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

920 WRIT PETITION NO.1945 OF 2021

**GANESH CHHAGAN PATIL
VERSUS
SARPANCH, GRAM PANCHAYAT, KAHATUL &
ANOTHER**

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Ms R. L. Jakhade, Advocate for petitioner;
Mr S. U. Chaudhari, Advocate for respondents

CORAM : RAVINDRA V. GHUGE, J

DATE : 16th March, 2022

PER COURT:

1. By this petition, the petitioner seeks to challenge the Judgment and order dated 15/09/2020 delivered by the Industrial Court, Dhule, vide which, Revision (ULP) No.13/2019 filed by the respondents/Grampanchayat, has been allowed. The Judgment and order dated 14/05/2019 delivered by the Labour Court, Dhule, in Complaint (ULP) No. 1/2015, thereby setting aside the dismissal of the petitioner, has been quashed and set aside and the Complaint has been dismissed.

2. I have considered the strenuous submissions of the learned Advocates for the petitioner as well as the respondents/Grampanchayat. With their assistance, I have gone

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through the petition paper book and the impugned Judgment of the Industrial Court as well as the Judgment of the Labour Court.

3. The petitioner joined the respondent as a 'Waterman' in 2005. He continued till 20/09/2013. Without issuing any charge-sheet to him, on account of the allegation that he has caused a wrongful loss of Rs.1,07,492/- by failing to collect water taxes from the local residents, he has been dismissed from service. A notice dated 12/07/2013 was issued to the petitioner, alleging misappropriation. It is his contention that he did not receive the notice. By order dated 20/09/2013, he came to be dismissed from service w.e.f. 14/08/2013. The learned Advocate for the petitioner, therefore, strenuously canvassed that the petitioner was dismissed with retrospective effect and any dismissal order/termination with retrospective effect is unsustainable in law.

4. She further submits that the petitioner was only a 'Waterman'. He was in-charge of supplying water to the local residents by operating the water taps for releasing the supply. He was never a Tax Officer or a Clerk appointed for collecting water taxes from the local residents. She further submits that the respondent did not reserve a right to conduct an enquiry before the Labour Court, in the written statement. Evidence was adduced by

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the respondents by examining three witnesses at Exhs. C-22, C-23, C-24 and 24/A. They have not stated in their evidence that the petitioner was specifically entrusted with duties of collecting water taxes from the local residents.

5. She then points out that the respondents prepared a Resolution on 14/08/2013 resolving to terminate him on the basis of a serious allegation and without conducting an enquiry. It was also alleged that he had prepared a false Receipt Book and collected water taxes. It was on 20/09/2013, that a notice was issued to the petitioner informing him that his services are dismissed w.e.f. 14/08/2013.

6. The learned Advocate representing the respondents, strenuously supports the Judgment of the Industrial Court. He relies upon the Affidavit-in-reply filed by Shri. Ravindra Pandit Shirsath, Gramsevak of the Grampanchayat Kahatul, dated 04/02/2022. He contends that the petitioner was responsible for a wrongful loss of revenue to the Grampanchayat. He was appointed as a 'Waterman' vide Resolution dated 21/04/2005. Because of the allegations, a Resolution was passed on 14/08/2013, dismissing his services and a notice was issued on 20/09/2013 informing him that he has been dismissed.

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7. He further submits that the Labour Court had committed a grave error in overlooking the conduct of the petitioner. The respondents had led evidence before the Labour Court and the same had been ignored. Reinstatement with continuity and full backwages were granted to the petitioner. Because the Judgment was unsustainable, the Industrial Court allowed the Revision Petition filed by the respondents/Management.

8. From the record, I find the following undisputed factors :-

- (a) The petitioner was working as a 'Waterman' since 2005 and had put in 8 years in employment.
- (b) The petitioner was not appointed for the purposes of collection of tax from the local residents.
- (c) The Grampanchayat passed a Resolution dated 14/08/2013 and resolved to dismiss his services.
- (d) By an order dated 20/09/2013, he was informed that he has been dismissed w.e.f. 14/08/2013.
- (e) Though a charge of misappropriation was levelled upon him, he was neither served with a charge-sheet, nor was any enquiry conducted.
- (f) The respondent had not reserved any right in the written statement to conduct an enquiry before the Labour Court.

9. Evidence Recorded before the Labour Court did not establish the charge of misappropriation on the part of the complainant. The Management could not establish that the petitioner was entrusted with the duties of collecting water taxes from the local residents. No right was reserved in the written statement by the Grampanchayat, in the light of the law laid down by the Hon'ble Apex Court in **Karnataka State Road Transport Corporation Vs. Laxmidevamma (Smt) & another, (2001) 5 Supreme Court Cases 433** (5 Judges Bench). The charges were not proved before the Labour Court.

10. It was an obligation on the respondents to establish that the petitioner was appointed to collect water taxes from the local residents. It was the Gramsevek, who is entrusted with these duties. Without performing such duties and with no evidence from any of the local residents that the petitioner had collected water taxes on the basis of a bogus Receipt Book or that they had paid water taxes to him and he had misappropriated the amount, holding the petitioner guilty of a charge, which is completely unsubstantiated, and awarding him the punishment of dismissal from service is virtually awarding him civil death, without having

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committed any offence.

11. It cannot be ignored that the Grampanchayat dismissed the services of the petitioner, as per its records, on 14/08/2013 and by order dated 20/09/2013, conveyed to the petitioner that he stood dismissed with retrospective effect from 14/08/2013.

12. The learned Division Bench of this Court, in **Assaram Raibhah Dhage Vs. Executive Engineer & ors., 1989 (2) C.L.R. 331**, dealt with the case of termination with retrospective effect and has concluded in paragraph 1 that “*The service of an employee, be he permanent or temporary, cannot be terminated with retrospective effect. Such is the ratio of this Judgment*”. It was further held in paragraph 3, which reads as under :

“3. *The petitioner's learned Counsel Miss Purohit is perfectly justified in making a grievance that it is unthinkable that an employee's services can be terminated with retrospective effect, as done in the present case. We join learned Counsel in her astonishment. For that matter, one of the conditions in the letter of appointment is that if the petitioner desired to resign he was liable to pay one month's salary or give one month's notice. It is therefore ironical that on the other hand, the petitioner's services were terminated with retrospective effect.*”

13. In Assaram Dhage (supra), the learned Counsel for the

Management took a stand, after realizing that termination with retrospective effect is unsustainable, that the date on the termination order may have a typographical error. This Court rejected the said contention by holding that this is *ipse dixit* as it is purely a conjecture and speculative reasoning on the part of the employer. An affidavit-in-reply indicated that there was no typographical error.

14. I find from the affidavit-in-reply of the respondents in this case that, there is no plea of a typographical error and in fact, it is vehemently submitted in paragraph 5 that, “*Vide letter cum final show cause notice dated 20.09.2013, the petitioner came to be dismissed from 14/08/2013. The respondents have taken the support of decision of Gram Panchayat Kahatul*”.

15. I find from the impugned Judgment of the learned Member of the Industrial Court that, he came to a conclusion that the Labour Court has not considered the evidence properly. If the employer could not prove that the petitioner was appointed for collecting water taxes and could not further prove that he has misappropriated the amount of Rs.1,07,492/-, how could the Labour Court conclude that the charges of misappropriation is proved. Though the probative value of evidence before the

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Labour Court in service jurisprudence is not of the same quality as the probative value of evidence recorded in criminal trials, there has to be some evidence on record to prove the guilt of an employee. The punishment of dismissal from services amounts to civil death. Such punishment cannot be awarded casually. Moreover, the impugned dismissal order was issued with retrospective effect and the employer did not take a plea before the Labour Court that they are willing to correct the said action and postpone the date of dismissal.

16. As such, this petition is allowed. The impugned Judgment of the Industrial Court dated 15/09/2020 is quashed and set aside. Revision (ULP) No.13/2019 stands dismissed.

17. The Judgment of the Labour Court stands sustained.

(RAVINDRA V. GHUGE, J.)

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