

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1347 OF 2004

Maharashtra State Road Transport
Corporation, Vahatuk Bhavan,
Dr. A. Nair Marg, Mumbai Central,
Mumbai - 400 008

.... Petitioner

Vs.

A.B. Patel
R/o : Kranti Nagar, Near Ice Factory,
At Post & Taluka Satana,
District Nashik

.... Respondent

Mr. G.S. Hegde I/by M/s G.S. Hegde & Associates for the Petitioner.
Ms. Seema Sarnaik for the Respondent.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 5th October 2018

JUDGMENT :

1 The petitioner, Maharashtra State Road Transport Corporation (hereinafter referred to as the “Corporation”) impugns the judgment and order dated 25th August 2003 passed by the Labour Court, Nashik in Reference (IDA) No. 30 of 1995. The facts in nutshell are as follows:

The petitioner is a statutory body engaged in providing bus services from one place to another in the State of Maharashtra. The Respondent was working as a 'Conductor'. On 16th June 1992, the petitioner was working as Conductor on the bus going from Malegaon to Satana. The Checking Inspector had conducted a surprise check. It had transpired that the respondent herein had issued used tickets to the passengers. The cash was found to be in excess of Rs.35/-. He was also in possession of tickets issued earlier by other Conductors.

2 The Petitioner-Corporation had issued charge-sheet to the respondent for the alleged offence and pursuant to enquiry, he was dismissed from service vide order dated 21st November 1992.

3 Upon failure of conciliation proceedings, the Deputy Commissioner of Labour had referred the matter to the Labour Court, registered as Reference No. 30 of 1995.

4 The learned Labour Court, upon considering the evidence recorded in the course of enquiry and the past service record of the respondent has rightly held that the enquiry was conducted by following due procedure of law and the findings recorded by the enquiry committee are not perverse and therefore the same does not deserve to be quashed and set aside. However, the Labour Court had taken into consideration the fact that the incident is dated 16th June 1992 and the evidence of the respondent/workman was recorded on 8th December 1999. That he was 60 years old and therefore his prayer for reinstatement had become infructuous. Therefore, in the interest of justice, the Labour Court had held that instead of dismissal- simple termination would meet the ends of justice.

5 The only contention of the petitioner is that the order of Labour Court is a reflection of misplaced sympathy and that if no fault is found with procedure or findings, then there is no reason to show misplaced sympathy. Perused the judgment and reasons assigned by the Labour Court.

6 Learned counsel for the respondent submits that the Labour Court was also concerned with the delay in procedure i.e. from 1992 to 2003 and therefore at the stage of delivering the verdict, the Court was governed by conscience that 'justice delayed is justice denied'. That the Labour Court could not be oblivious of the fact that the entire family was dependent upon the respondent/workman and at the twilight of his life, he deserved a decent survival and therefore has awarded retiral terminal benefits. It is also submitted that the justice must appear to have been done.

7 Dismissal is punitive in nature while a termination of employment simply brings an employment contract to an end. 'Dismissed' as per Oxford Dictionary is “treat as unworthy of serious consideration and refuse further hearing to (a case)”, whereas Black's Law Dictionary defines 'dismissal' as “termination of an action or claim without further hearing”.

8 In the present case, a notice was served upon the respondent. A fair hearing was given and therefore, it cannot be said

that the petitioner had exercised the powers arbitrarily. Termination of employment as per Black's Law Dictionary is the complete severance of an employer-employee relationship.

9 Many a times dismissal and termination are held to be synonymous, however, they differ in letter and spirit as well as the ascertainment of the rights of the employee would differ. A dismissal on account of grave misconduct, as in the present case, would necessarily entail dismissal. In the present case, the Petitioner-Corporation has been fair enough to conduct an enquiry and give an opportunity of hearing to the employee.

10 Thus, the difference between termination and dismissal is that–Dismissal could be on account of misconduct involving dishonesty or criminality and that is not the case in termination. On termination, the employee would be entitled to receive gratuity and other terminal benefits, whereas the same cannot be granted in case of dismissal.

11 The expressions dismissal, removal, termination and reduction in rank are technical words used in cases in which a person's services are terminated by way of punishment although the connotations are different. That once grave misconduct is proved like in the present case on more than one occasion then the order of the dismissal would be justified.

12 In view of this, the above petition deserves to be allowed. Hence, the following order:

ORDER

- I) The Writ Petition is allowed and disposed of.
- II) The petitioner is entitled to file an application seeking withdrawal of the amount, which is deposited in the Labour Court with accrued interest.
- III) Needless to mention that the respondent would be entitled to the payment of terminal dues, if any, except gratuity. Gratuity is forfeited.

(SMT. SADHANA S. JADHAV, J.)