

Reportable**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD****WRIT PETITION NO. : 5412 OF 1999**

Khanderao s/o Punjabrao Mundhe,
age Major, Occu. Nil.
r/o at Sasegaon, Post Manu,
Tq. Kannad, Dist. Aurangabad.

... PETITIONER**VERSUS**

Divisional Traffic Superintendent,
(Default) M.S.R.T.C., Aurangabad.

... RESPONDENT

...

Advocate for the Petitioner : Shri R. V. Gore h/f.
Ms. C. E. Gaikwad

Advocate for the Respondent : Smt. R. D. Reddy

...

CORAM : RAVINDRA V. GHUGE, J.**DATED : 13th JUNE, 2019.**

...

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and order dated 08/07/1994, delivered by the Industrial Court in Revision (ULP) No. 18/1989, vide which, the revision petition filed by the respondent Corporation was allowed and the judgment of the Labour Court dated 19/01/1989 allowing complaint ULP No. 132/1984 was quashed and set aside.

2. I have considered the submissions of the learned Advocates for the respective sides.

3. The petitioner joined services with the respondent in 1979 as a bus conductor. On 16/01/1984, the Flying Squad of the MSRTC caused a surprise check of the bus, in which the petitioner was performing duties as a conductor, on the Songir-cross road at Dhule. Three checkers namely Shri S.R. Deshmukh, Shri M.N. Nikam and Shri Mahindrakar, apprehended the petitioner having issued three used tickets and had issued two unpunched tickets to some passengers. A charge sheet was issued on 11/04/1984. The petitioner replied on 19/04/1984 and denied the charges. After recording of oral evidence, the enquiry officer submitted his findings holding the petitioner guilty of the misconduct of misappropriation and dishonesty. He was issued with an order of dismissal dated 17/18th August, 1984.

4. The petitioner approached the Labour Court by filing complaint (ULP) No. 132/1984 and by an interim order, the petitioner was granted reinstatement and he continued in

employment. After the Labour Court allowed his complaint by judgment dated 19/01/1989, the MSRTC approached the Industrial Court through a revision petition under Section 44 of the MRTU and PULP Act, 1971. By the impugned judgment, the revision was allowed and the judgment of the Labour Court was quashed and set aside. The complaint was dismissed.

5. The learned Advocate for the petitioner employee has strenuously criticized the impugned judgment of the Industrial Court on the following grounds :

(a) The revisional powers of the Industrial Court are limited and there cannot be any re appreciation of evidence.

(b) Though three checkers formed a part of a Flying Squad, only one person was examined in the enquiry.

(c) The passengers, who carried used tickets and those passengers, who were found with unpunched tickets, were not examined and their statements were not produced, in the enquiry.

(d) The MSRTC had planned to remove the petitioner from service and a false story was cooked up.

(e) The bus was over crowded and the petitioner was unable

to cope up with the job of issuing tickets.

(f) His service record for five years till 1984 was clean and unblemished.

6. The learned Advocate for the Corporation submits that the Labour Court followed a strange procedure. When the enquiry was under challenge and the petitioner contended that the charges are not proved against him, two issues as regards the fairness of the enquiry and the fairness of the findings of the enquiry officer were not framed. The enquiry papers were placed on record and they were relied upon which would indicate that the petitioner did not desire to challenge the fairness of the enquiry or the findings of the enquiry officer. Nobody made a grievance about the non-framing of the two vital issues.

7. Reliance is placed upon the following judgments by the Respondent :-

*(1) North West Karnataka Road Transport Corporation
Versus H. H. Pujar, 2008 AIR (SC) 3060*

(2) State of Haryana Vs. Rattan Singh, 1977 AIR (SC)

1512

(3) Divisional Controller, KSRTC (NWKRTC) Vs. A. T.

Mane, 2004 AIR (SC) 4761

(4) Hidayatali Meheboobali Sayyed Vs. MSRTC, 2012 (1)

Bom. C.R. 236

(5) U. P. State Road Transport Corporation Vs. Basudeo

Chaudhary and another, (1997) 11 SCC 370.

(6) U.P. State Electricity Board Vs. U.P. Bijali Karamchari

Sangh and another, (1997) 11 SCC 372

8. I find from the record and the observations of the Labour Court that the parties relied upon the record and proceedings of the enquiry proceedings. Three tickets, which were already punched or an earlier trip, were re issued by the petitioner. This was proved since the MSRTC has the record of used tickets by virtue of a way bill. Three passengers were found with tickets which were not punched, which indicates that the petitioner did not desire to punch the tickets as they could be used later. These tickets had scribbling on the reverse side mentioning the amount to be returned. Such tickets are handed over to the conductor while alighting so as to receive

the amount of change. These tickets were collected by the checking squad and the petitioner was found with an excess amount of Rs. 36/- in his cash box.

9. The Labour Court has erred in holding that the findings of the enquiry officer, “*cannot be held to be given by following the principles of natural justice*”. I do not find that such a conclusion carries any meaning because either the findings of the enquiry officer have to be sustained or they have to be declared as perverse. The Labour Court then holds that the findings are perverse as there is no corroborative evidence. This finding is arrived at in the judgment thereby vitiating the enquiry at the judgment stage, which is impermissible.

10. In matters of such nature involving the State Road Transport Corporation, the statement by the person heading the checking squad before the enquiry officer, would amount to sufficient evidence. It is not necessary that every member of the checking party needs to be examined before the enquiry officer. The report of the checking party signed by the members of the squad was also before the enquiry officer. The

Labour Court, therefore, has erred in setting aside such evidence.

11. Considering the law laid down by the Honourable Apex Court in *Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd.*, [AIR 1965 SCC 1803], *Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh* [1972 (1) SCC 595 = AIR 1972 SC 1031], *The Workmen of M/s Fire Stone Tyre and Rubber of India Private Ltd., Vs. The Management and others* [AIR 1973 SC 1227 = 1973(1) SCC 813], *Bharat Forge Company Ltd., Vs. A.B. Zodge and another* [AIR 1996 SC 1556], whether the findings of the enquiry officer are perverse or not, should be decided by the Labour Court or the Tribunal, as the case may be, peremptorily so as to deliver its part I judgment. If the findings are perverse, the entire enquiry would stand vitiated, as held in *Bharat Forge (supra)*. Then the MSRTC would have got the opportunity of conducting a denovo enquiry in view of the judgment of the Honourable Apex Court (five judges) in the matter of *Karnataka State Road Transport Corporation Vs. Laxmidevamma & another* [2001

(II) **CLR 640**]. The Industrial Court noticed this perversity in the impugned judgment.

12. In *H.H. Pujar (supra)*, the Honourable Apex Court concluded that once the fairness of the enquiry was not questioned, non examination of the passengers would not affect the legality of the enquiry.

13. In the case of *Rattan Singh (supra)*, the Honourable Apex Court has held that strict and sophisticated rules of evidence would not apply to domestic enquiries as like the applicability of the Indian Evidence Act to the matters before the Courts. Specific observations of the Honourable Apex Court are found in paragraph 4 which read as under :-

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this

proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender or independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunals cannot be held good. However, the courts below misdirected themselves, perhaps in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halbsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence – not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamenlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order in

invalid on that ground".

14. The Honourable Apex Court has further held in the matters of ***KSRTC Vs. B. S. Hullikatti [AIR 2001 SC 930 = (2001) 2 SCC 574]*** and ***Divisional Controller, KSRTC Vs A. T. Mane 2004 (supra)***, that non examination of passengers in the domestic enquiry would not be fatal to such enquiries.

15. The learned Division Bench of this Court in the matter of ***Hidayatali (supra)***, has concluded that once a conductor is found to have issued used tickets or has allowed passengers to travel ticketless, non examination of the passengers or non checking of the cash bag would not vitiate the order of dismissal.

16. In ***Basudeo Chaudhary (supra)***, the Honourable Apex Court has concluded that misappropriation committed by a bus conductor for an amount of Rs. 5.35 and a total loss of Rs. 65/- would not be a decisive factor. The conduct of committing misappropriation is sufficient to warrant the punishment of dismissal from service. Similarly, the view taken by the

Honourable Apex Court in the matter of *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourarana Sangha Etc. [2000 AIR SCW 3439 = AIR 2000 SC 3129 = (2000) 7 SCC 517]*, and by the learned Division Bench of this Court in the matter of *P.R. Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33]*, is that the act of misappropriation, even of a small amount, would not render the punishment of dismissal, disproportionate.

17. Considering the above, it is apparent that the judgment of the Labour Court is grossly perverse and erroneous and the Industrial Court has appropriately set it aside.

18. The learned Advocate for the petitioner has strenuously contended that the jurisdiction of the Industrial Court under its revisional powers provided in Section 44 would restrict the Industrial Court from appreciating the evidence threadbare. Though in principle the learned Advocate is right, the fact remains that it is the duty of a revisional authority or Court to notice the perversity in the findings of the lower authority. If

the judgment of the Labour Court is against the established principles and tenets of law, such a judgment cannot be sustained.

19. The learned Advocate for the petitioner submits that the petitioner had continued in employment till 1991 when he was again dismissed for another misconduct of absenteeism. He has no instructions as to what happened to the said cause of action subsequently. He, however, prays that whatever service benefits that the petitioner may have earned on account of the interlocutory orders passed by the Labour Court and the Industrial Court, like payment of wages etc., the respondents be restrained from recovering them from the petitioner.

20. I am of the view that though the petitioner continued in employment on account of interlocutory orders, he has discharged his duties in between 1984 to 1991. He has been paid his wages for the work done which cannot be recovered by the respondent Corporation merely because the order of dismissal issued in 1984 has now been sustained by the Court. The respondent, therefore, shall not recover the benefits as it

has been paid to the petitioner during his tenure of employment till 1991 or till the date he had actually worked.

21. Considering the above and having noted that the Labour Court has adopted a procedure which is alien to Labour jurisprudence, I could have directed that the matter be remanded to the Labour Court for enabling the MSRTC to conduct a denovo enquiry. However, I am not doing so taking into account the fact that the matter pertains to 1984, which is almost 35 years ago and in view of the observations of the Honourable Apex Court in the matter of *Ku. Pushpa Ramdas Zatake Vs. The Divisional Controller, Maharashtra State Road Transport Corporation*, decided on 09/07/2018 in *Petition (s) for Special Leave to Appeal © No(s). 22618/2017*, wherein it was held that such old matters should be given a 'quietus'.

22. In view of the above, this petition, being devoid of merit, is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

shp/-