

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

WRIT PETITION NO.7100 OF 2017

Solapur Municipal Corporation
Through the Assistant Commissioner ... Petitioner
Versus
Chokha Revansiddha Gaikwad ... Respondent

.....

Mr. Samir Kumbhakoni for the Petitioner.
Mr. S.M. Kamble for the Respondent.

....

CORAM : S.C.GUPTE, J.

DATE : 8 JUNE 2018

JUDGMENT :

. Heard learned Counsel for the parties.

2 The petition challenges a judgment and order dated 9 March 2016 passed by the Industrial Court at Solapur in a revision under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act"). By the impugned order, the Industrial Court partly set aside the order of the Labour Court passed on a complaint of unfair labour practices filed by the Respondent herein.

3 The Respondent, who was the original complainant before the Labour Court, was working as a driver on a vehicle of Octroi Department of the Petitioner Municipal Corporation. The vehicle was allotted to S.N.

Auradi, who was an Octroi Inspector. It was the Respondent's case before the Labour Court in the complaint that on 23 May 1998, whilst discharging his duty as a driver on the vehicle, a truck loaded with goods was found proceeding from the octroi post at Chaitra Pune Naka without paying octroi duty; the Octroi Inspector at the site directed the Respondent to chase and stop the truck with the help of a Hamal working there, one Chand Babulal Shaikh. It was the case of the Respondent that he along with Shaikh quickly got into the vehicle and chased the truck, but in that process, due to fog and rainwater accumulated on the road, the vehicle driven by him rammed into a roadside tree, causing damage to the vehicle and also injuries to the Respondent and Shaikh. It was submitted that the Octroi Inspector, with an intent to shield himself, wrongly gave a report against the Respondent and on that basis, the Respondent was first suspended and later served with a charge-sheet resulting into the domestic enquiry. It was submitted that though a criminal case lodged against him as a result of the incident resulted in an acquittal, the Respondent was dismissed from service from 08 February 2001 pursuant to the enquiry. His dismissal was challenged by the Respondent before the Labour Court in his complaint under MRTU & PULP Act. The Labour Court, by its judgment and order dated 28 May 2014, whilst accepting that the complainant had committed misconduct by not following service conditions or acting on the orders of the superior, was of the view that the punishment awarded to the Respondent was harsh and disproportionate to the misconduct complained of. The Labour Court, accordingly, partly allowed the complaint by directing reinstatement of the Respondent along with full back wages and restricted the punishment to withdrawal of six annual increments permanently. Being aggrieved by this order, the Petitioner herein filed a

revision application before the Industrial Court at Solapur. By the time the revision came to be decided, the Respondent had superannuated from the services of the Petitioner. (The controversy, accordingly, now pertains to only the order of back wages.) The Industrial Court was of the view that withdrawal of six annual increments permanently was also a harsh and disproportionate punishment. It, accordingly, cancelled the order of withdrawal of increments. It was, however, of the view that considering the admitted position that the Respondent had worked throughout the dismissal period as mazdoor and earned livelihood of Rs.100/- to Rs.150/- per day, the back wages payable to the Respondent ought to be restricted to 25% of back wages from the date of his dismissal till his retirement. The order of the Industrial Court is challenged by the Petitioner-Municipal Corporation in the present petition.

4 The Labour Court in its original order passed on the complaint rightly observed that though the Respondent was guilty of the misconduct of having driven a vehicle of the Municipal Corporation without orders of his superior, the intent and purpose of his action was not to cause loss to the Corporation, but on the other hand, to apprehend a defaulter running away from law and thereby benefiting the Corporation. The accident occurred was out of this desperate attempt. The Court was also rightly of the view that considering this aspect of the matter and also his past service and conduct, the punishment of dismissal awarded to the Respondent was disproportionate to his misconduct. The Labour Court, however, ordered withholding of six annual increments of the Respondent permanently as and by way of punishment. The Industrial Court in revision considered the aspect of gainful employment of the Respondent during the dismissal

period. (The impugned order of the Labour Court was passed on 28 May 2014, whereas the dismissal was of 8 February 2001.) It was not in dispute that during the course of these thirteen years, the Respondent had worked as mazdoor and earned a livelihood of about Rs.100/- to Rs.150/- per day. In the premises, the Industrial Court restricted the back wages to 25 % of back wages from the date of the Respondent's dismissal and till his superannuation. The Industrial Court was, however, of the view that the punishment of withholding of six annual increments permanently was also harsh and disproportionate to the misconduct. It accordingly cancelled that part of the order.

5 No fault can be found with the order of 25 % back wages. There is no negligence alleged or proved in driving of the vehicle and since the misconduct was not of a serious nature warranting the punishment of dismissal, reinstatement with back wages is clearly in order. The revisional Court rightly took into account the gainful employment of the Respondent during the period of his dismissal and restricted the back wages of 25 % of the back wages from the date of his dismissal until the date of his superannuation. No fault, accordingly, can be found with the order of the Industrial Court.

6 As for the punishment of withholding of six annual increments, the record of the case does indicate, and practically both Courts below have come to concurrent findings of fact in this behalf that the alleged misconduct was merely a technical misconduct. Though the Respondent drove the vehicle without instructions from his superior for whom he was driving the same, both Courts have accepted his case that he drove the

vehicle in a matter of emergency with a view to apprehend a lawbreaker, who was running away from the octroi post without paying duty. If that is so, withholding of six annual increments of the Respondent on a mere observation that the vehicle was driven without authority and the resulting accident was proved, does not appear to be in order. There is no rationale for this punishment and accordingly, it was rightly set aside by revisional Court.

7 Learned Counsel for the Petitioner submits that this part of the original order of the Labour Court was not a subject matter of challenge in the revision application; it was for the Respondent to challenge this part of the order and that had not been done; and thus, the revisional court erred in interfering with this part of the order under revision. Technically that is correct, but then the order of the revisional court must be seen as a whole. The revisional court not only cancelled the withholding of the increments which was ordered by the trial court, but reduced the back wages awarded by it to 25 %. The workman took the order as a whole, his increments protected, but his back wages reduced. If this order is right, it is right as a whole. The workman did not challenge the original order before the revisional court, since, though his increments were withheld, he got the whole of back wages. He was satisfied with it as a whole, considering the compensation awarded. This Court has anyway found merit with both parts of the revisional order; the order of restricting back wages 25 % and the order of cancellation of the withholding of the increments are both legitimate and correct and need to be affirmed.

8 In that view of the matter, there is no merit in the petition. The Writ Petition is accordingly dismissed.

9 No order as to costs.

(S.C. GUPTE, J.)