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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.36 OF 2019

Mah. State Road Transport Corporation

Thane Thru Competent Authority

...Petitioner

vs

Balkrishna Parathi

...Respondent

.....

Mr. Y.P. Deshmukh, for the Petitioner.

Mr. Vaibhav Jagdale, a/w. Mr. Avinash Jalisatgi, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED: 12 DECEMBER, 2019

P.C. :

. Heard learned Counsel for the parties. This writ petition challenges an order passed by the Labour Court at Thane in a reference made to it by the Appropriate Government under the Industrial Disputes Act.

2. The subject matter of reference was the application of the Respondent (original second party) for reinstatement with continuity of service and with back wages. The second party was an employee working as a conductor with the Petitioner (original first party) since 1990. His services came to be terminated from 7 February 2011. The termination was in pursuance of a departmental enquiry based on a charge-sheet. The charge against the second party was that he had remained absent without any authorization from 1 August 2010 to 16

August 2010 and thereafter. According to the second party, he was indisposed till 16 August 2010 and was advised complete rest. It was his case that having regard to the medical circumstances, he had addressed an ex-post facto application for leave to the depot manager. It was submitted that the charge of absenteeism was, accordingly, not proved. Secondly, it was submitted that the punishment of dismissal for remaining absent from duty for about 16 days was shockingly disproportionate to the mis-conduct, even if such mis-conduct were to be treated as proved. The reference court, in its Part-I award, held the domestic enquiry to be fair and proper and the conclusion of the Enquiry Officer as not perverse. The court, however, in its Part-II award, held that the punishment of dismissal from service was shockingly disproportionate to the mis-conduct proved. The court, accordingly, ordered re-instatement with continuity of service but without back wages.

3. Learned Counsel for the Petitioner/first party submits that the second party was habitually absent and was punished even on earlier occasions. Habitual absence from duty was neither a charge against the second party nor was he called upon to explain any such habitual absence at the stage of the show cause notice issued to him in pursuance of the finding of the Enquiry Officer. Punishing the delinquent employee on an alleged case of habitual absenteeism without alleging habitual absenteeism either at the departmental enquiry or at the punishment stage would amount to a serious infraction of principles of natural justice. In so far as the punishment ordered for the proved misconduct is concerned, the conclusion of the Labour Court that such punishment

was disproportionate to the proved charge cannot be assailed on any provision or principle of law.

4. There is, accordingly, no merit in the writ petition. The writ petition is dismissed.

Smita
Gonsalves

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(S.C. GUPTE, J.)