

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6971 OF 2017

Vishnu S/o. Pandurang Pantawane
vs.
Chief Executive Officer, Zilla Parishad and another

WRIT PETITION NO. 5191 OF 2017

Chief Executive Officer, Zilla Parishad and another
vs.
Vishnu S/o. Pandurang Pantawane

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. B. C. Chandrakapure, counsel for petitioner/employee.
Shri. V. D. Raut, counsel for respondent/Zilla Parishad.

CORAM : MANISH PITALE J.

DATED : 03/03/2020

By these writ petitions, the employer as well as the employee have approached this Court challenging judgment and order dated 31/01/2017, passed by the Industrial Court, Nagpur whereby complaint filed by the employee was partly allowed and it was held that while the misconduct was proved against the employee, the punishment of withholding three increments with cumulative effect was harsh and accordingly it was directed that only one increment would be so withheld.

2. The learned counsel appearing for the

employer i.e. the Chief Executive Officer, Zilla Parishad submit that while five charges were levelled against the employee, only one charge was proved, which was of misbehavior with superior officer. According to the learned counsel for the employer, this was the most serious charge levelled against the employee and when the Industrial Court itself, upon analysis of evidence, found that there was sufficient oral and documentary evidence to hold that the said charge was proved, the Industrial Court erred in reducing the punishment in the aforesaid manner by holding that imposition of punishment of withholding three increments with cumulative effect was disproportionate to the proved charge. It was submitted that as per settled law Courts are slow in interfering with the punishment imposed unless it shocks the conscience of the Court and it is found to be wholly disproportionate to the proved charge.

3. On the other hand the learned counsel appearing for the employee submitted that the only charge said to have been proved was misbehavior with superior officer and that sufficient evidence was not on record to prove the said charge. It was further submitted that in any case no error could be attributed to the impugned order passed by the Industrial Court since the punishment, even if it was to be held that the charge was to be proved, was correctly reduced to withholding of only one increment with cumulative effect. It was

further pointed out that the employee had retired in the year 2015 and that there had been no other incident or enquiry against the employee till he retired honourably.

4. A perusal of the impugned judgment and order passed by the Industrial Court shows that the oral and documentary evidence has been analyzed and detailed findings have been rendered as to why it could be concluded that the charge of misbehaving with superior officer was proved against the employee. This Court finds that the analysis of the evidence on record is proper. The charge of misbehavior with superior officer did stand proved against the employee in the present case. This is clear from the fact that although initially the employee did state that at the time of the incident, the superior officer was present for inspection and so was the said employee, further stating that another employee was indeed present at the time of the incident, but later the employee turned around and claimed that the incident never took place and that he was never present. The evidence of the superior officer, as well as an office assistant, sufficiently supports the fact that the incident did take place in the manner in which it was claimed by the superior officer. Thus, this Court finds that there is no substance in the contentions raised on behalf of the employee that the incident never took place and that the charge was not proved.

5. The only question that remains is, as to whether the penalty of withholding three increments

with cumulative effect was so highly disproportionate to the proved charge that the Industrial Court was justified in interfering with the same and reducing it to only one increment. In ordinary course, this Court would have been inclined to interfere with the impugned order, because settled principles of law regarding the limited scope for interference in the nature of punishment, were not taken into consideration by the Industrial Court in the present case, while passing the impugned order. But the facts of the present case show that the employee has now retired on superannuation in the year 2015 itself and that there is nothing on record to show that any further incident or allegation of misconduct or misbehavior was alleged against the employee. He seems to have retired upon attaining the age of superannuation honourably in the year 2015

6. In view of the above, this Court is of the opinion that interfering with the impugned order as regards the nature of punishment at this stage when the employee has already retired, would not be in the interest of justice. If the punishment originally imposed upon the employee is restored, it will not only lead to recovery of certain amounts from the employee, but it would also adversely affect the quantum of pension being paid to the employee. In view of these facts, this Court declines to exercise writ jurisdiction in favour of the employer.

7. Accordingly, both the writ petitions are

dismissed and the impugned judgment and order passed by the Industrial Court is confirmed. No order as to costs.

JUDGE

KOLHE/P.A.