

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

913. WRIT PETITION NO. 4887 OF 2007

Gaurishankar S/o Lotan Patole
age 46 years occupation service as Driver
R/o Shindkheda District Dhule

...Petitioner

Versus

The Divisional Controller,
Maharashtra State Road Transport Corporation,
Dhule Division, Dhule

...Respondent

Mr. A.R. Sayyad, Adv. h/f. Mr. S.P. Bramhe, Adv. for petitioner
Mr. D.S. Bagul, Advocate for respondent

CORAM : ROHIT B. DEO, J.

DATE : 29th January, 2020

PER COURT :

1. Rule. Rule made returnable forthwith. Heard finally by consent.

2. I heard the learned Counsel for the parties on 23rd January 2020 and passed the following order.

" 1 I have heard learned Counsel for the parties at length.

2 Two issues arise for my consideration. The first issue is, whether the order of the Industrial Court is sustainable, inasmuch as the Industrial Court concededly did not frame the issue as to whether the employee was given

proper opportunity to defend his case. This is despite the fact that the employee specifically contended that the inquiry was unfair and indeed ex parte. The other issue is, whether the punishment is shockingly disproportionate. The reduction of pay by three stages with permanent effect is the punishment, which has a cascading effect.

2 In order to enable the learned Counsel for Respondent- MSRTC to obtain instructions on whether some milder punishment can be imposed, stand over to 29.01.2020 for orders, immediately after the Urgent Admissions' board.

3 An authenticated copy of this order be supplied to the learned Counsel for the Respondent. "

3. The learned Counsel for the petitioner states that although the Industrial Court did not frame issue as to whether the enquiry is fair and proper, the petitioner is ready and willing to give up the challenge to the fairness of the enquiry if the issue of disproportionality of the punishment is addressed by this Court. In all fairness, the learned Counsel for the respondent has no objection to such course.

4. The misconduct which is held proved is that the employee, who was working as driver, threatened the Traffic Inspector Shri Z.H. Rajput. The backdrop is the grievance, which

the petitioner nurtured, that the said officer lodged an unnecessary complaint/report as regards the leave availed by the petitioner. The allegation, which is held proved, is that the petitioner uttered the words "You are troubling me, I will see you."

5. The petitioner has superannuated. It is not the case of the employer that the petitioner indulged in violence or that he abused or used obscene words. Words used are too generic in nature and do not necessarily convey that the petitioner intended to threaten Shri Rajput with any serious consequence. Such words are often uttered in anger and it is quite possible that the intent was to convey to Shri Rajput that the petitioner too would lodge an appropriate complaint or take recourse to departmental remedy. In any event, I am satisfied that while the behaviour may be rude, an unacceptable behaviour does not warrant punishment of reduction of pay by three stages. The punishment has a cascading effect. My conscious is satisfied that the punishment is shockingly disproportionate to the proved misconduct and it needs modification.

6. In all fairness, the learned Counsel for the respondent-M.S.R.T.C. has left it to the Court to substitute the punishment rather than remitting the issue to the employer for imposing milder punishment. In my considered view, the punishment can be modified to stoppage of three increments for one year i.e. without

permanent or cumulative effect. This shall be adequate punishment for the proved misconduct.

7. The respondent shall calculate and release the monetary benefits to the petitioner due to the modification of the punishment, within eight weeks.

8. Needless to say, the gratuity and/or any other retiral benefits shall also be released/paid, within the aforesaid period of eight weeks.

9. Rule is made absolute in the aforestated terms.

(ROHIT B. DEO)
JUDGE

Madkar