

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

WRIT PETITION NO. 12331 OF 2022

Chandrakant S/o Samindar Suryawanshi,
Age : 43 Years, Occu. : Service (Conductor),
R/o at village Ghonsi, Tq. Jalkot,
District Latur. .. Petitioner

Versus

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Division Latur,
Dist. Latur. .. Respondent

Shri Shailendra S. Kulkarni, Advocate for the Petitioner.
Shri Anand D. Wange, Advocate for the Respondent.

**CORAM : SANDEEP V. MARNE, J.
DATE : 07TH DECEMBER, 2022.**

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. By this petition, petitioner challenges judgment and order dated 06.10.2022 passed by the Industrial Court, Latur dismissing Revision (ULP) No. 21 of 2022 and confirming judgment and order dated 13.11.2021 passed by the Labour Court pronouncing order on preliminary issue in Complaint (ULP) No. 08 of 2013. In short, Award-I of the Labour Court answering the preliminary issues (i) Whether departmental enquiry conducted is fair, proper, legal and in accordance with the principles of natural justice and (ii) whether findings of the Enquiry Officer are perverse, are answered against the petitioner

employee, by the Labour Court, whose order is upheld by the Industrial Court.

3. Shorn of unnecessary details, the facts of the present case are that the petitioner was appointed on the post of conductor in the respondent/corporation. Disciplinary proceedings have been initiated against him by issuance of memorandum of charge sheet dated 17.05.2012. It is alleged in the charge that while discharging his duties as conductor on 07th May, 2012 on Udgir to Nilanga route at Valandi, his bus was checked by raiding team and upon examination of tickets of passengers in the bus, it was found that two groups of passengers had paid an amount of Rs. 29/- each (Rs. 58/- in total) towards purchase of tickets and instead of issuing them the printed tickets generated through the Electronic Ticketing Machine (ETM), he issued them blank papers generated out of ETM paper roll mentioning advance booking ticket No. 11208 thereon. It was therefore alleged that the petitioner has misappropriated amount of Rs. 58/-.

4. Domestic enquiry was conducted into the charges, in which petitioner participated. Enquiry Officer submitted report holding that the charges leveled against him are proved. Therefore, a show cause notice dated 14.01.2013 was issued proposing to impose penalty of dismissal from service. He challenged the show cause notice before the Labour Court by filing Complaint (ULP) No. 08 of 2013 and filed an interim application for stay. By order dated 14.03.2013, the Labour Court restrained the respondent-corporation from issuing final penalty order in pursuance of the show cause notice, on account of which Petitioner continues to be in service.

5. The Labour Court thereafter proceeded to hear Complaint ULP No. 08 of 2013 on two preliminary issues i. e. (i) Issue No. 2: whether enquiry was conducted in a fair, proper and legal manner and in accordance with the principles of natural justice and (ii) Issue No. 3: whether the findings recorded by the Enquiry Officer are perverse. By judgment and order dated 13th November, 2021, the Labour Court was pleased to answer both the issues against petitioner holding that enquiry was held in fair and proper manner by following principles of natural justice. It was also held that findings of the Enquiry Officer are not perverse. Aggrieved by the judgment and order dated 13.11.2021, petitioner filed Revision (ULP) No. 21 of 2022 before the Industrial Court, Labur, which is pleased to dismiss the same by judgment and order dated 06.10.2022. Present petition challenges orders of the Industrial Court dated 06th October, 2022 and the judgment of the Labour Court dated 13th November, 2021.

6. I have heard learned counsels for petitioner and respondent-corporation and have perused the records of the case.

7. So far as first issue as to whether the enquiry is held in a fair and proper manner and whether principles of natural justice are followed or not, I am in agreement with the findings recorded by the Labour Court and the Industrial Court. Petitioner was served with the charge sheet asking him to explain exact charges level against him. He was given full and proper opportunity to defend himself. He has cross examined the witness produced by the respondent-corporation. Copy of the report of the enquiry

officer was served on him and his explanation was called. Principles of natural justice are followed to the hilt while conducting departmental enquiry. Therefore issue No. 2 relating to the conduct of enquiry in a fair and proper manner is rightly answered in affirmative by Labour Court and Industrial Court.

8. So far as issue No. 3 about perversity in the findings of the enquiry officer is concerned, the charge leveled against the petitioner was issuance of blank tickets by mentioning advance booking numbers to two group of passengers. On the basis of this conduct, an inference of misappropriation of amount of Rs. 58/- is drawn against petitioner. Immediately after conducting verification/raid, statement of petitioner was recorded on 07th May, 2012, in which he took a specific stand that ETIM machine allotted to him was malfunctioning on account of which the tickets for two passengers could not be generated and hence he took out blank papers from the roll in the machine and wrote No. 11208 and Rs. 58/- on said blank paper. This defence continued throughout the enquiry right upto Labour and Industrial Courts. Petitioner relied upon maintenance/repairs report in respect of ETIM Machine No. 56, which he used on the concerned day. That report indicates that successive conductors who used machine No. 56 reported malfunctioning thereof on various dates before the incident. Thus, it is difficult to hold that the stand of malfunctioning of the machine taken by the petitioner immediately after the incidence could be afterthought or disbelievable. Not only the stand was immediately taken after the incidence, but the same is backed by evidence on record.

9. The report of the enquiry officer indicates that the above

aspect has not at all been dealt with while holding petitioner guilty of the charge. Thus the relevant material is eschewed by the inquiry officer.

10. Now coming to the findings recorded by the Labour Court on the above aspect, the Labour Court in para No. 12 of the judgment has held as under :

"The complainant has taken stand that due to defective ETI machine the said ticket did not come properly, hence he has issued hand written ticket to the passenger. The evidence given by the complainant before the enquiry officer shows that he has issued proper tickets bearing No. 11207 & 11209 to the passengers. Then how at the time of issuing one ticket ETI machine had not worked properly? So this stand taken by the complainant is not acceptable. There is passenger statement on record which corroborates evidence of the reporter."

11. Above findings of the Labour Court shows that it has also proceeded to ignore the evidence in the form of reports of successive conductors in maintenance/repairs register showing repeatedly malfunctioning of the ETIM machine . The Industrial Court has also completely glossed over this aspect while rejecting the revision petition filed by the petitioner.

12. I am therefore of the view that so far as the first element of the charge about issuance of blank tickets instead of issuing proper tickets generated out of ETIM machine could not have been held to be proved against the petitioner and the findings recorded by the enquiry officer to that extent are completely perverse.

13. The second element of the charge against the petitioner is

about mentioning of the number 11208 on blank tickets. It is admitted position that said ticket No. 11208 is in respect of advance booking ticket and the petitioner ought not to have written the same on said blank paper. Therefore, the second element of charge mentioning number relating to advance booking on the ticket issued to the passengers has correctly been held to be proved and same is supported by the evidence on record.

14. Consequently, I hold that first element of charge relating to issuance of proper printed and generated ticket on ETIM machine is not proved against the petitioner and only the second element of charge about mentioning number for advance booking on blank papers is proved.

15. Both the learned counsels appearing for the petitioner as well as the respondent have strenuously submitted before me that in the light of conclusion of perversity of findings with regard to first element of charge, the proceedings are required to be relegated to the Labour Court for affording an opportunity to the respondent-corporation to lead evidence. Learned counsel for the petitioner in support of his contention has relied upon judgment of the Supreme Court in the case of **Karnataka State Road Transport Corporation Vs. Lakshimdevamma** and another dated 01st May, 2001 in Civil Appeal No. 2738 of 2001 and the judgment of this Court in the case of **Maharashtra State Road Transport Corporation and another Vs. Sayyed Saheblal Syed Nijam** in Writ Petition No. 3095 of 2013 and decided on 03rd May, 2014.

16. In my view, whether finding recorded by the enquiry officer is perverse or not is to be decided on the basis of evidence on record. If Court comes to the conclusion that the evidence on record does not support finding of enquiry officer against delinquent employee, there is no question of giving further opportunity to the employer to adduce additional evidence. The procedure of giving opportunity to the employer to lead evidence before the Labour Court is applicable only when a finding is recorded that the enquiry is not conducted by following principles of natural justice or there is no inquiry at all. In the present case, the Respondent-corporation has adduced all possible evidence in the inquiry. Only conclusion of guilt could be drawn on the basis of such evidence is the issue. For that purpose, there is no necessity of giving an opportunity to Respondent-corporation to lead very same evidence before the Labour Court. The same would result in unnecessary wastage of time. In fact in **Karnataka State Road Transport Corporation Vs. Lakshimdevamma** (supra) the Apex Court held that the the right of management to lead evidence is not a statutory right and a procedure drawn by Supreme Court to avoid delay and multiplicity of proceedings. It would be relevant to quote the following passage from the judgment:

*“Before we proceed to examine this question any further, it will be useful to bear in mind that **the right of a management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such tribunal or Court is not a statutory right. This is actually a procedure laid down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman.** The geneses of this procedure can be traced by noticing the following observations of this Court in *Workmen of Motipur Sugar Factory (P)Ltd. Vs. Motipur Sugar Factory* (1965 (3) SCR 588) :*

If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the mean-time. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself.

(emphasis supplied)

17. In the present case, I have already arrived at a finding that the enquiry has been held in a fair and proper manner by following principles of natural justice. Therefore, there is no question of remanding the matter back to the Labour Court for rehearing on issue No. 3 relating to perversity. The evidence is already available on record and on perusal of that evidence, I have recorded a finding that the first element of charge against the petitioner is held to be proved. The finding of perversity is recorded by me not on the basis of inadequate or absence of evidence but on account of ignoring the evidence on record. It is settled law that even if a relevant material on record is not considered, the finding can become perverse. In such circumstances, there is no need of remanding the matter back to the Labour Court for providing an opportunity to the respondent-corporation to lead evidence before the Labour Court.

18. Accordingly, writ petition partly succeeds. The judgment and order dated 16.10.2022 passed by the Industrial Court and

judgment and order dated 13.11.2022 passed by the Labour Court are set aside. It is held that the first element of charge of issuance of blank tickets instead of issuing tickets generated out of ETIM machine is not proved against the petitioner. However second element of charge of mentioning number for advance booking on such blank ticket is held to be proved. The Labour Court shall accordingly proceed to decide remaining issues, including that of proportionality of penalty, only with regard to second element of charge.

19. Rule is partly made absolute in above terms. No costs.

[SANDEEP V. MARNE, J.]

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