

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4418 OF 2018

Sachin Charlus Mirpagar,
Age: 40 years, Occu: service,
R/o At Post Shastri Nagar,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar

Petitioner

Versus

1 Divisional Controller
Maharashtra State Road Transport Corporation,
Ahmednagar Division,
Sarjepura Kothla
Ahmednagar

2 Divisional (Traffic) Superintendent,
Competent Authority
Maharashtra State Road Transport Corporation,
Ahmednagar Division, Sarjepura,
Kothla, Ahmednagar

Respondents

Mr.A.S. Kulkarni with Mr. P.V. Barde advocate for the petitioner

Mr.B.S. Deshmukh with Mr. Kunal Kale advocates for Respondents

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CORAM : **RAVINDRA V. GHUGE, JUDGE**

(Date : 6th MARCH, 2019)

ORAL JUDGMENT

1 Rule. Rule made returnable forth-with and heard finally by
the consent of the parties.

2 Perused the record available.

3 The petitioner employee, by this petition, has put-forth prayer clause 13-A and B, as under:-

“ (A) By issuing the appropriate writ, order, direction or any other appropriate order in the nature of writ, the Hon'ble High Court may be pleased to quash and set aside the Exh.O-5 in Revision (ULP) No.34/2017 on 12.04.2018 by Industrial Court Ahmednagar, and further quash and set aside the order passed below Exh. U-2 in Complaint (ULP) No.09/2017 on 05.10.2017 by Labour Court, Ahmednagar.

(B) By issuing the appropriate writ, order, direction or any other appropriate order in the nature of writ, the Hon'ble High Court may be pleased to allow the application below Exh. U -2 filed by petitioner in Complaint (ULP) No.0-9/2017. ”

4 The petitioner is working as a Junior Assistant with the respondent Corporation. In 2006, he was transferred to Shevgaon depot. It is his contention that, on 21.1.2017, he performed his duties in the second shift at the concerned workshop beginning at 5 p.m. and ending at 2 a.m. on 22.1.2017. After shift hours, while he was proceeding towards his house, he was arrested by the Police Authorities at 3 a.m. on the ground that an FIR was

registered against him at Bhingar Police Station. He, was, therefore, suspended w.e.f. 23.1.2017 and was subsequently served with a charge sheet dated 27.1.2017, alleging therein that, he has committed a misconduct, which amounts to moral turpitude. After conclusion of the enquiry, he was served with the second show cause notice dated 29.3.2017, proposing the punishment of dismissal from service.

5 It is pertinent to note that, the Corporation has issued the charge sheet, only for the reason that, the petitioner was arrested and was in Police custody for more than 48 hours. His involvement in the alleged case of robbing a lady was published in Marathi Dainik Pudhari and this tarnished the image and reputation of the Corporation. The charge of theft and tarnishing the image of the Corporation, amounts to an act of moral turpitude.

6 The petitioner challenged the second show cause notice dated 29.3.2017 by preferring Complaint ULP. No.9/2017 under section 28(I) read with section 30(2), invoking item 1 of schedule IV of the MRTU & PULP Act, 1971. He was granted *exparte* ad Interim protection and he continued in employment. By order dated 5.10.2017, the Labour Court rejected the Application for Interim Relief Exhibit

U-2. The petitioner approached the Industrial Court, by preferring a Revision ULP No.34/2017 under section 44 of the said Act. By the impugned order Exh.O5 dated 12.4.2005, the Application for interim relief was rejected.

7 The contention of the petitioner is that, while he was returning home on 21.1.2017, he, in fact, noticed that unknown persons had robbed a lady by name Pramila Mhatre. An amount of Rs.24,000/- was snatched from her. As they were trying to get away, the petitioner intercepted the thieves and tried to catch hold of them. This created a commotion and out of mistaken identity, the petitioner was apprehended and believed to be one of the robbers for which, he was charged under section 392, IPC. His contention is that this incident has occurred outside the establishment premises and the said issue does not, in any way, relate to the working of the petitioner with the Corporation or the discipline of the Corporation. Merely because a news appeared in the news papers regarding the arrest of the petitioner, that the Corporation placed him under suspension, on account of being in Police custody beyond 48 hours. He was charge sheeted for an offence of causing damage to the image and reputation of the Corporation and that he had committed an act which amounted to moral turpitude.

8 Grievance of the petitioner is that, unless the criminal case was decided and the offence was proved against him, it cannot be concluded that he had committed a theft on a public road, which would reflect on his conduct and character. He hastens to add that a Judgment has been delivered on 27.1.2018 by the learned Judicial Magistrate, First Class in Regular Cr. Case No.208/2017 and he has been acquitted. The said Court concluded that because the petitioner chased the thieves, that they threw the bag and fled on their motorcycle. The eye witnesses as well as the victim stated that they never saw the petitioner robbing the lady.

9 The Learned Advocate for the Corporation has strenuously defended the domestic enquiry and the proposed punishment. His contention is that the Court should not interject in the disciplinary proceedings as the law mandates that the disciplinary proceedings must reach a logical end in accordance with the Discipline & Appeal Rules of the Corporation.

10 He relies upon the Apex Court Judgment in the matter of ***Hindustan Lever Limited versus Ashok Vishnu Kate (1995 (6) SCC 326)***, especially paragraph No. 54 to contend that protection against the proposed punishment should be granted in rarest of rare cases. His further argument is that as

the reputation of the Corporation was maligned on account of the behaviour of the petitioner and since he was involved in a case of theft and was arrested, he was guilty of an act which amounts to moral turpitude.

11 I have considered the strenuous submissions of the learned counsel for the respective parties and have gone through the record available.

12 It requires no debate that, the Rule of Law in this country, in matters of crimes and offences is that a charge sheeted employee or an accused, is 'innocent until proven guilty'. It is not that an accused or a charge sheeted employee is 'guilty until proven innocent'. In service jurisprudence, the law is well settled that a charge sheeted employee is not under a mandate to establish his innocence. The onus and burden of proving a charge leveled upon an employee lies on the shoulders of the management and only after the burden is discharged, that the onus will shift on to the charge sheeted employee to disprove the charges leveled upon him. Onus Probandi is on the employer.

13 The Honourable Apex Court (Three Judges bench) in the matter of ***M/s Glaxo Laboratories (I) Ltd versus Presiding Officer, Labour Court, Meerut and others*** (AIR 1984 SC 505)

has concluded that numerous acts of misconducts, such as drunkenness, riotous or disorderly behaviour, indecent behavior, fighting amongst workers, use of abusive language or committing acts subversive of discipline, would not be per-se misconducts unless each of them has its roots and manifestation in the premises of the establishment.

14 As regards what would constitute a misconduct in the vicinity of the establishment, has been considered in Glaxo (supra) in paragraph Nos.13 and 14 which read as under:-

“13. After reading clause 10, Mr.Shanti Bhushan contended that the expression 'committed with the premises of the establishment or in the vicinity thereof can qualify only the expression 'any act subversive of discipline and efficiency and any act involving moral turpitude' but not the earlier portion of the clause. Numerous acts of misconducts have been collocated in clause 10, such as drunkenness, fighting, indecent or disorderly behaviour, use of abusive language, wrongfully interfering with the work of other employees etc. Says Mr. Shanti Bhushan that these acts of misconducts are per-se misconducts that each one of them cannot have any co-relation to the time or place where it is committed and each one of them is an act of misconduct irrespective of the time and place where it is committed. Expanding the submission, it was urged that drunkenness is such a socially reprehensible action that if it is committed within the premises of the establishment or in the vicinity thereof or any where else

at any point of time, it would none the less be an act of misconduct comprehended in clause 10 and punishable under Standing Order 23. If this construction were even to be accepted, the employer will have more power than the almighty State because State chooses to punish drunkenness in public place. But on the construction canvassed for if a man consumes liquor in his own house with the doors closed and gets drunk, the employer can still fire him. If a man uses abusive language towards his close relation in his own house with closed door, the employer would be entitled to fire him, and this approach overlooks the purpose of prescribing conditions of service by a statute. To enable an employer to peacefully carry on his industrial activities, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconducts when committed within the premises of the establishment. The employer has hardly any extra territorial jurisdiction. He is not the custodian of general law and order situation nor the Guru or Mentor of his workmen for their well regulated cultural advancement. If the power to regulate the behaviour of the workmen outside the duty hours and at any place wherever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconducts to be enforced within the premises where the workmen gather together for rendering services. The employer has both the power and jurisdiction to regulate the, behaviour of workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment. When the broad purpose for

conferring power on the employer to prescribes the acts of misconduct that may be committed by his workmen is kept in view, it is not difficult to ascertain whether the expression 'committed' within the premises of the establishment or in the vicinity thereof would qualify each and every act of misconducts collocated in clause 10 or in the last two only, namely, 'any act subversive of discipline and efficiency and any act involving moral turpitude'. To buttress this conclusion, one illustration would suffice. Drunkenness even from the point of prohibitionist can at best be said to be an act involving moral turpitude. If the misconduct alleging drunkenness as an act involving moral turpitude is charged, it would have to be shown that it was committed within the premises of the establishment or vicinity thereof but if the misconduct charged would be drunkenness the limitation of its being committed within the premises of the establishment can be disregarded. This makes no sense. And it may be remembered that the power to prescribe conditions of service is not unilateral but the workmen have a right to object and to be heard and a statutory authority namely, Certifying Officer has to certify the same. Therefore, keeping in view the larger objective sought to be achieved by prescribing conditions of employment in certified Standing Orders, the only construction one can put on clause 10- is that the various acts of misconducts therein set out would be misconducts for the purpose of Standing Order 21 punishable under Standing Order 23, if committed within the premises of the establishment or in the vicinity thereof.

14. What constitutes establishment or its vicinity

would depend upon the facts and circumstances of each case.

15 In the matter of ***Mulchandani Electrical & Radio Industries Ltd., versus The workmen(AIR 1975 SC 2125)***, the Honourable Apex Court (three Judges bench), once again dealt with a similar situation, wherein a workman had assaulted another workman at a far-off-place. The misconduct was committed while returning back home from duties. It was concluded that, though the misconduct has occurred beyond the premises of the establishment, the act committed by the workman would have its effect and would manifest in the discipline of the establishment. Such an act was held to have been committed on the premises of the establishment.

16 It was observed in Mulchandani (supra) in paragraph No.6 as under:-

“6. On the question of misconduct the relevant Standing Order is Standing Order 24 (1) which is in these terms:

“24. The following acts and omissions on the part of a workman shall amount to misconduct:-

XX XX XX XX
XX

(1) Commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment;

XX XX XX XX
XX

It was not disputed before us that the allegation of assault, if proved, would be an act subversive of discipline; what was contended on behalf of the respondent was that the alleged assault having taken place in the train between Thana and Mulund which was obviously outside the premises or precincts of the establishment, was not covered by Standing Order 24 (1). The Labour Court also found that the alleged assault did not amount to misconduct under Standing Order 24 (1) which, it was held, was restricted to acts and omissions inside the premises of the establishment. In our opinion, on a plain reading of the clause, the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequence of such an act manifests itself. In other words, an act wherever committed, if it has the one effect of subverting discipline or good behaviour within the premises or precincts of the establishment will amount to misconduct under Standing Order 24 (1). We are unable to agree that Standing Order 24 (1) leaves out of its scope an act committed outside though it may result in subversion of discipline or good behaviour within the premises or precincts of the establishment in question. Such a construction in our view would be quite unreasonable."

17 The single Judge of this Court in the matter of **Kolhapur Zilla Shetkari Vinkari Sahakari Soot Girani Limited versus Ramchandra Shankar Shinde & another (1990 2 CLR 803)** referred to the Judgment delivered by the Honourable Apex Court in case of Glaxo Laboratories (supra) and Mulchandani Electrical & Radio Industries (supra) and considered the facts of the case, wherein the badli worker had assaulted a clerk Mr. Devtale and

also one employee of ESIC dispensary in the presence of the Doctor-in-charge of ESIC dispensary. An enquiry was conducted and the employee was dismissed. This Court set aside the dismissal on the ground that the charge sheeted employee had a grudge against another employee and had assaulted him outside the factory premises. Such a private grudge was compared with an employee getting drunk in his house and beating his own wife.

18 I am unable to agree with the view taken by the learned single Judge in ***Kolhapur Zilla Shetkari Vinkari Sahakari Soot Girani Limited***'s case (supra) as it is contrary to the law laid down in *Mulchandani Electrical* (supra), *Glaxo Laboratories* (supra) and ***Palghat BPL & PSP Thozhilali Union versus BPL (I) Limited & another (1995 (6) SCC 237)***. In *BPL* (supra), a worker who was standing at the bus stop outside the factory establishment, had thrown a stone at a vehicle of an officer, which was passing by and the stone caused injuries to the said officer. No doubt, the Honourable Apex Court showed leniency towards such a worker, but, this act, having been committed on the premises of the establishment, was held to be a misconduct.

19 Similar is the view taken by the learned single Judge of this

Court in the matter of **Bajaj Auto Limited versus Kalidas Devram Patil (1999 Vol.III, Mh.L.J. 857)**. The view taken by the learned single Judge was sustained by the learned Division Bench of this Court in the matter of **Kalidas D Patil Versus Bajaj Auto Limited, LPA No.67/2000**.

20 In Bajaj Auto (Supra), the learned single Judge observed in paragraph No.9, as under:-

“ 9. As the learned Judge of the Labour Court has held that the inquiry was conducted in keeping with the principles of natural justice and the findings of the Inquiry Officer were not vitiated, it would be necessary to take into consideration the enquiry report submitted by the Inquiry Officer to decide the first issue. Amongst the witnesses examined before the Inquiry Officer, it would be worthwhile to mention regarding the testimony of one Shri V.S. Abhyankar, who was working at the relevant time as Assistant Security Officer with the Petitioner-company and was in fact staying in the neighborhood of Shri Pillai. It is clear from the testimony of Shri Abhyankar as well as other witnesses that the assault on Shri Pillai was a preplanned event inasmuch on 10th February, 1998 Shri Abhyankar had spotted the respondent employee in the morning in the vicinity of Shri Pillai's residence while he was reaching the bus to go to the factory. The Respondent-employee has been identified to be the person who directly assaulted Shri Pillai first with Bamboo sticks and then he picked up the earthen pot and threw on the head of Shri Pillai. The events do go to show that the respondent employee along with his colleagues and first identified the residence of Shri Pillai by visiting the area in the morning, he was aware that Shri Pillai, though was not

covered by the lock out notice, was attending the duties. It is further proved that in the evening Shri Pillai returned from the factory he entered the house of Shri Samuel and it was under these circumstances that Shri Samuel was first picked up by the respondent. However, this does not lead to the conclusion that Shri Pillai was assaulted by way of misplaced identity. The learned Judge of the Labour Court failed to apply his mind to the depositions of the witnesses, who were examined before the enquiry officer in support of the charges leveled against him and if these depositions are considered, the findings that the incident of assault was an isolated incidence and it was by way of a misplaced identity cannot be sustained. In the case of Palghat BPL (supra) while the workmen were on strike as the management had suddenly backed out from the settlement in conciliation proceedings. On 14th March, 1983 while the three concerned workmen were standing at the BPL bus stop on Pollachi road, National Highway diversion, they cited the officers passing through the way and assaulted one Officer by name Shri N.V. Subramanian and others. The Labour Court recorded a finding that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. However, the Supreme Court observed that the appellants alone were not members of the assembly of the workmen standing at the BPL bus stand and who had hurled stones towards the officers. It was under these circumstances the Apex Court held that the discretion exercised by the learned Judge of the Labour Court under section 11-A of the Industrial Disputes Act to consider the quantum of punishment was justified and it did not call for interference. In the instant case, the eye witnesses to the incidence have clearly stated that it was the respondent - employee who assaulted Shri Pillai by Bamboo sticks and threw the earthen pot on his head sustaining grievous hurt on his forehead. The intention to assault Shri Pillai was clear and loud in the

behaviour of the respondent-employee and his colleagues. If regards be had to the attaining circumstances, the intention was double edged viz. (i) to ensure that Mr. Pillai was taught a lesson and he would not go to the factory for work and (ii) similarly placed employees who were attending to work, would refrain from going to the factory. In short, it was an action aimed at creating a terror amongst the employees reporting for duty and the assault was not due to any personal enmity or any other reason un-connected with the working of the factory.”

21 In the instant case, the facts are glaring. The petitioner is said to have chased the robbers and on account of the same, the bag containing money was dropped by the robbers on the road and they had fled. This would not amount to a misconduct, committed on the premises of the establishment. I do not find any role of the employer in proving a charge of theft leveled by the State against a civilian. Even if it is assumed for the sake of assumption that, the employer can consider the said incident as a misconduct, it is beyond comprehension that, an employer would level a charge in connection with such theft as if the said charge can be proved in a domestic enquiry.

22 The learned counsel for the Corporation strenuously submits that, the Corporation was not dealing with the charge of theft, but intended to prove that the conduct of the petitioner,

which was publicized in the newspaper, led to the tarnishing of its image and reputation. I am unable to accept the said contention for the reason that, unless the offence was proved against the petitioner, it cannot be concluded that, he was guilty of an act which amounted to moral turpitude. Unless a charge of moral turpitude is proved, an employee cannot be deprived of his employment.

23 The Learned counsel for the Corporation has gone into the charge sheet threadbare and has read it-out in the open Court. He submits that, the only charge leveled upon the petitioner was that the news of his arrest was published in Daily Pudhari dated 21.1.2017. Hence the management initiated the enquiry against the petitioner. So also, the petitioner was kept in Police custody for ten days, which is not disputed. The charge leveled upon him was that he has brought the employer to disrepute. I find that no employer can proceed against an employee for an incident unconnected with the establishment or its premises, alleging that that the employer was brought to disrepute, unless the employer can prove that the employee had committed an offense that brought the employer to disrepute.

24 In the instant case, the petitioner has been exonerated of the charge of having committed a theft, under section 392 of IPC.

As such, no offence is proved against him. Consequentially, the Corporation cannot take a stand that, the petitioner has committed an act which amounted to moral turpitude. Had such an offence been proved in criminal trial, the Corporation could have then dispensed with the services of the petitioner, even without any enquiry, in view of the settled law that, if an employee is convicted, the employer can dispense with his services, without conducting an enquiry.

25 In view of the above, I do not find that the Labour Court, as well as, the Industrial Court have rightly applied the law to the facts of this case.

26 I, therefore, do not find that the employer was justified in initiating the enquiry against the petitioner, in these peculiar facts of the case.

27 The Learned Advocate for the petitioner submits that in the light of the Judgment of this Court, the complaint itself can be disposed off. The Learned Advocate for the Corporation submits that this Court may pass an appropriate order.

28 In view of above, this petition is allowed. The impugned orders of the Labour Court and the Industrial Court are quashed

and set aside. Complaint ULP. No.9/2017 filed by the petitioner before the Labour Court would not survive and stands disposed off in view of my conclusion that the charge sheet is without basis and the employer could not have initiated an enquiry against the petitioner. The second show cause notice dated 29.3.2017 is, therefore, quashed and set aside. However, it shall be noted that this Judgment shall not be an impediment for the Corporation to take recourse to disciplinary proceedings in the event, the petitioner is charged for some other misconducts, committed during pendency of this litigation or if he suffers an adverse order against his acquittal by the trial Court.

29 Rule is made absolute accordingly in the above terms.

**(RAVINDRA V. GHUGE),
JUDGE**