

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8568 OF 2019

Ashok Ganpat Ghatkar,
Age-57 years, Occu-Nil,
R/o Kotul, Tal.Akole,
Dist.Ahmednagar
PETITIONER

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VERSUS

1. Divisional Controller,
Maharashtra State Road Transport
Corporation, Sarjepura,
Ahmednagar
2. Divisional Traffic Superintendent,
Competent Authority M.S.R.T.C.
Ahmednagar Division, Sarjepura,
Ahmednagar

-- RESPONDENTS

Ms.S.P.Kakade (Matkar), Advocate for the petitioner.
Mr. M.K.Goyanka with Mr.M.D.Shinde, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/07/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment of the Labour Court dated 01/04/2014 by which complaint (ULP) No.123/2002 has been

dismissed. The petitioner is also aggrieved by the judgment of the Industrial Court dated 16/07/2018 by which Revision (ULP) No.13/2015 has been dismissed.

3. I have called upon Mr.Goyanka, learned Advocate, who normally appears for the MSRTC, Ahmednagar, which is a respondent in this proceeding, to appear in this case.

4. I have heard the learned Advocates for both the sides and with their assistance, I have gone through the petition paper book.

5. The petitioner joined the respondent/Corporation as a 'Clerk' in the Cash Department in the Ahmednagar Division in 1985. He claimed to be on leave from 23/10/1995 for 1 day. He resumed duties on 24/10/1995. He found that a Junior Clerk had marked on the relevant papers that an amount of Rs.4,988/- was missing. After the petitioner checked the accounts once again, it was found that there was a shortfall of Rs.3,630/-. The petitioner was charge sheeted on 03/10/1996. The enquiry was conducted over a period of 7 years and he was issued with a second show cause notice on 29/06/2002 proposing the punishment of dismissal from service for mis-conduct of mis-appropriation. Copy of the Enquiry Officer's

Report was supplied to him.

6. The petitioner, instead of replying to the second show cause notice, preferred Complaint (ULP) No. 123/2002 for challenging the show cause notice. He was initially granted *ex-parte* ad-interim protection on 30/11/2002. His application for interim relief was subsequently rejected on 16/03/2004. He approached the Industrial Court in Revision (ULP) No.23/2004, which was dismissed. He then approached this Court in WP No.5430/2004 and the same was dismissed. Consequentially, the respondent/Corporation proceeded with the second show cause notice and awarded the punishment of dismissal from service by order dated 16/10/2004. In the enquiry, he was held guilty of mis-appropriation of an amount of Rs.3,630/-. The learned Advocate for the respondent/Corporation points out that earlier, the petitioner was held guilty of misappropriating Rs.8,000/- and he was awarded a minor punishment and the said amount was fully recovered from him. His past service record is therefore is seriously blemished.

7. I find that the Labour Court rightly framed 2 issues in the light of the judgment delivered by the Hon'ble Apex Court in the matter of Workmen of Motipur Sugar Factory Private Ltd.,Vs. The Motipur

Sugar Factory Private Limited, AIR 1965 SC 1803, 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, Shambhu Nath Goyal Vs. Bank of Baroda, AIR 1984 SC 289 and Bharat Forge Company Ltd., Vs. A.B.Zodge and another, AIR 1996 SC 1556. It dealt with the 2 issues as to whether the petitioner proves that the enquiry was vitiated and as to whether the findings of the Enquiry Officer are perverse. By an order dated **18/06/2008**, the Labour Court concluded that the enquiry was conducted in a fair and proper manner. By an order dated 14/02/2014, it concluded that the findings of the Enquiry Officer are sustainable and are not perverse.

8. Surprisingly, while deciding the complaint, the Labour Court once again went into the charges and the evidence recorded in the enquiry. In fact, the Labour Court permitted the petitioner to lead evidence on the charges proved against him. This approach of the learned Labour Court (Coram : D.H.Sharma), is completely alien to labour jurisprudence. Once the enquiry is sustained and the findings of the Enquiry Officer are not perverse, the charges stand proved, until such Part I judgment of the Labour Court is set aside by any Superior Court. What remains to be decided by the Labour

Court is as to whether the punishment awarded is shockingly disproportionate to the gravity and seriousness of the mis-conduct after considering the past service record, in view of the judgment delivered by the Hon'ble Apex Court in the matter of Kumaon Mandal Vikas Nigam Ltd. vs Girja Shankar Pant & Ors [(2001) 1 SCC 182 = AIR 2001 SC 24].

9. Notwithstanding the above, the Labour Court concluded that the charge stood proved and the punishment awarded was not shockingly disproportionate. The petitioner preferred a revision petition. The learned Industrial Court (Coram : D.H.Deshmukh) has rightly considered the Law and has correctly observed in paragraph No.8 that once the findings of the Enquiry Officer are not perverse and the enquiry is sustained, the Labour Court only has to find out whether the punishment awarded is shockingly disproportionate, keeping in view Item 1(g) Schedule IV of the MRTU and PULP Act. The Industrial Court rightly observed that the petitioner has not challenged the orders upholding the enquiry and the findings of the Enquiry Officer and therefore the Industrial Court was required to exercise its revisional powers on a very short issue. The Industrial Court dismissed the revision on the ground that the punishment is not shockingly disproportionate.

10. The learned Advocate for the petitioner has strenuously canvassed the grounds formulated in the memo of the petition. The petitioner, however, has limitations in this matter since the orders of the Labour Court upholding the enquiry and the findings of the Enquiry Officer have not been assailed either before the Industrial Court or before this Court. The only issue is as to whether the punishment is shockingly disproportionate.

11. In view of the law laid down by the Hon'ble Apex Court in the matter of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [(2000) 7 SCC 517 = 2000 AIR SCW 3439 = AIR 2000 SC 3129] and Kumaon Mandal (supra) and considering the view taken by the learned Divisional Bench of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33], an act of misappropriation is always considered to be a grave and serious mis-conduct. So also, the petitioner had earlier committed a similar mis-conduct.

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

13. The learned Registrar (Judicial) shall forward a copy of this judgment to the learned Judicial Officers Mr.D.H.Sharma and Mr.D.H.Deshmukh.

(Ravindra V.Ghuge, J.)