

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

WRIT PETITION NO.8397 OF 2018

Pandharinath Chandar Karmude,
Age : 53 years,
Occupation : Service as a Conductor,
R/o Godbharle Niwas, Shivaji Nagar,
Latur, Taluka and District Latur.

...PETITIONER

-VERSUS-

The Divisional Controller,
MSRTC Division Office,
Latur.

...RESPONDENT

...

Advocate for the Petitioner : Ms.Reddy Jayshri P.
Advocate for the Respondent : Smt.Reddy Ranjana D.

...

CORAM: RAVINDRA V. GHUGE, J.

**DATE :- 25th March, 2019,
26th March, 2019 and
27th March, 2019.**

Oral Judgment :

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

2 The Petitioner/ original Complainant Employee is aggrieved

by the judgment and order dated 10.07.2018 delivered by the Industrial Court, Latur by which, Revision (ULP) No.26/2015 filed by the Respondent/ MSRTC has been allowed and the judgment of the Labour Court dated 03.12.2014 in Complaint (ULP) No.28/2012 has been quashed and set aside. Consequentially, the punishment of dismissal proposed against the Petitioner has been sustained, in view of the charge of misappropriation having been proved before the Labour Court.

3 The Petitioner is in employment today on account of the interlocutory orders passed by the Courts, including an ex-parte ad-interim order passed on 24.07.2018 by the High Court directing the Corporation, not to terminate the Petitioner.

4 The Petitioner has joined the Respondent Corporation in 1993 as a Bus Conductor. On 01.01.2012, the checking squad of the Respondent Corporation caused a surprise check of the bus traveling from Jalna to Gulbarga. The bus was intercepted at Davatpur Pati, which is about 30 kilometers from Latur and two lady passengers were found to be traveling ticket-less. Their statements were recorded and they revealed that they had paid an amount of Rs.62/- each, to the Petitioner, at Latur and had undertaken the journey upto Umarga. Yet he did not issue tickets to them.

5 The Petitioner was served with a charge sheet and an enquiry was initiated. The Petitioner took the stand that there was a crew change at Latur and he entered the bus as a conductor for the onward journey from Latur to Gulbarga. He stated that the said ladies had boarded the bus at Beed and they took tickets only upto Latur. The Petitioner tried to prevent them for traveling ticket-less from Latur onwards. He contended that the passengers had paid the bus fare right up to Umarga to the earlier bus conductor and he had issued them tickets only upto Latur.

6 The Petitioner was held guilty of the charge of misappropriation of Rs.124/- in the light of the statement of the two lady passengers and the checker. He was issued with the second show cause notice after the Enquiry Officer held him guilty. He rushed to the Labour Court with a ULP complaint u/s 28(1) r/w Item 1 of Schedule IV of the MRTU and PULP Act, 1971. The Labour Court protected the Petitioner and subsequently, delivered it's part-1 order on the issue of the Domestic Enquiry concluding that the enquiry was conducted in a fair and proper manner. However, it was declared that the findings of the Enquiry Officer are perverse thereby vitiating the Enquiry. The Respondent/ Corporation, had reserved its right to conduct a de-novo enquiry. After conducting a de-novo enquiry, the Labour Court delivered it's final judgment on

03.12.2014 concluding that no offence is proved against the Petitioner and the show cause notice dated 05.06.2012, proposing the punishment of dismissal from service, deserves to be quashed and set aside.

7 The Respondent/ Corporation challenged the part-1 order as well as the final judgment, by preferring two revision petitions before the Industrial Court. The Industrial Court has dealt with one revision petition as against the final judgment. In fact, in my view, two revision petitions were not actually required. By the impugned judgment dated 10.07.2018, the Industrial Court allowed the first revision petition filed by the Corporation and set aside the final judgment of the Labour Court dated 03.12.2014. The said second revision petition preferred by the Corporation was disposed of as being infructuous with the conclusion that the Corporation was estopped from challenging the Part I order.

8 The learned counsel for the Petitioner strenuously canvasses the following points :-

- (a) The Petitioner was arguing with the two lady passengers, as they were reluctant to pay the fare from Latur to Umarga.
- (b) After much persuasion, they paid Rs.124/- and before he could issue them the tickets, the bus was subjected to a surprise check at a distance of about 30 kilometers.

- (c) Though he has made a statement to the checking squad that he had received the fare of Rs.124/-, it was on account of the arguments with the ladies that he was unable to issue tickets.
- (d) The checker should have produced the bus passengers in the de-novo enquiry before the Labour Court.
- (e) The Labour Court has rightly recorded that, the statement made by the checker and the statement made by the Petitioner before the checker, cannot be relied upon and that it would be unsafe to rely upon the statement made before the checker.
- (f) The Petitioner did not have any intention to commit misappropriation of the funds of the Corporation.
- (g) The Labour Court rightly concluded that the evidence adduced by the Corporation is not safe to be accepted.
- (h) The Labour Court has rightly concluded that the statement of the Petitioner recorded by the checker, does not mean that the Petitioner/Complainant has admitted his guilt, since he is before the Labour Court contending that he does not admit that he has misappropriated the amount.
- (i) Jurisdiction of the Industrial Court under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU &

PULP Act, 1971"), is limited and it cannot re-appreciate the evidence recorded before the Labour Court.

- (j) Reliance is placed upon the judgments in the matters of *Hoechst Marion Roussel Ltd. vs. Mrs. Rhona Noreha and another*, 2000 (1) ALL MR 535, *Vithal Gatlu Marathe vs. Maharashtra State Road Transport Corporation and others*, 1996 (3) LLN 476 and *Gajanan Shamrao Thakre vs. MSRTC*, (2001) III LLJ 704 (Bom).

9 The learned counsel for the Respondent/ Corporation submits as under :-

- (a) The past service record of the Petitioner is highly blemished.
- (b) In a period of 19 years, he has been punished for allowing the passengers to travel ticket-less after misappropriating fare amounts, on two occasions.
- (c) He was suspended on two occasions for such acts of misappropriation.
- (d) He has been penalized on a few occasions for other lapses while on duty.
- (e) The Labour Court has conducted the proceedings as if it was conducting a criminal trial.
- (f) The Part-1 order of the Labour Court dated 31.07.2014 was

not challenged by the Corporation initially as it preferred to conduct a de-novo enquiry.

- (g) The Corporation preferred two revision petitions for challenging the part-1 order as well as the final judgment of the Labour Court, before the Industrial Court.
- (h) Merely because the Corporation did not challenge the part-1 order immediately and conducted a de-novo enquiry, would not mean that it has acquiesced its right to challenge the part-1 order as well.
- (i) In the de-novo enquiry, the checker was examined and he produced the entire record to indicate that the Petitioner was apprehended misappropriating Rs.124/- and the two lady passengers had deposed before the checker that they had paid the amount to the Petitioner, who did not issue them the tickets.
- (j) The Lady passengers did not state before the checker that they were traveling from Beed and had purchased tickets initially for the Beed- Latur segment.

10 Considering the above, it needs to be scrutinized as to whether, the employer is precluded from challenging the part-1 order merely because the employer conducted the de-novo enquiry. In the

matter of *Suryabhan M. Avhad vs. Mahindra and Mahindra, 2011 (I) CLR 457*, it is concluded that the part-1 order can be subjected to challenge before conducting a de-novo enquiry. It is also concluded that the employer may choose to conduct a de-novo enquiry. There is no Law prohibiting a challenge to the part-1 order as well as the final judgment, if the employer has any grievance subsisting.

11 It is well settled by the Hon'ble Apex Court in the matter of **KSRTC Vs. Laxmidevamma and another, 2001(2) CLR 640** that an employer must reserve his right to conduct a *denovo* enquiry at the first available opportunity in the written statement. Such a right being reserved would not be said to mean that the employer admits that the enquiry is vitiated or the findings of the Enquiry Officer are perverse. Such a right being reserved, is by way of abundant precaution and in view of the Law laid down by the Hon'ble Apex Court.

12 In the above backdrop, if an enquiry is declared as vitiated on account of non observance of the principles of natural justice or on account of the perversity in the findings of the Enquiry Officer, the employer would have the option of challenging the Part I order/ Part I award, as the case may be, before the Industrial Court, if the Part I order is passed under the MRTU and PULP Act, 1971 or before this

Court, if Part I award is under the Industrial Disputes Act, 1947. The other option is that the employer can proceed to conduct a *denovo* enquiry before the Labour Court or the Tribunal, as the case may be. If the employer succeeds in proving the charges in the *denovo* enquiry, there may be no occasion for the Management to approach the Higher Court. However, if the employer suffers an adverse order in the *denovo* enquiry, it may challenge the Part I order/award as well as the final judgment/Part II award before the Higher Court. The rule of estoppel by conduct would not be applicable in such cases.

13 Though this issue is not raised before me by way of a specific challenge, I have dealt with the said aspect keeping in view that the Industrial Court has drawn an unsustainable conclusion that as the Corporation has conducted the de-novo enquiry, it was estopped from challenging the legality of the part-1 order concerning the fairness of the enquiry and the findings of the Enquiry Officer. This is likely to create confusion for the litigants as well as the Lawyers.

14 I find from the record that the Labour Court has practically conducted the case before it as if it was dealing with a criminal trial. It is settled law that a departmental enquiry / a trial in service jurisprudence, is conceptually distinct and different from a criminal trial. The probative

value of evidence in a criminal trial has to be of the highest degree and the offence has to be proved beyond any doubt. In service jurisprudence, the preponderance on the principles of probabilities is the doctrine on the basis of which, it has to be assessed as to whether, it can be reasonably inferred that the employee has committed a misconduct.

15 In **Ajit Kumar Nag Vs. General Manager, Indian Oil Corporation Ltd. and others [2005 AIR SCW 4986]**, the Hon'ble Apex Court has held in paragraph No.11 as under :-

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of

proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

16 In **Ved Mitter Gill Vs. Union Territory Administration, Chandigarh and others [(2015) 8 SCC 86]**, the Hon'ble Apex Court has concluded in paragraph No.33 as under :-

"33. Insofar as the holding of a trial, and the appearance of witnesses therein is concerned, yet again, the analogy invoked by the learned counsel representing the appellant/petitioners, is wholly misconceived. Whilst in a criminal prosecution proof is strict, and must be based on cogent and acceptable evidence. In a criminal case, there is no alternative but to establish guilt of an accused, based on acceptable evidence. The evidence is to be produced before the Court, trying the criminal case. There is no way the same can be exempted, as in the case of a departmental proceeding. Insofar as the present controversy is concerned, there is a constitutional provision creating

an exception. Clause (b) of the second proviso to [Article 311\(2\)](#) of the Constitution of India, is the exception in question, which authorizes the course adopted by the respondents. The reasons for dispensing with the departmental enquiry, cannot be dependent upon the holding or not holding of criminal proceedings, against the appellant/petitioners. Once the parameters stipulated in clause (b) of the second proviso to [Article 311\(2\)](#) of the Constitution of India are satisfied, the submissions advanced at the hands of the learned counsel for the appellant/petitioners, would not arise."

17 The Honourable Supreme Court has concluded, in the matter of the ***State Bank of Patiala v/s S.K.Sharma, AIR 1996 SC 1669***, that violation of procedural rights would not lead to vitiation of an enquiry. If substantive rights of the worker are violated in the enquiry thereby, leading to the weakening of his defence, that the court can brand the enquiry to be unfair and vitiated.

18 In the case of **Workmen of Balmadies Estates Vs. Management, Balmadies Estates and others [(2008) 4 SCC 517]**, the Hon'ble Apex Court has held that the charges levelled upon a workman will have to be scrutinized on the basis of the evidence recorded, by applying the principle of probabilities. In paragraph No.10, it has been concluded as under :-

"10. It is fairly well settled now that in view of the wide power of the

Labour Court it can, in an appropriate case, consider the evidence which has been considered by the domestic Tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the Domestic Tribunal. The assessment of evidence in a domestic enquiry is not required to be made by applying the same yardstick as a Civil Court could do when a lis is brought before it. [The Indian Evidence Act](#), 1872 (in short the [Evidence Act](#)) is not applicable to the proceeding in a domestic enquiry so far as the domestic enquiries are concerned, though principles of fairness are to apply. It is also fairly well settled that in a domestic enquiry guilt may not be established beyond reasonable doubt and the proof of misconduct would be sufficient. In a domestic enquiry all materials which are logically probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility."

19 I find from paragraph 23 of the judgment of the Labour Court that it has relied upon the statement of the Petitioner made in the court that he did not admit his guilt, notwithstanding his statement made before the checker. The conclusions drawn in paragraph 23 read as under :-

"23. But this witness did not state in his evidence that, he has recorded the statement of complainant as per the say of complainant. Because during the course of cross, the complainant deposed that, he was forced to note down the statement and therefore, he has reduced into writing his statement according to say of checker. Not only this he has further deposed that the alleged statement was not read over to him and not given to him for reading and only his signature was obtained by the checker thereon. He has further denied that he has written the contents of his statement as per his own will and

wish. Under such circumstances though the witness Prajakumar Bansode deposed that he has recorded the statement of complainant but considering aforesaid aspect it is very unsafe to accept the evidence of witness Prajakumar that he has recorded the statement of complainant as per his say and hence mere recording of statement of complainant it does not mean that the complainant has admitted the guilt that he has not issued tickets to the passengers with an intention to commit misappropriation of funds of S.T. Therefore the statement of complainant does not attach much weightage."

20 It is, therefore, obvious that the Labour Court considered the evidence before it in a manner as if it was dealing with a criminal trial. The principles of probabilities were completely ignored, inasmuch, as the Labour Court lost sight of the fact that there was some evidence on record to indicate that the Petitioner had not issued two tickets to the passengers for a long distance of almost 30 kilometers. The past service record of the Petitioner indicates that he was punished on two occasions for similar misconducts. This aggravating factor was also not considered by the Labour Court.

21 In **Biecco Lawrie Limited and another Vs. State of West Bengal and another [(2009) 10 SCC 32]**, it was held that unless the punishment is shockingly disproportionate, there cannot be an interference in the quantum of punishment. It would be apposite to

reproduce paragraph No.57 of the said judgment hereunder :-

"57. From a perusal of these observations, made in the aforesaid decisions of this Court as noted herein above, it is crystal clear that the general trend of judicial decisions is to minimize the interference when the punishment is not harsh and definitely for charges that are leveled against the respondent and in the instant matter, dismissal is absolutely not shocking to the conscience of the court."

22 The Honourable Supreme Court, in the matter of ***KSRTC vs. B.S.Hullikatti, (2001) 2 SCC 574***, has concluded that the passengers need not be examined in a domestic enquiry. Their statements recorded by the checker and produced in the enquiry would be sufficient evidence to be considered on preponderance of the principles of probabilities. In a subsequent case between the ***Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane, (2005) 3 SCC 254***, the Honourable Supreme Court has laid down the law that non examination of the passengers would not lead to a conclusion that the charges are not proved against a bus conductor.

23 The learned counsel for the Petitioner has contended that as the Petitioner is in employment, leniency may be shown towards him.

24 The learned counsel for the Corporation submits that misappropriation of amounts and permitting the passengers to travel

ticket-less or re-issuing used tickets, has become a disease for the Corporation. Electronic ticketing machines have now been introduced to curb the acts of misappropriation and yet there are hundreds of cases of bus conductors indulging in misappropriation. It is further canvassed that the Corporation does not have the manpower to keep a check on every bus conductor at all times. They are apprehended only in a random surprise check.

25 I find that the Honourable Supreme Court has laid down the law in the matter of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara Sangha*, 2000(7) SCC 517 : AIR 2000 SC 3129, that the amount of misappropriation is not relevant. An employee indulging in misappropriation is not to be pardoned. The learned Division Bench of this Court, in the matter of *P.R.Shele vs. Union of India and others reported in 2008 (2) Mh.L.J. 33*, has concluded that removal from service is the only punishment available against an employee who is proved to have committed misappropriation.

26 I do not find any reason as to why the Labour Court has relied upon a bald statement of the Petitioner that he did not intend to misappropriate any amount. The Court cannot expect a chargesheeted

employee to tell the Court that he has misappropriated an amount. The Labour Court should not have blindly relied upon the statement of the Petitioner that, though he had Rs.124/- excess and had not issued any tickets to two lady passengers, he had no intention to misappropriate the amount and was about to issue tickets, especially in the backdrop of he having been punished on two occasions for similar acts.

27 The Hon'ble Apex Court has dealt with the issue of sufficiency of evidence in the matter of **Employers, in relation to the Management of West Bokaro Colliery of M/s TISCO Ltd., Vs. Concerned Workman, Ram Pravesh Singh [2008 II CLR 220]** in paragraph Nos. 15, 16, 17 and 19 as under :-

"15. This Court in [Divisional Controller, KSRTC \(NWKRTC\) vs. A.T. Mane](#) [(2005) 3 SCC 254], held that: -

From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our

opinion, as held by this Court in the case of *Rattan Singh* [(1977) 2 SCC 491] is not a condition precedent. We may herein note that the judgment of this Court in *Rattan Singh* has since been followed by this Court in [*Devendra Swamy vs. Karnataka SRTC*](#) [(2002) 9 SCC 644]

16. [*In U.P. State Road Transport Corporation vs. Vinod Kumar*](#) [2007 (13) SCALE 690], this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the Enquiry Officer or the punishment awarded by the Punishing Authority.

17. After going through the order of the Industrial Tribunal, we are of the opinion that the Tribunal has interfered with the findings recorded by the domestic Tribunal as if it was the Appellate Tribunal. There was evidence present on record regarding indecent, riotous and disorderly behaviour of the respondent towards his superiors. The Management witnesses who were present at the scene of occurrence have unequivocally deposed about the misbehaviour of the respondent towards his superiors. Their evidence has been discarded by the Tribunal by observing that in the absence of independent evidence, the statements of the workmen who were present at the scene of occurrence could not be believed. Industrial Tribunal fell in error in discarding the evidence produced by the Management only because the independent witnesses were not produced. It is nobody's case that the independent witnesses were available at the scene of occurrence and the Management had failed to produce them. It is possible that at the time of occurrence, only the workers of the Management and the persons who were trying to put up the construction unauthorizedly

were the persons present and no independent evidence was available. Statements of the fellow workmen had established the misconduct of the respondent. Enquiry Officer accepted the testimony of the witnesses produced by the Management who had clearly implicated the respondent. It was a legitimate conclusion which could be arrived at and it would not be open to the Industrial Tribunal to substitute the said opinion by its own opinion.

19. Tribunal has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities"

28 In the case of **Regional Manager, U.P.SRTC, Etawah and others Vs. Hoti Lal and another [(2003) 3 SCC 605]**, it was held that it would be the responsibility of the bus conductor to collect the fare and issue tickets. Paragraph No.9 reads as under :-

"9. The decision in U.P. State Road Transport Corporation's case (*supra*) was really in a different factual background making it distinguishable from the facts of the present case, and has no application. [In Karnataka State](#)

Road Transport Corporation v. B.S. Hullikatti (2001(2)SCC 574) it was held that it is misplaced sympathy by Courts in awarding lesser punishments where on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare. It was finally held that the order of dismissal should not have been set aside. The view was re-iterated by a three Judge Bench in *Regional Manager, RSRTC v. Ghanashyam Sharma* (2002 (1) LLJ 234), where it was additionally observed that the proved acts amount either to a case of dishonesty or of gross negligence, and Bus Conductors who by their actions or inactions cause financial loss to the Corporations are not fit to be retained in service."

29 In the case of **Narayan Bapuji Dhote, Nagpur Vs. Divisional Controller, M.S.R.T.C. Nagpur** [2007 II CLR 368], this Court has concluded that acts of misappropriation should be dealt with, with an iron hand. The observations in paragraph Nos.6 and 7, read thus :-

"6. The judgment of Division Bench of this Court dated 26.7.2006 (*supra*) considers the identical situation and punishment of dismissal in these circumstances has been maintained. Even the judgment of the Hon'ble Apex Court in the case of *U.P.S.R.T.C. Dehradun Vs. Suresh Pal* (*supra*) again upholds such action. The Hon'ble Apex Court has noticed that in such cases, it was incumbent for such employer to weed

out said practices and the instances of such misconduct should not be dealt with lightly so as to pollute the atmosphere in the Corporation and other co-workers. The Hon'ble Apex Court has observed that such misconduct should be dealt with iron hands and not leniently. The petitioner was the only source who collected revenue on behalf of the M.S.R.T.C. It is, therefore, apparent that respondent cannot keep faith in him in these circumstances.

7. I, therefore, find that the punishment inflicted is not shockingly disproportionate. No case is made out for interference in writ jurisdiction. Writ petition is accordingly dismissed. Rule is discharged. However, in the facts of the present case, there shall be no order as to costs."

30 The learned counsel for the Petitioner has strenuously canvassed that the jurisdiction of the Industrial Court under Section 44 of the MRTU and PULP Act is so limited that it should not re-appreciate evidence and should not interfere with the findings of the Labour Court.

31 It is settled law that if the conclusions of the Labour Court appear to be perverse, erroneous and against the tenets of law, the Industrial Court or even this Court can exercise its revisional jurisdiction and set aside such findings if the Court is convinced that the conclusions would cause gross injustice, in view of the Law laid down by the Apex Court in the matter of **Syed Yakooob Vs.K.S.Radhakrishnan and others**

[AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682].

32 In view of the above and considering the highly blemished past service record of the Petitioner, I do not find that the Industrial Court has committed any error to the extent of setting aside the final judgment of the Labour Court dated 03.12.2014 and concluding that the charge of misappropriation is proved and the punishment is not shockingly disproportionate. In my view, the blemished past service record of the Petitioner would amount to an aggravating factor and merely because he has continued in employment under fortuitous circumstances vide the interlocutory orders of the Court, would not mean that the act of misappropriation committed by the Petitioner should be ignored. The evidence on record adduced by the Corporation pursuant to the de-novo enquiry, has proved that the Petitioner is guilty of the charge of misappropriation.

33 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

(Date : 26.03.2019)

34 Before this order could be signed, the learned Advocate for

the Petitioner approached this Court on 26.03.2019 and moved an oral motion stating that as the Petitioner has about less than 3 years of service left, he would prefer to resign so that he could rescue his retiral and pensionary benefits. The learned Advocate for the Respondent/ Corporation submitted that she would take instructions from the Corporation as the charge proved against the Petitioner is of misappropriation, which amounts to moral turpitude.

(Date : 27.03.2019)

35 On 27.03.2019, both the learned Advocates jointly moved this matter. The learned Advocate for the Petitioner confirmed the statement of the Petitioner made on 26.03.2019. The learned Advocate for the Corporation submitted that the Corporation is not willing to accept the said proposal and this Court may pass an appropriate order.

36 I find from the record that the petitioner is continued in employment due to the interlocutory orders passed by the Labour Court, Industrial Court and this Court. In similar circumstances, in the matter of ***Kum.Pushpa Ramdas Zatake Vs. The Divisional Controller, Maharashtra State Road Transport Corporation***, the Hon'ble Supreme Court delivered an order on 09.07.2018 in Special Leave to Appeal No.22618/2017 holding that as the employee is in employment due to the

orders of the Court and has been working, it would be just and proper to give a quietus to the case. By directing the employee not to claim any back wages from the respondents, the case was given a quietus.

37 In view of the above, I deem it appropriate to accept the request of the Petitioner. As such, the Petitioner shall tender his application for voluntary retirement on or before 15.04.2019, which would mean that he would be quitting his employment. The said application would be accepted by the Respondent/Corporation on or before 30.04.2019. The date from which the application of the petitioner is accepted by the Corporation, would be the last day of employment of the Petitioner. Thereafter, the Petitioner would be entitled for all retiral and pensionary benefits, inclusive of gratuity, upto the date on which his application is accepted.