

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11863 OF 2014

1.The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

2. The Regional Manager,
Maharashtra State Road Transport
Corporation, Nasik Region,
Nasik.

..Petitioners

Versus

Ashok Panditrao Mahajan,
Age 51 years, Occ. Service
R/o P.N.Mahajan,
Nageshwar Colony,
Ramkruti Park, Sambhaji Nagar,
Jalgaon.

..Respondent

WITH
WRIT PETITION NO. 3230 OF 2015

1.The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

2. Reviewing Authority
The Regional Manager,
Maharashtra State Road Transport
Corporation, Nasik Region,
Nasik.

..Petitioners

Versus

Vasudeo Vitthal Mahajan
Age 56 years, Occ. Service
R/o Tali, Post Ozar, Wade Road,
Karjai Naka, Chalisgaon,
District Jalgaon.

..Respondent

WITH
WRIT PETITION NO. 5348 OF 2015

1.The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

2. Reviewing Authority
The Regional Manager,
Maharashtra State Road Transport
Corporation, Nasik Region,
Nasik.

..Petitioners

Versus

Devidas Dudha Jadhav
Age 57 years, Occ. Service
R/o 9, Mansi Housing Society,
Aditya Nagar, Patna Devi Road,
Chalisgaon, Dist. Jalgaon.

..Respondent

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Advocate for Petitioners : Shri Goyanka M.K.
Advocate for Respondents : Shri Patil Vijay Y.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 19, 2018

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petitions are taken up for final disposal.

4. In all these petitions, the learned counsel for the petitioner / MSRTC submits that an identical issue is involved and Writ Petition No.11863 of 2014 has been taken up for hearing by the consent of the parties along with Writ Petition Nos.3230 and 5248 of 2015.

5. It is jointly submitted by the learned Advocates that the issue involved is regarding the scope of the second appellate departmental authority of the Corporation in exercising his powers under Rule 9 of the Discipline and Appeal Rules, by which, the decision of the First Appellate authority has been reviewed, suo moto.

6. In all these three petitions, the respondent / employee had approached the Labour Court in the following matters:-

(i) Complaint (ULP) No.24 of 2011, which is allowed by judgment dated 23.10.2012

(ii) Complaint (ULP) No.22 of 2011, which is allowed by judgment dated 20.10.2012 and

(iii) Complaint (ULP) No.25 of 2011, which is allowed by judgment dated 22.10.2012.

7. All these complainants succeeded before the Labour Court, which has allowed the complaints, set aside the enquiry without framing an issue, quashed the individual second show cause notices proposing the punishment and granted relief of “not to take any action on the basis of the second show cause notice and proposed punishment of dismissal is set aside.”

8. The MSRTC approached the Industrial Court in the following matters:-

(i) Revision (ULP) No. 36 of 2013, dismissed by judgment dated 25.4.2014

(ii) Revision (ULP) No. 34 of 2013, dismissed by judgment dated 25.4.2014 and

(i) Revision (ULP) No. 33 of 2013, dismissed by judgment dated 25.4.2014.

9. I have considered the strenuous submissions of the learned Advocates for the respective sides. Shri Patil vehemently submits on behalf of the respondent / workers that the impugned judgments are concurrent conclusions, are justifiable and these petitions be dismissed with heavy costs. It is further stated that

the two respondents Vasudeo and Devidas have retired and Ashok is still in employment.

10. The following issues arise in these proceedings, which are identical:-

(a) Whether the Labour Court could have interfered with the enquiry without framing two issues with regard to the fairness of the enquiry and the findings of the enquiry officer?

(b) Whether the Labour Court could have directed the Corporation not to award the punishment of dismissal from service, without dealing with the fairness of the enquiry?

(c) Whether the Corporation, through its appellate authority can cause a suo moto review under Rule 9 of the Discipline and Appeal Rules and thereby reconsider the proposed lesser punishment imposed by the First Appellate authority.

(d) Whether the Industrial Court lost sight of the error committed by the Labour Court while dismissing the Revision Petition filed by the Corporation?

11. In so far as the first two issues are concerned, they are no longer res integra in view of the judgment of this Court in the

matter of Santoba Bapurao Kadam Vs. The Divisional Traffic Superintendent - Writ Petition No.3597 of 2004, dated 8th May 2018, wherein, it has been concluded that even when the Labour Court is considering a challenge to the enquiry and the findings of the Enquiry Officer, while dealing with the second show cause notice proposing the punishment of dismissal, the two issues pertaining to the fairness of the enquiry and the findings of the enquiry officer have to be framed. The Labour Court cannot interfere with the enquiry or the findings, unless the two issues are answered in the affirmative. So also, even if the Labour Court concludes that the enquiry is vitiated, a de novo enquiry is to be permitted without which, the Labour Court cannot cause an interference in the action of the employer.

12. In so far as the third issue is concerned, the same is also not res integra in the light of the judgment of this Court in the matter of Maharashtra State Road Transport Corporation Vs. Laxman Kacharu Vairal [2016 (3) Mh.L.J. 222], wherein, this Court has concluded that the appellate authority has the power to review the punishment imposed by the disciplinary authority suo-moto.

13. In all these three cases, charges of misappropriation have

been proved in the enquiries. The past records are highly blemished. The Disciplinary authority proposed the punishment of dismissal. These workers filed a first departmental appeal which was allowed by reducing the punishment to stoppage of three increments. The reviewing authority, therefore, exercised its suo-moto powers and restored the punishment of dismissal.

14. So also, this Court, in the matter of Maharashtra State Road Transport Corporation, through its Divisional Controller Vs. Vishweshwar Malkuji Ukey [2009 (2) Mh.L.J.489], has concluded that though the appellate authority can exercise the suo moto power of review under Rules 9 and 10, it does not have the power to review its own order. In Laxman's case (supra), this Court has concluded that the review proceedings have to be concluded within one year and they cannot be continued beyond one year. In this backdrop, the interference by the Labour Court in the order of review passed by the appellate authority, cannot be sustained.

15. The Industrial Court apparently lost sight of the above perversity in the judgments of the Labour Court and failed to set aside the said judgments for being erroneous. For this reason, the judgment of the Industrial Court cannot be sustained.

16. At this juncture, learned Advocate for the respondents submits that as Vasudeo and Devidas have already retired from service and they have not been dismissed from service for the acts of mis-appropriation, they would be entitled for gratuity. Learned counsel for the Corporation submits that the Corporation admittedly disagreed with the lesser punishment awarded by the first appellate authority which directed the stoppage of three basic increments of each of these respondents. He, therefore, rejects the proposal of the respondents.

17. In view of the crystallized law, all these matters deserve to be remitted to the Labour Court for framing of proper issues and for a decision afresh on the first two issues. Learned counsel for the respondents submits on instructions that the two workers who have retired from service, will have to suffer the rigours of litigation and are agreeable to suffer the punishment of stoppage of three increments. Their retiral benefits could be calculated on the basis of such stoppage and they would be eager to receive their gratuity and retiral benefits as they have retired from service. He further adds that since Ashok is in employment, he is willing to accept the punishment of stoppage of three increments. Learned Advocate for the Corporation rejects this

proposal as the charges proved against them are of misappropriation.

18. Considering the above, these three petitions are allowed. The judgments of the Labour Court dated 23.10.2012, 22.10.2012 and 20.10.2012 are quashed and set aside. Complaint (ULP) Nos.24, 25 and 22 of 2011 are restored to the files of the Labour Court, Jalgaon for framing of the following two issues:-

(a) Whether the complainant proves that the enquiry was conducted in violation of the principles of natural justice and

(b) Whether the complainant proves that the findings of the enquiry officer are perverse.

19. The litigating sides shall appear before the Labour Court at Jalgaon on 13.7.2018. The Labour Court shall follow the law laid down in the case of Santoba (*supra*), while dealing with these cases. Since, Vasudeo and Devidas have already retired and Ashok is on the verge of retirement, the Labour Court, Jalgaon shall decide these cases expeditiously and in any case on/or before 30.4.2019.

20. Considering the above, the judgment of the Industrial Court dated 25.4.2014 stands set aside and all the three Revisions (ULP) stand disposed off.

21. Considering the view taken by the Honourable Supreme Court in the case of Jorsingh Govind Vanjari Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon Division, Jalgaon [2017 (3) Mh.L.J. 497], all retiral benefits of these employees will be subject to the result of the complaints in which they have challenged the punishment of dismissal from service.

22. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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