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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2500 OF 2020**

Mr. Rajendra Dattu Jadhav

.... Petitioner.

V/s

Navi Mumbai Mahanagar Palika

Transport Service and Anr.

.... Respondents.

**WITH
WRIT PETITION NO.1292 OF 2020**

Navi Mumbai Mahanagar Palika

Transport Service and Anr.

.... Petitioners

V/s

Mr. Rajendra Dattu Jadhav

.... Respondent.

Dr. Uday Warunjikar for the Petitioner in Writ Petition No.2500 of 2020 and for the Respondent in Writ Petition No.1292 of 2020.

Mr. Sandesh Deshpande for the Petitioners in Writ Petition No.1292 of 2020 and for the Respondents in Writ Petition No.2500 of 2020.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 21 , 2022

P.C.:-

1] On 1/1/2000, Petitioner Rajendra joined in the employment of Respondent Corporation/Transportation Authority in the capacity of conductor (hereinafter referred to as “employee”). Said employee remained unauthorizedly absent from 06/09/2007 to 28/07/2009 (692 days). As the employee remained absent unauthorizedly for a

period of 692 days, he was served with show cause notice to which he has submitted reply on 06/08/2009. In the said reply, employee has submitted his explanation that he was not well and as such was unable to attend duties.

2] On 11/08/2009, the employee has tendered doctor's certificate that he was suffering from depression and as such sought reinstatement.

3] Accordingly, employee was reinstated and was served with charge-sheet⁶ dated 27/10/2009, thereby proposing inquiry against the employee pursuant to the provisions of Bombay Provincial Municipal Corporation Act, 1949 and Rule 24 of the Model Standing Orders, 1959. It was informed to the employee that if the charge is not admitted by the employee, same will be inquired into and employee should mention with clarity in the reply as to admission or non-admission of the charge alleged. As such, charge levelled against the employee was of unauthorized absence of 692 days for 06/09/2007 to 28/07/2009.

4] After receipt of charge-sheet, it appears that the employee appeared before Inquiry Officer on 23/12/2010 and admitted charge of unauthorized absence. However, he has urged that his reply to the show cause notice furnished on 06/08/2009 be appreciated.

5] Based on the aforesaid admission, Inquiry Officer submitted

report and employee was served with notice dated 08/02/2011 stating that charge against the employee was proved.

6] Accordingly dismissal order dated 22/06/2011 was served. In the interregnum when employee was in the employment, he met with an accident on 24/12/2009 while travelling to his home after having completed his duty. In the said accident, employee has suffered serious injury and amputation of right leg. As a sequel of above, he is unable to discharge duty. Feeling aggrieved, employee preferred Complaint (ULP) No. 105/2011 alleging unfair labour practice. The learned Judge, Labour Court, in its order dated 16/09/2015 recorded that Inquiry conducted against the complainant is not fair and proper and findings are perverse.

7] Employer – Corporation thereafter decided to lead evidence in support of order of dismissal and examined Depot Manager Anil Shinde at Exhibit C-9. After appreciating the evidence, Judge, Labour Court vide impugned order dated 24/02/2016 declared that the employer is engaged in unfair labour practice under item 1(a), (b), (d), (e), (f) and (g) of Schedule IV of Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practice Act, 1971 and directed Respondents to desist from engaging in such unfair labour practice and reinstatement with continuity of service with full back-wages with effect from 22/06/2011 came to be ordered. Employer feeling aggrieved preferred Revision being Revision Application (ULP) No.39 of 2016 before the Industrial Court, Thane. Said Revision came

to be partly allowed vide impugned judgment dated 20/08/2019 whereby order of reinstatement was maintained, however back-wages were ordered to be reduced by 50%.

8] Feeling aggrieved, both employer and employee have preferred respective Petitions.

9] Heard Dr. Warunjikar, learned Counsel for the employee and Mr. Deshpande, learned Counsel for the Employer in both the Petitions.

10] Dr. Warunjikar, Counsel for the employee would urge that the order impugned delivered by Industrial Court is a subject matter of challenge. According to him, Industrial Court once has held that inquiry was vitiated and the finding of fact recorded by the Labour Court does not warrant any interference ought not to have reduced back-wages to 50%. According to him, medical certificate issued to the employee by Dr. Yunus Hasan Ali was very much made available, certifying ailment (depression) of the employee. He would also urge that reference made to the Medical Board also says that at the time of such reference, employee was not having any psychiatric ailment which would suggest that employee was earlier suffering from medical ailment as was certified by Dr. Yunus. He would urge that the judgment of the Labour Court is based on the view expressed by the Apex Court in the matter of *State of Uttaranchal vs. Kharak Singh*, reported in **(2008) 8 SCC 236**. He would further urge that the said judgment has laid down procedure to be followed in departmental

inquiry. According to him, before recording evidence of witnesses of the employer since statement of the employee was recorded and no further inquiry was conducted, judgment of the Labour Court is just and proper. He would urge that order of the Industrial Court is not sustainable and is liable to be quashed and set aside.

11] Mr. Deshpande, Counsel appearing for the employer would urge that in reply dated 06/08/2009 to the first show cause notice, the employee has specifically stated that his case be considered on humanitarian ground. According to him, on 11/08/2009, employee has submitted representation and for the first time tendered medical certificate issued by Dr. Yunus Hasan Ali dated 10/08/2009. According to him, very qualification of Dr Yunus Hasan Ali is under cloud as the said Medico appears to be possessing degree of M.B.B. CH. (CAIRO). He has invited my attention to the charge-sheet issued to the employee and stated that employee was specifically informed that he must mention as to whether he admits the charge or would like to face inquiry. He would also urge that in voluntary statement given by employee to the Inquiry Officer on 23/12/2010, employee in categorical terms has accepted charge levelled against him of unauthorized absence for a period of 692 days. As such, according to him order of Labour Court and Industrial Court both are not sustainable.

12] I have appreciated aforesaid submissions.

13] The unauthorized absence of employee from 06/09/2007 to 28/07/2009 which is for a period of 692 days while working in the employment of the Employer in the capacity of conductor is not in dispute. It appears that for the first time employee has tendered his medical certificate while replying to the show cause notice i.e. on 11/08/2009. As such it can be inferred that medical certificate issued by Dr Yunus Hasan Ali was for the first time made available after 10/08/2009 i.e. immediately day before he was permitted to join duty i.e. on 11/08/2009. Rightly so objected by the Counsel for Employer, very sanctity of the medical certificate is under cloud as to whether Dr Yunus Hasan Ali is qualified medical practitioner and same cannot be inferred from perusal of the said certificate. The employee was made aware about his right as to admit or reject the charge levelled against him and in response to the same before recording of evidence could commence, he has specifically stated before the Inquiry Officer that he admits to the charge of unauthorized absence. Such statement made by the employee on 23/12/2010 which is duly signed by him sufficiently proves acceptance of charge by the employee.

14] Once the charge is admitted by the employee, there hardly remains any purpose or cause for conducting departmental inquiry against the employee like the Petitioner in this case. I have hardly come across any position of law from side of employee through any precedent that in spite of admission of charge holding of inquiry is mandatory. It is only after employee does not admit the charge, inquiry proceedings are initiated, thereby recording evidence of

Employer which in this case was rightly so not required, particularly when the employee has admitted charge of unauthorized absence. The medical certificate submitted by the employee is also subsequent to the period of unauthorized absence of 692 days. The position of law as could be inferred from the judgment of the Apex Court in the matter of *Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T. Murali Babu* reported in **(2014) 4 SCC 108**, amply supports the case of the Employer. In case of long unauthorized absence, it is held that it is not obligatory on the part of disciplinary authority to record finding of wilful absence even when the employee failed to show compelling circumstances for remaining absence. As such, in catena of judgments, it has been held that long unauthorized absence without sufficient cause is a serious misconduct.

15] The Apex Court in the aforesaid judgment has also held that it is the duty of the employee to maintain discipline and act with responsibility, perform duty with sincerity and serve the Institution with honesty. Adhering to the principle of discipline is not only for personal excellence but also for collective good of organisation. Indisciplined conduct on the part of the employee was duly admitted by him and as such in my opinion, employer was justified in awarding punishment of dismissal. Apart from above, judgment relied upon by the employee in the matter of *State of Uttaranchal* cited supra will be of hardly any assistance, as the employee has admitted charge of unauthorized absence and was, in my opinion, not required to be proceeded against by conducting departmental inquiry.

16] In this backdrop, Writ Petition preferred by the employee being Writ Petition No.2500 of 2020 is hereby dismissed, whereas Writ Petition No. 1292 of 2020 preferred by the employer stands allowed in terms of prayer clause (a), which reads as under:-

“(a) That by an appropriate writ, order or direction, this Hon’ble Court be pleased to quash and set aside the impugned Judgment and Order dated 20/08/2019 passed by the Learned Member, Industrial Court, Thane in Revision Application (ULP) No.39 of 2016 as well as Judgment and Orders dated 16/09/2015 and 24/02/2016 passed by the learned Fourth Labour Court, Thane in Complaint (ULP) No.105 of 2011.”

17] At this stage, this Court is required to be sensitive to the fact that the employee during his employment while travelling on the bus of employer while returning to home from employment met with an accident and has suffered grievous injury, resulting into amputation of his right leg. The employee is informed to have underwent operation five times in KEM Hospital. The said fact is duly proved from the judgment delivered by the Claims Tribunal in Claim Petition of the employee wherein he is awarded compensation of Rs 9,96,900/- including no fault liability.

18] Employer has given an offer in his affidavit dated 25/10/2021

of one time payment of 4 lakhs towards full and final settlement. I have appreciated aforesaid offer of the Employer. Employee was in the employment from 01/01/2000 till date of his termination. He has also suffered major accident. As a consequence, he is now unable to discharge his duty as driver. In this backdrop, offer made by Employer to the tune of Rs 4 lakhs appears to be somewhat on lower side and as such considering the interest of justice, it will be appropriate in my opinion to direct the Employer to pay amount of Rs 6 lakhs.

19] In view of above, it is directed that employer shall deposit amount of Rs 6 lakhs in this Court in any case by 30/11/2022 which the employee is entitled to withdraw. The said amount shall be deposited towards full and final settlement of the claim of the employee. The said amount is in addition to the amount of compensation awarded before Lok Adalat in M.A.C. Application No. 275 of 2011.

(NITIN W. SAMBRE, J.)