

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.184 OF 2011
IN
WRIT PETITION NO.4059 OF 2008

Muzaffar Khan Zamir Khan, Mominpura, Ner Nawarpur, Malkapur Dist. Buldhana
-vs-

The Divisional Controller, M.S.R.T.C. Buldhana Division, Buldhana and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri B. M. Khan, Advocate for appellant.
Shri V. G. Wankhede, Advocate for respondents absent.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.
DATE : August 31, 2021

The challenge raised in this Letters Patent Appeal is to the judgment of the learned Single Judge dated 19/03/2009 in Writ Petition No.4059/2008. By the said judgment the aforesaid writ petition preferred by the appellant challenging the dismissal

inspection. After holding an enquiry, a show-cause notice was issued to the appellant seeking to dismiss him from service. In absence of any satisfactory explanation, the order of dismissal dated 12/02/2001 was issued.

3. The appellant challenged the order of dismissal by filing complaint before the Labour Court. The Labour Court recorded a finding that the enquiry as held was fair and proper. Due opportunity was given to the appellant during the enquiry. It was then found that the misconduct as alleged was proved in the enquiry and the findings recorded by the Enquiry Officer were not perverse. The learned Judge of the Labour Court held that the punishment of dismissal was not shockingly disproportionate. By the order dated 14/05/2002 the complaint came to be dismissed.

The Industrial Court in exercise of revisional jurisdiction by its judgment dated 13/09/2007 affirmed the findings recorded by the Labour Court. In addition it observed that on 11 earlier occasions the appellant had been punished for similar misconduct. The revision application was accordingly dismissed.

4. The appellant being aggrieved filed Writ Petition No.4059/2008. The learned Single Judge after considering the entire material on record by judgment dated 19/03/2009 refused to interfere in writ jurisdiction thus dismissing the same. Being aggrieved the appellant has preferred the present Letters Patent Appeal.

5. Shri B. M. Khan, learned counsel for the appellant submitted that the six passengers who had been issued tickets that were used were not examined in the enquiry proceedings as a result the appellant did not have any opportunity to cross-examine those passengers. Placing reliance on the decision in *A. P. S. R. T. C Rep. By Depot Manager vs. G. Murali 2018 (12) SCC 41* it was submitted that in absence of evidence of those witnesses the charges could not be stated to be proved. He further submitted that the show-cause notice was issued to the appellant on 08/02/2001 and less than 48 hours were given for filing reply to the same. No adequate opportunity therefore was available to the appellant to defend his case. According to the learned counsel despite supplying copy of the interim order passed by the Industrial Court on 13/02/2001 the Corporation proceeded to hastily pass the order of dismissal. It was urged that considering the past service record of the appellant the punishment of dismissal from service was disproportionate. Reliance was placed on the decision in *Pramod Kumar Singh Sishodia vs. State of U P and ors. 2017 (3) LLJ 492*. It is thus submitted that the impugned orders were liable to be set aside and the appellant ought to be reinstated in service.

6. There was no appearance on behalf of the respondents yesterday. Hence the matter was kept today by granting further opportunity. However there is no appearance on behalf of the respondents. Accordingly we have heard the learned counsel for the appellant and we have also perused the material on record. It is seen that Labour Court after considering the entire records of the enquiry proceedings has held that the same was

conducted in a fair and proper manner by giving due opportunity to the appellant. The findings recorded by the Enquiry Officer were not shown to be perverse. This finding has been affirmed by the Industrial Court and then by the learned Single Judge. The absence of examination of six passengers who were re-issued the tickets has been considered by the learned Single Judge in paragraph 5 of the impugned judgment. Reliance has been placed on the decision in *State of Haryana and anr. vs. Rattan Singh AIR 1977 SC 1512*. We find that reliance has been rightly placed on the aforesaid decision. When there was other material on record that supported the conclusion that misconduct as has been duly proved, absence of examination of six passengers would not make much difference. We do not find any reason to take a different view of the matter. Hence the decision in *G. Murali* (supra) cannot be made applicable to the facts of the present case. The aspect as to short period for filing reply and due opportunity to respond to the charges had been considered by the Labour Court. It has been found that the appellant effectively participated in enquiry proceedings and the Corporation succeeded in proving the charges. These findings having been confirmed by two Courts, the scope for interference in that regard is minimal in the absence of any jurisdictional error.

7. We thus find that the Labour Court and thereafter the Industrial Court has after verifying the entire record proceeded to adjudicate the proceedings and refused relief to the appellant. The contentions raised also did not find favour with the learned Single Judge. We do not find any ground

made out to interfere with the aforesaid adjudication in the present proceedings. For aforesaid reasons there is no merit in the Letters Patent Appeal. It is accordingly dismissed leaving the parties to bear their own costs.

JUDGE

JUDGE