IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.629 OF 2018

Parasnath J. Yadav … Petitioner
V/s.
The Board of Trustees,
Mumbai Port Trust and ors. … Respondents

Ms.Shobana Gopal for the Petitioner.
Ms.Kavita Anchan with Ms.Heena Shaikh i/by M/s M.V.Kini & Co. for Respondent Nos.1 and 2.
Mr.Niranjan Shimpi for Respondent No.4.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 26, 2019.

P.C.:-

1. The petitioner has challenged an order dated 15th May, 2017, by which the Board of Trustees of Mumbai Port Trust (hereinafter to be referred to as "the Board") has imposed a punishment of withholding the entire contribution of the employer to the petitioner's provident fund account.

2. Brief facts are as under:-

The petitioner was an employee of the Port Trust. On 20th August, 2014, the petitioner was posted in the night shift alongwith two other winch drivers for discharge what is referred to as "CR coils". The Petitioner was In-charge of the ship crane. The allegations of the employer are that the petitioner and other co-employees on the said night had indulged in the activity of "go-slow" and thereby committed a misconduct. A show cause notice therefore, came to be issued on 22nd August, 2014 against the petitioner and other drivers and employees present at the spot on that night. The petitioner was called upon to show cause why disciplinary action should not be initiated against him. The Department issued memorandum of charges to the petitioner on 19th September, 2014 primarily alleging that on the day in question he had indulged in the activity of go-slow and thereby breached the Disciplinary Rules. A detailed inquiry was conducted. The Inquiry Officer submitted his report dated 28th March, 2016 opining that the charges were proved against the petitioner. The Inquiry Officer’s report was supplied to the petitioner permitting him to make representation. At the end of the inquiry, the Disciplinary Authority imposed a punishment of reduction of pay by two stages from the date of his last increment drawn. This order was passed on 27th April, 2016. Incidentally, the petitioner had superannuated with effect from 1st February, 2016. The punishment of reduction of pay by two stages, therefore, had no effect on him. The respondents therefore referred his case to the Board for imposition of appropriate punishment since as per the Service Rules on the retired employee any punishment pursuant to the disciplinary action could be imposed only by the Board. The Board thereafter passed the impugned order dated 15th May, 2017 imposing the penalty of non-payment of the Board’s entire contribution to the petitioner's provident fund account. This amount comes to approximately Rs.17 lakhs. This order of punishment the petitioner has challenged mainly on two grounds. Firstly, that the Board had no authority to withhold any part of the provident fund including the employer's contribution once the petitioner had retired from service. Second contention was that in any case, the punishment was not commensurate with the proved charges. The petitioner was situated similar to other co-employees, against whom also for similar charges, departmental proceedings were carried out which resulted into imposition of punishment of reduction of pay by two stages. Against the petitioner a much stiffer penalty has been imposed merely because he had retired by the time the inquiry was completed.

3. Learned counsel for the Board opposed the petition firstly contending that, the appeal is available against impugned order of punishment. Secondly, according to her, the Service Rules permit withholding of employer's contribution of provident fund in case of retired employee and thirdly, the Court could not interfere in the quantum of punishment imposed by the employer unless it is shockingly disproportionate.

4. We have perused the Service Rules and Regulations.

We have serious doubt whether once an employee retires from service, any punishment of withholding of provident fund could be imposed. Rule 15(1) of Bombay Port Trust Rules of the Provident Fund to which reference is made, would permit deduction of any portion of the provident fund in case the employee is dismissed from service for grave misconduct or upon his being found guilty of criminal offence. Even in such a case only the employer's contribution could be deducted. Neither of the two situations envisaged in the said Rule applies in the present case. However, in the facts of the present case, it is not necessary for us to express any final opinion on this aspect of the matter. This is so because, the disputes can be substantially narrowed down considering the special facts of the case. We may recall, the Disciplinary Authority had conducted parallel Departmental Inquiry against the petitioner and other co-employees for similar allegations of misconduct. All the delinquents including the petitioner were visited with the penalty of reduction of pay by two stages. The similarity of the delinquency is thus even accepted by the Board. Only in case of the petitioner, the Board was forced to change the order of punishment since the penalty of reduction of pay would not be implementable in case of the employee who had by then already retired. It was under these circumstances that the original punishment of reduction of pay by two stages came to be substituted by a fresh penalty of withholding entire contribution of the employer to the petitioner's provident fund account. This would have much harsher effect on the petitioner. Had the punishment of reduction of pay by two stages being implemented, the petitioner would have for remainder of his service, been deprived of two increments in his scale of pay. Looking to the petitioner’s advanced age and limited service left, this would have made very small monetary loss to the petitioner, perhaps not exceeding Rs.50,000/- in any case. As against this, the penalty of not paying the employer’s contribution of provident fund would deprive the petitioner of a sum close to Rs.17 lakhs. The substituted penalty is thus shockingly disproportionate to the proved misconduct, even by adopting the standards of the employer itself.

5. It is true that ordinarily when the Court finds that the punishment imposed by the employer is excessive the question of imposing the substituted alternative penalty would be placed back before the employer. However, in rare and exceptional cases the Court in exercise of writ jurisdiction may as well provide for a substituted penalty which would in any case put an end to the entire dispute. Considering the facts of the case and the reasons mentioned above, we permit the respondents to withhold a sum of Rs.50,000/- from the petitioner's provident fund account (out of the employer's contribution) and release the rest. The penalty order would stand modified accordingly. This order will be effected within four weeks from the date of the order. If so done, there shall be no interest liability. If not implemented within such time, the payment shall carry simple interest at the rate of 8% per annum after this period. Petition disposed of accordingly.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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