

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

WRIT PETITION NO. 4104 OF 1999

Suresh s/o Himatrao Patil,
Age : 43 years, occu. Nil,
R/o : Plot No. 130, Krantinagar,
Shirpur, Dist. Dhule

...PETITIONER

VERSUS

1) The Divisional Controller,
M.S.R.T.C. Dhule.

2) The Divisional Traffic Suptd.
(Default), M.S.R.T.C. Dhule.

...RESPONDENTS

...

Advocate for the Respondents : Shri Dipesh Pande h/f.
Shri D. S. Bagul

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th JUNE, 2019.

...

ORAL JUDGMENT :

1. I had passed the following order on 06/05/2019 :-

"1. Though this matter is listed for final hearing in the special Board for final hearing in vacation, none present for both the sides.

2. Stand over to 20/06/2019 for "passing orders" on

dismissal.

3. *C.A. No. 3004/2001, seeking final hearing in the Writ Petition, does not survive and stands disposed off."*

2. Appearance of the Advocate is shown. Yet none appears for the petitioner.

3. Though this petition could be dismissed for want of non prosecution, I have considered the pleadings of the petitioner and I have perused the petition paper book with the assistance of the learned Advocate for the Corporation.

4. The petitioner was working as a "bus conductor" with the Corporation from 26/12/1981. On 09/07/1991, while he was on duty in the bus from Badwani to Dhule, the bus was checked at Rajapur by the Flying Squad and it was noticed as under :

(a) Three passengers were travelling from Badwani to Rajapur, who had paid Rs. 21/- to the petitioner, but had not received the tickets as the petitioner did not issue them the tickets.

(b) After seeing the checking officials, he hurriedly tried to issue tickets bearing Nos. 874462 to 874464 by resorting to a wrong punching.

(c) The petitioner obstructed the checking officials by behaving arrogantly and he tore the spot statement of the passenger witnesses.

(d) He started instigating the passengers so as to avoid giving any statement.

(d) He was found with Rs. 57.25/- in excess.

5. The checking squad took possession of the necessary documents, the way bill, the excess cash and prepared a detailed report which was submitted to the Department. The petitioner was charge sheeted and after the conclusion of the enquiry, he was found guilty. He was dismissed by order dated 21/01/1992.

6. The petitioner chose not to lead any evidence and relied upon the enquiry papers. He denied that he had torn the statement of witnesses. It was contended that the enquiry be vitiated as the statement of passengers were not recorded.

7. By judgment dated 28/12/1994, his complaint ULP No. 211/1992 was dismissed. Subsequently his Revision Application (ULP) No. 26/1995 was also rejected.

8. The Honourable Apex Court has held in *KSRTC Vs. B. S. Hullikatti [AIR 2001 SC 930 = (2001) 2 SCC 574]* and *Divisional Controller, KSRTC (NWKRTC) Vs. A. T. Mane, 2004 AIR (SC) 4761*, that non examination of witnesses would not vitiate the enquiry.

9. 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 a misappropriation even of a small amount would warrant the punishment of dismissal.

10. In *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], it has been held that unless the punishment shocks the judicial conscience of the Court and appears to be shockingly disproportionate, 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 an employee should not be retained in service if the charge of misappropriation is proved.

12. Considering the above, I do not find any merit in this petition and the same is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

shp/-