

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

42 WRIT PETITION NO.13093 OF 2017

Narayan Maruti Kanthale
Age : 49 years, occ : service
R/o Vijaynagar, Pathardi,
District Ahmednagar.

Petitioner

Versus

Divisional Controller
Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Sarjepura (Kothala), Ahmednagar.

Respondent

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Mr. D.K. Dagadkhair, Advocate for the petitioner.
Mr. B.S. Deshmukh, Advocate for the respondent.

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CORAM : **Rohit B. Deo, J.**

DATE : 13th January 2020.

JUDGMENT :-

. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. The short question involved is whether the First Labour Court, Ahmednagar erred in denying the back wages in entirety to the employee on the premise that the employee has “not pressed the same”.

3. Concededly, the petitioner – employee was dismissed from service vide order dated 16.03.2007 for proved misconduct of unauthorised absence.

4. The resultant dispute was referred to the First Labour Court, Ahmednagar for adjudication.

5. The First Labour Court found the enquiry fair and legal and findings of the Enquiry Officer were found not perverse. However, the First Labour Court directed reinstatement without back wages holding that the punishment of dismissal is not proportionate to the misconduct. It may be noted that the First Labour Court found misconduct not grave.

6. Both the learned Counsel have fairly stated that there is nothing on the record of the proceedings to show that the employee did not press the relief of back wages. The learned Counsel for the employer would qualify the statement by clarifying that there is nothing in writing to suggest that the employee did not press for back wages.

7. I do not see any conceivable reason for an employee, who is dismissed for misconduct of remaining unauthorisely absent, to not press for back wages after contesting the Reference till the very end on merits. It is not

as if the employee took the option of giving up the back wages in the hope of early and expeditious disposal of the Reference and the consequential reinstatement. This does not appear to be the case here.

8. However, it is also seen from the order impugned that while holding the punishment of dismissal disproportionate to the proved misconduct, a lesser punishment is neither proposed nor inflicted, nor it is left for the employer to decide.

9. In this view of the matter, while direction to reinstate the employee has attained finality, the matter is remitted to the First Labour Court, Ahmednagar for fresh decision on the entitlement of the respondent employee to back wages and if found entitled, to the extent thereof. Needless to observe, that every opportunity shall be given to the contesting parties to adduce evidence in support of the respective contentions.

10. The parties are directed to appear before the First Labour Court, Ahmednagar on 14th February 2020.

11. The First Labour Court, Ahmednagar is requested to decide the issue of back wages within three months from the date of appearance of the parties.

12. Rule is made absolute in aforesaid terms.

(ROHIT B. DEO, J.)

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