) No. 14/2007 as he was dismissed from service by way of punishment on 07/09/2007. The said Enquiries were held to be vitiated and the findings of the Enquiry Officer were held to be perverse in the Part-I judgment of the Labour Court.

5. A de nova enquiry was conducted by the Corporation

before the Labour Court and by the impugned judgment dated 14/12/2015, the Labour Court dismissed the complaint after concluding that the charges are proved against the deceased. He had admittedly failed to deposit the said two amounts strictly as per Rule 12(b) of the Corporation. The Labour Court, therefore, concluded that the said misconduct cannot be branded as being of a minor or technical character and hence the punishment imposed upon the deceased would not be said to be shockingly disproportionate. It is for the same reasons as have been recorded by the Labour Court that the Industrial Court dismissed the Revision Petition filed by the deceased.

6. The learned Advocate for the petitioner submits that now that the deceased has passed away, the L.Rs. are pursuing this litigation only with the hope that if they establish that the punishment was shockingly disproportionate, there would stand to earn retiral benefits alongwith other service benefits and back wages.

7. The record reveals that the deceased had a highly blemished past service record as he was punished on 22

(Twenty Two) occasions. Identical misconducts of temporary misappropriation were committed by him 9 (nine) times, besides the 2 (two) occasions at issue. He was given an opportunity to improve his conduct with minor punishments and subsequently he was also punished with stoppage of 2 (two) increments.

8. It is settled law that even a temporary misappropriation would amount to a misappropriation which cannot be shown leniency. The Honourable Apex Court in the matter of *Damoh Panna Sagar Rural Regional Bank and another Vs. Munna Lal Jain [2005 (104) FLR 291]*, and in the matter of *Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.) etc., Appellants vs The Secretary, Sahakari Noukarara Sangh, etc., Respondents, AIR 2000 Supreme Court 3129* has concluded that misappropriation of any amount is a grave and serious misconduct. In *Damoh Panna case (Supra)*, the Honourable Apex Court has concluded that unless a punishment amounts to being shockingly disproportionate to the gravity and the seriousness of the misconducts proved, no interference is called for merely because a punishment may

appear to be disproportionate.

9. Considering the above and keeping in view that the deceased had admitted of having failed to deposit large sums of money with the employer strictly as per the rules applicable, the punishment awarded to the deceased cannot be termed as being shockingly disproportionate. The impugned judgments, therefore, do not appear to be perverse or erroneous.

10. This petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-