

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

WRIT PETITION NO. 9148 OF 2013

**THE DIVISIONAL CONTROL, MSRTC, JALGAON AND OTHERS
VERSUS
BHAUSING PRATAPSING RAJPUT**

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Advocate for the Petitioners : Shri M. K. Goyanka with
Shri Manoj Shinde

Advocate for the Respondent - sole : Shri P. R. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th JANUARY, 2019.

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PER COURT :

1. On 15/01/2019, after hearing the learned Advocates, I
had passed the following order :-

"1. I have heard this matter extensively. By order dated 27/01/2014, this petition was admitted. Interim relief was refused.

2. The respondent/employee had approached the Industrial Court by filing Complaint ULP No. 24/2010, challenging his order of dismissal dated 31/03/2009 and the order of the first appellate authority dated 16/10/2009. By the order of dismissal, he was removed from service on account of proved misconduct. Charge of corruption was levelled

against him. The first appellate authority substituted the order of dismissal with the order of stoppage of three increments concluding that no charge is proved against him.

3. Section 7 of the MRTU and PULP Act, 1971, does not invest jurisdiction in the Industrial Court to entertain a case of dismissal. Under Section 5, the Industrial Court can deal with various items under Schedule II, Schedule III and items 3 to 10 of Schedule IV. Section 7 vests jurisdiction with the Labour Court to deal with cases of discharge, dismissal, termination, removal or otherwise termination under item 1 of Schedule IV.

4. The Industrial Court has allowed the complaint by the impugned judgment. The petitioner/ Corporation is held guilty of ULP, without mentioning under which item and of which Schedule. The departmental enquiry conducted by the petitioner/ Corporation is quashed and set aside. The order of dismissal is quashed and set aside. Reinstatement is ordered with continuity and full backwages. The order of the first appellate authority dated 16/10/20009, is also quashed and set aside. Surprisingly, the issue cast is whether the complainant proves that the respondent has committed an ULP under item 9 of Schedule IV by

suspending the complainant from 23/07/2008.

5. It is apparent that the Industrial Court has failed to recognize its jurisdiction and has granted all the reliefs prayed for by the worker without considering the scope of its jurisdiction under Section 5 and without considering the fact that the only issue cast in the complaint was with regard to the suspension of the worker. To say the least, the Industrial Court has delivered a perverse judgment, which is unsustainable in law and is non-est to the extent of the interference with the departmental enquiry and the dismissal order without considering the law laid down by the Hon'ble Supreme 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]. Even the issue as to the legality of the order of the first appellate authority was not framed. In this backdrop, the impugned judgment deserves to be quashed and set aside."

4. *Learned advocate for the respondent/original complainant worker submits, on instructions, that the complainant is agreeable to suffer stoppage of one increment as a punishment and would not make any grievance about the recovery of Rs. 21,200/-. Learned advocate for the petitioner/Corporation submits, on oral instructions, that this petition can be disposed of by modifying the impugned judgment in terms of the statement made by the worker. Shri Patil, learned advocate submits that he finds it proper to place an affidavit of the worker on record before this Court could dispose of this petition in terms of this statement.*

5. *As such, list this matter on 24/01/2019, for passing orders, after taking on record the affidavit of the worker."*

2. The learned Advocate for the respondent employee tenders an affidavit dated 24/01/2019 which is sworn by the respondent Bhausing Parapsingh Rajput, who is present in the Court. It is pointed out by Shri Patil, learned Advocate that the name should read as Bhausing Pratapsingh Rajput.

3. Shri Patil made a request to the learned Advocate for the petitioner Corporation as to whether, the corporation can pay

the back wages of the employee for a period of about 9 to 10 months. The learned Advocate for the Corporation submits, on instructions, that the Corporation is not agreeable for the payment of back wages. However, the Corporation would accept the proposal of imposing the punishment of stoppage of one increment. The amount of Rs. 21,200/- which is to be recovered, can be recovered from his monthly salary.

4. Shri Patil submits that about Rs.1500/- have already been recovered and further amount has not been recovered as the Industrial Court had protected the respondent – original complainant. He prays that the residual amount of Rs. 19,700/- may be recovered by adjusting it as against the gratuity which would be payable to the respondent employee after he retires, keeping in view that his retirement is just two years away. I find the said request to be equitable.

5. Considering the above and in view of the observations of the Honourable Apex Court in the matter of ***Ku. Pushpa Ramdas Zatake Vs. The Divisional Controller, Maharashtra State Road Transport Corporation, decided on 09/07/2018***

in Petition (s) for Special Leave to Appeal © No(s).

22618/2017, I deem it appropriate to give a quietus to this matter.

6. As such, this petition is partly allowed. The impugned judgment of the Industrial Court dated 22/04/2013 shall stand modified. The declaration of ULP against the petitioner stands quashed and set aside. The order dated 16/10/2009 passed by the first appellate authority would be modified and the punishment of stoppage of one increment shall be imposed upon the respondent. The amount resulting from the stoppage of three increments (the punishment made applicable earlier), will now be adjusted with the punishment of stoppage of one increment and from the date on which the order of the appellate authority became effective. If any amounts are due to respondent No.1 in view of the reduction in the punishment, the same may be adjusted as against the recovery of Rs. 19,700/-. If some more amount is payable to the respondent employee, the MSRTC would pay the same and accordingly make the said payment to the respondent employee within a period of four months from today.

7. Needless to state, the respondent would be deprived of the back wages from the date on which the order of dismissal was effected till the date on which the respondent was reinstated. This order is passed with the consent of the respondent present in the Court, as obtained by Shri Patil, learned Advocate.

(RAVINDRA V. GHUGE, J.)

shp/-