

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

WRIT PETITION NO.14001 OF 2018

ATUL LAXMANRAO GORE

VERSUS

**MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
AHMEDNAGAR THROUGH DIVISIONAL CONTROLLER**

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Advocate for the Petitioner : Shri P. V. Barde

Advocate for Respondent Nos. 1 and 2 : Shri B. S. Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 07th JANUARY, 2019.

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PER COURT :

1. The petitioner is aggrieved by the interlocutory order dated 08/12/2017 passed by the Labour Court, by which, the application for interim relief challenging the second show cause notice has been rejected. The petitioner is also aggrieved by the judgment and order dated 11/12/2018 delivered by the Industrial Court, by which, his Revision (ULP) No. 46/2017 has been dismissed.

2. The learned Advocate for the petitioner submits that he has joined service with the MSRT Corporation on 28/02/2003 as a bus conductor. On 22/09/2014 there was a surprise

check, which according to him, occurred within 12 kms. of the bus starting from Shikrapur. A charge sheet was issued on 11/10/2014 since the petitioner was found to have manipulated the tickets and had Rs. 100/- in excess. After the enquiry was concluded and the petitioner was held guilty of the charge of misappropriation, the second show cause notice, dated 18/04/2017 was issued. He challenged the said notice vide complaint (ULP) No. 11/2017 and was initially granted protection.

3. The learned Advocate for the petitioner strenuously submits that he was using the Electronic Ticket Issuing Machine (for short ETI Machine). He was also equipped with a tray of printed tickets which could be used in the event ETI suffered any snag. While issuing tickets to the passengers, the ETI Machine started delivering blank tickets and hence, the petitioner started writing the details of the tickets while issuing them to the passengers. Only Rs. 100/- were found in excess and as the bus was checked within 12 kms., some of the passengers were found travelling ticketless and some of the passengers had received blank tickets.

4. He further submits that if the protection granted to him is continued, he would co-operate with the pending proceedings before the Labour Court and he would avoid seeking adjournments. No loss or harm would be caused to the respondent Corporation. If he is terminated, he would suffer an irreparable harm and serious prejudice owing to his unemployment.

5. The learned Advocate for the MSRTC submits that the Management has followed the due procedure laid down in law. The charges levelled upon the petitioner were proved. The second show cause notice proposing the punishment of dismissal from service owing to the act of misappropriation committed by the petitioner, was served upon him. Before the Management could take a decision, he rushed to the Labour Court and was granted *ex parte ad interim* protection, thereby, preventing the Management from initiating any disciplinary action against him.

6. He further submits that the Electronic Ticket issuing

Machine was found in order since, after the blank tickets were given to the passengers, some printed tickets were also issued. This was noticed from the fact that the time of issuance is also printed on the said tickets. If the ETI machine was dysfunctional, the petitioner should have issued the printed tickets which were available in the tickets tray. The acts of misappropriation committed by the conductors has become a menace to the Corporation and hence, Flying Squads are pressed into service to search for erring conductors.

7. I find that the law on granting protection against the proposed punishment has been crystalized by the Honourable Apex Court in *Hindustan Lever Ltd. Vs. Ashok Vishnu Kate, 1995 II CLR 823*. It is specifically observed in paragraphs 53 and 54 as under :-

"53. Reference made in paragraph VI to the Bombay High Court's judgment also cannot be of any avail as they were based on the view which was accepted by the learned single Judge of the High Court of Bombay at Nagpur which has rightly been overturned by the Division Bench of the Bombay High Court in the judgment under appeal on a correct interpretation of the relevant provisions of the Act. Therefore, the earlier

view taken by the learned single Judges of the Bombay High Court cannot be said to be well – sustained. For all these reasons, the appellant has made out no case for our interference in this appeal.

54. *Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take a disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such a departmental proceedings initiated by serving of chargesheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prima facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under*

Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated."

8. It is, therefore, apparent that the Labour Court ought not to grant interim protection against the proposed punishment unless it appears that the punishment proposed is grossly disproportionate to the misconduct. If charges of misappropriation have been proved in the enquiry, the Labour Court cannot interfere unless the proposed punishment appears to be shockingly disproportionate.

9. The material available does indicate that the petitioner could have issued the printed tickets from the tray if the ETI machine was dysfunctional. The record, however, reveals that some tickets were issued by the Machine after the blank tickets were given to some of the passengers. The Trial Court, therefore, will have to deal with the issue as to whether, the findings of the enquiry officer are perverse and only then the Labour Court can come to a conclusion that the charges are

not proved against the petitioner.

10. In view of the above, I do not find that the concurrent orders passed by the Labour Court as well as the Industrial Court could be termed as being perverse or erroneous. This petition being devoid of merit is, therefore, dismissed.

11. The Labour Court, after considering the pendency of matters before it, would be at liberty to give precedence to complaint (ULP) No. 11/2017.

(RAVINDRA V. GHUGE, J.)

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