

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

**REVIEW PETITION NO.23 OF 2018
IN
WRIT PETITION NO.6804 OF 2005**

Mr. Balasaheb Madhukar Bende .. Petitioner
Versus
The General Manager
BEST Undertaking
And Another ... Respondents

.....

Mr. Machhinder A. Patil for the Petitioner.
Ms. Kavita Anchan a/w Arsh Misra i/b M.V. Kini & Co. for the
Respondents.

CORAM : S.C. GUPTE, J.

DATE : 13 MARCH 2020

P.C. :

. Heard learned Counsel for the parties.

2 This Review Petition seeks review of an order passed by this court on 21 September 2016 rejecting a writ petition filed by the Review Petitioner herein.

3 The Review Petitioner was working as a bus conductor with the Respondent undertaking. The charge of misconduct against him was that he had remained absent between 11 October 1999 and September 2000 for a period of 43 days. Even after making an allowance for

the sick leave he applied for 25 days, for which the Petitioner had forwarded a medical certificate, he still appears to have taken 7 days of casual leave and the further leave of absence of 11 days without any permission or application. The Respondent undertaking in this case conducted a departmental enquiry against the Petitioner pursuant to a charge-sheet. The Petitioner participated in this enquiry. After a report of the Enquiry Officer finding the Petitioner guilty of the charge levied against him, the Disciplinary Authority of the Respondent undertaking ordered his dismissal from service. The Petitioner's departmental first appeal came to be dismissed. His second appeal was also dismissed by the Traffic Manager of the Respondent undertaking. The Petitioner thereupon served a demand notice to the Respondent undertaking under the Maharashtra Industrial Relations Act ("Act"), calling upon the latter to reinstate him in service with consequential benefits. This resulted into a reference. A learned Judge of the Labour Court, after hearing the reference, answered the same in the negative. Being aggrieved, the Petitioner carried the matter before the Industrial Court. The Industrial Court, by its judgment and order dated 1 February 2005, dismissed the appeal. The Petitioner then brought the matter before this court in a writ petition. This court, by its order dated 21 September 2016, dismissed the writ petition.

4 The only ground urged by the learned Counsel for the Petitioner in the present review petition is that the relevant Standing Order (Standing Order No.20(f)) provides for punishment of dismissal in case

of absence without authority for more than 15 consecutive days. It is submitted that the Petitioner's absence, after making allowance for the sick leave, backed by a medial certificate, was only of 11 consecutive days and, accordingly, the order under review contains an error and deserves to be reviewed.

5 The order under review notices the Petitioner's contentions in this behalf in paragraph 6 of the order. In paragraph 8, the court has dealt with the submission and has come to a conclusion that even after appropriating 25 days towards sick leave, there still remained 18 days of absence and such absence was unjustified, since there was no casual or other leave to the credit of the Petitioner. The court noted that these facts, coupled with the past record of the Petitioner, which compounded the matter for guilt, justified the finding of the Enquiry Officer as also the punishment of dismissal awarded by the disciplinary authority to the Petitioner. Both courts below had not found any infirmity with the order of dismissal. This court, accordingly, noted that there was no error of jurisdiction on the part of the courts below or any illegality or infirmity in the impugned orders for this court to exercise its writ jurisdiction under Article 227 of the Constitution of India. The court, accordingly, dismissed the petition.

6 No ground has been made out in the present petition for review of this order. There is no new or important material or evidence, which was not within the knowledge of the review

Petitioner or which could not be produced by him when the order under review was passed. There is no error apparent on the face of the record and there is no other reason why the order calls for a review.

7 There is, accordingly, no merit in the review petition. The Review Petition is dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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by Rajesh V.
Chittewan
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