

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.14701 OF 2018**

Rajaram Sakharam Gaikwad

.. Petitioner.

Vs.

Maharashtra State Road

Transport Corporation & Anr.

.. Respondents.

Mr.Balwant V. Salunkhe for the Petitioner.

Mr.C.M. Lokesh for the Respondents.

**CORAM : A.K. MENON, J.**

**DATED : 12TH FEBRUARY, 2019**

**P.C. :**

1. By this writ petition, the petitioner challenges the award dated 3rd August, 2016 passed by the Labour Court, Satara rejecting Reference (IDA) No.30 of 2010 by which the petitioner sought reinstatement in service with full backwages.

2. The facts in brief are as follows : The petitioner is stated to be a driver, who was engaged in the respondent corporation since 1994. The impugned order, however, describes the petitioner as a "Conductor". Both counsel state that this is erroneous description since at all material time the petitioner was a driver.

3. It is contended that initially, the petitioner remained absent for a

period from 2nd March, 2001 to 13th March, 2001. It was his contention as canvassed by Mr.Salunkhe, the learned counsel for the petitioner that the petitioner had approached the corporation to submit a leave application but it was not accepted. Being unwell the petitioner apparently sought medical assistance from a doctor in Satara but the Respondent's office reported that he remained absent without permission. In the statement of claim in the reference it is averred that that a charge sheet dated 2nd April, 2001 came to be issued leveling charges under clauses 10, 11, 22 and 25 of the Disciplinary Procedure. No written explanation was filed to the charge sheet.

4. An enquiry was then conducted but it was contended that the proceedings before the Enquiry Officer were perverse. It is contended that a show cause notice dated 16th March, 2002 thereafter came to be issued calling upon the petitioner to explain why he should not be dismissed from service. A reply dated 21st March, 2002 was submitted showing cause, however, the petitioner was dismissed from service without considering his reply. Thereafter, Complaint (ULP) No.31 of 2002 was filed which was partly allowed and the order of dismissal was quashed and set aside and the corporation was directed to issue fresh show cause notice and to give the petitioner an opportunity of showing cause.

5. Mr.Salunkhe contended that despite the order, no show cause notice was issued yet a dismissal order dated 28th January, 2010 was passed. It

was contended that thereafter he sought relief from the Labour Commissioner, Satara on or about 25th February, 2010 but to no avail. The Corporation meanwhile filed a written statement and resisted the complaint. It is seen from the record that a fresh show cause notice came to be issued on 15th January, 2010 to which no reply was filed.

6. In the aforesaid background, it is also found that the petitioner had not filed the reference within the time prescribed. The Labour Court framed two substantial issues firstly whether the proposed punishment was disproportionate and secondly whether termination of the petitioner's services was illegal. The issues have been answered in the negative against the workman. Learned counsel for the petitioner reiterated that the petitioner had in fact submitted a leave application which was not considered and he was not permitted to proceed on leave.

7. I have gone through the impugned order and it does not appear that the aspects now canvassed were canvassed before the Labour Court which has in paragraph 14 recorded that the petitioner had in his cross examination admitted that he had been dismissed from service in the year 1997 and 1999 for the same reason, namely, absenteeism. Further on fourteen occasions he has been punished for absenteeism. This was evident from the record before the Labour Court. On seven occasions punishment of fine and on three occasions stoppage of annual increment was imposed. The service record of the petitioner was very bad and supported the respondent

corporation's case. Furthermore, in respect of show cause notice on 15th January, 2010 the petitioner did not even respond. In that view of the matter, the Labour Court considered the submissions and came to the conclusion that the dismissal order dated 28th January, 2010 was neither harsh nor disproportionate.

8. In any event this matter was required to be dealt with in accordance with the disciplinary procedure which provided for dismissal. It may also be mentioned that although the impugned order is dated 3rd August, 2016, this petition is filed only on 3rd October, 2018, the reason being that in the year 2016 the petitioner has approached this Court by filing Writ Petition No.13798 of 2016 which petition came to be withdrawn on 24th September, 2018 with leave to file a fresh petition within two weeks and that is how this petition came to be filed. Be that as it may, nothing in the impugned order is shown to be perverse or otherwise illegal. It has considered the rival contentions and delivered a reasoned judgment. I find no reason to interfere with the impugned order, hence I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No order as to costs.

**(A.K. MENON.J.)**