

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

WRIT PETITION NO. 3693 OF 1999

Divisional Controller
Maharashtra State Road
Transport Corporation
Latur

...Petitioner

Versus

D. B. Hibare
R/o Udgir, Tq. Udgir
Dist. Latur.

...Respondent

...

Advocate for the Petitioner : Shri M. K. Goyanka with
Shri Manoj D. Shinde
Advocate for the Respondent : Smt. M. S. Jagtap

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th JUNE, 2019.

...

ORAL JUDGMENT :

1. None had appeared for the respondent employee on 02/05/2016. On 06/05/2019, this matter was taken up for final hearing in the special final hearing drive in vacation. As none was present, this matter was posted today for dismissal.

2. I have considered the submissions of the learned

Advocate for the Corporation, who has drawn my attention to the impugned judgments of the Labour Court and the Industrial Court.

3. The learned Advocate for the respondent employee has strenuously opposed this petition. She submits that the judgments delivered by the Labour Court and the Industrial Court are based on the established principles of law and call for no interim relief. She has relied upon the record available and informs that the respondent was reinstated in service, was continued and has superannuated.

4. The respondent original complainant had approached the Labour Court by preferring complaint ULP No. 77/1992 challenging the show cause notice proposing the punishment of dismissal, dated 18/11/1992. The workman submitted his reply on 23/11/1992. Before the Corporation to take a decision in his matter, he approached the Labour Court in complaint ULP No. 77/1992. He was granted interim relief in the nature of continuation of his services.

5. On 26/11/1992, the Corporation informed the Labour Court that the respondent has been dismissed from service by way of a punishment. Interim relief was granted to the respondent after he was already terminated. The Labour Court allowed his complaint by the impugned judgment dated 30/06/1993 and the Corporation preferred a Revision (ULP) No. 63/1993. The said revision was dismissed on 05/03/1999 and he was reinstated in service on 27/11/1992. He attained the age of superannuation on 31/01/2008 and the Management has not paid his provident fund and gratuity due to the pendency of this petition.

6. It appears from the record that though the respondent employee had assailed the departmental enquiry and had questioned the findings of the enquiry officer, the Labour Court did not frame two issues as to (i) whether the enquiry is vitiated and (ii) whether the findings of the enquiry officer are perverse. This is mandatorily required to be done in the light of the law crystalized by the Honourable Apex Court in the matters of *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].

7. In a single judgment, the Labour Court on the one hand, vitiated the enquiry on the ground that the passenger travelling with used tickets issued by the respondent conductor was not examined. On the other hand, the Labour Court concluded that even if it is presumed that the respondent has committed misappropriation, the same is for a meager amount of Rs. 17/- and hence his dismissal from service was considered to be shockingly disproportionate.

8. *Insofar* as non examination of bus passengers is concerned, this issue has been settled by the Honourable Apex Court 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)*. Non examination of

passengers would not vitiate the enquiry.

9. *Insofar* as proportionality of the punishment is concerned, the Honourable Apex Court has held in *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [2000 AIR SCW 3439 = AIR 2000 SC 3129 = (2000) 7 SCC 517]*, that the amount misappropriated is not decisive. An employee indulging in corruption needs to be removed from service.

10. The Honourable Apex Court in the matter of *Damoh Panna Sugar Rural Regional Bank Vs. Munna Lal Jain, 2005 (104) FLR 291 and Biecco Lawrie Limited and another vs. State of West Bengal and another, [(2009) 10 SCC 321]*, has held that merely because a Court may find that the punishment is disproportionate, would not vest jurisdiction in the Court to interfere with the quantum of punishment. Unless the punishment is found to be shockingly disproportionate and it shocks the judicial conscience of the Court, no interference is called for.

11. The learned Division Bench of this Court has held in ***P.R. Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33]***, that a small amount of misappropriation would not be a ground for showing sympathy towards such a workman. A person indulging in misappropriation deserves to be removed from service.

12. In the light of the above, the judgment of the Labour Court dated 30/06/1993 is rendered unsustainable and is quashed and set aside. Consequentially, complaint (ULP) No. 77/1992 stands dismissed. As an effect, the impugned judgment of the Industrial Court dated 05/03/1999 stands quashed and set aside and the revision (ULP) No. 63/1993 stands disposed off.

13. In the above situation, as the Labour Court has failed to follow the prescribed procedure in law, the matter could have been remitted to the Labour Court for a fresh decision. The dispute is 27 years old. In a similar situation, the Honourable Apex Court has held in the matter of ***Ku. Pushpa Ramdas Zatake Vs. The Divisional Controller, Maharashtra State***

Road Transport Corporation, Jalgaon vide order dated 09/07/2018 in Petition (s) for Special Leave to Appeal © No(s). 22618/2017, that in such matters, a quietus should be accorded to such litigation.

14. It is informed that the respondent was reinstated in service as this Court merely stayed the back wages on the condition of depositing Rs. 50,000/- in this Court. The respondent workman has already withdrawn the amount of Rs. 50,000/- under the leave granted by this Court. The learned Advocate for the petitioner informs that the provident fund and gratuity have not been paid to the respondent.

15. Since I have concluded that the findings of the enquiry officer cannot be branded as being perverse on the ground that bus passengers were not examined in the enquiry, the charges against the respondent workman stand proved by the enquiry conducted by the Corporation. I have also concluded that the punishment of dismissal from service is commensurate to the gravity and the seriousness of the misconduct of misappropriation committed by the respondent. However, as

the respondent was already reinstated and has earned his wages for the work done, there can be no recovery from the respondent. So also, as he has already withdrawn Rs. 50,000/- from this Court towards back wages, the said amount also should not be recovered by the petitioner Corporation. Provident Fund Accumulations is a right of an employee and the respondent, therefore, would be at liberty to withdraw the P.F. Accumulations by following the due procedure of approaching the P.F. Authorities and not any other authority.

16. In the above backdrop, as I have held that the charges are proved against the respondent and the punishment of dismissal from service is commensurate, the petitioner shall deprive the respondent of the gratuity amount.

17. This petition, is therefore, partly allowed in terms of the above directions and rule is made partly absolute.

(RAVINDRA V. GHUGE, J.)

shp/-