

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

WRIT PETITION NO. 7412 OF 2018

Meer Rafat Ali Meer Inayat Ali vs. Maharashtra State Road Transport
Corporation and others

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

Court's or Judge's Orders.

Mr. Abdul Subhan, Advocate for petitioner.
Mr. Pratik Gavai, Advocate for respondent Nos.1 to 3.

CORAM : MANISH PITALE J.
DATE : 10/06/2022

By this writ petition, the petitioner has challenged judgment and order dated 13/11/2002 passed by the Industrial Court, Maharashtra, Akola, whereby revision application filed by the respondents was allowed, the judgment and order of the Labour Court was set aside and the complaint filed by the petitioner was dismissed.

2. The petitioner was appointed as bus Conductor with the respondent-corporation in the year 1988. In October 1992, he was served with a charge-sheet on the ground that although he had collected amounts from passengers, he had failed to issue tickets. An enquiry was conducted wherein the petitioner was

found guilty of the charges levelled against him, as a result of which the respondent-corporation issued an order dated 24/01/1996, dismissing the petitioner from service.

3. Aggrieved by the same, the petitioner filed Complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, alleging unfair labour practice against the respondent-corporation, seeking setting aside of the order of termination of service and for consequential benefits.

4. The said Complaint was opposed by the respondent-corporation.

5. After taking into consideration, the pleadings and the material on record, by judgment and order dated 10/04/2002, the Labour Court, Akola, partly allowed the Complaint of the petitioner, declaring that the respondent-corporation had indulged in unfair labour practice. The petitioner was directed to be reinstated, although the relief of back-wages was denied. The Labour Court found that although the petitioner had failed to prove that the findings of the Enquiry Officer could be said to be perverse, but since

the penalty imposed upon the petitioner was shockingly disproportionate, the Complaint deserved to be allowed.

6. Aggrieved by the same, the respondent-corporation filed revision application before the Industrial Court, which stood allowed in the aforesaid terms by impugned judgment and order dated 13/11/2002. To challenge the said judgment and order dated 13/11/2002, the petitioner filed the present writ petition after about almost 16 years on 22/06/2018. Upon notice being issued, the respondent-corporation entered appearance through counsel and the matter was heard finally.

7. Mr. Abdul Subhan, learned counsel for the petitioner submitted that the Industrial Court ought not to have allowed the revision application, for the reason that the Labour Court had correctly found the penalty imposed upon the petitioner being shockingly disproportionate. It was submitted that the Labour Court found that when certain allegations were made against the petitioner on earlier three occasions, the respondent-corporation had already imposed minor punishments and that the facts of the case did not warrant an order of dismissal from service. It was

submitted that cogent explanation was indeed given by the petitioner for the non-issuance of tickets to certain passengers and that therefore, the Industrial Court ought not to have interfered with the order of the Labour Court. On the question of penalty being shockingly disproportionate, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of *V. Ramana vs. A.P.S.R.T.C. and others 2005 (7) SCC 338*.

8. On the other hand, Mr. Gavai, learned counsel appearing for the respondent-corporation submitted that the Labour Court having itself found that the findings of the Enquiry Officer could not be said to be perverse, it ought not to have granted relief to the petitioner. It was submitted that the Labour Court erred in holding that the penalty was shockingly disproportionate. Even otherwise, the Labour Court could not have granted relief of reinstatement to the petitioner and at worst the matter ought to have been relegated to the employer i.e. the respondent-corporation for reconsidering the aspect of penalty to be imposed on the petitioner. As regards the impugned judgment and order of the Industrial Court, it was submitted that the same was based on proper appreciation of the material on record, particularly the

fact that the Labour Court had not even rendered any finding about unfair labour practice against the respondent-corporation and yet the complaint of the petitioner was allowed. It was highlighted that the present petition was filed after 16 years and that on the said ground itself, the petition deserved to be dismissed.

9. The learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case of ***Regional Manager, U.P.S.R.T.C. and others vs. Hoti Lal and another*** 2003 1 CLR 712.

10. This Court has considered the submissions made on behalf of the rival parties in the context of the material on record. It is an admitted position that while the impugned judgment and order was passed by the Tribunal on 13/11/2002, the present writ petition was filed in this Court on 26/02/2018. Thus, it was almost after 16 years that the petitioner chose to invoke the jurisdiction of this Court. Although strictly speaking there may not be any specific limitation period prescribed for approaching this Court to invoke jurisdiction under Article 227 of the Constitution of India, an aggrieved party is expected to seek redressal within reasonable period of time. By no stretch of imagination can the period of 16 years be said to be a

reasonable period of time within which the petitioner approached this Court. Therefore, on this ground itself the writ petition ought to be dismissed.

11. But, since the petitioner was an employee who has sought to raise grievance against his employer, this Court has considered the merits of the matter also. The record shows that even the Labour Court in its judgment and order dated 10/04/2002 found that the petitioner had miserably failed to establish that the findings rendered by the Enquiry Officer were perverse. Therefore, on merits the petitioner had clearly failed to make out a case in his favour. The only aspect on which the Labour Court proceeded in favour of the petitioner was that the penalty imposed upon him was found to be shockingly disproportionate. Even on this aspect of the matter, the Labour Court clearly erred by allowing the Complaint and directing reinstatement of the petitioner when in such circumstances, at the most the Court was expected to relegate the employee back to the employer for re-consideration of the aspect of penalty that could be imposed.

12. On the challenge raised by the respondent-corporation before the Industrial Court, it was found in the impugned judgment and order that the Labour

Court had not even rendered any finding on unfair labour practice. Thus, it is relevant that the Labour Court could not have exercised jurisdiction in favour of the petitioner in the absence of any such finding in its order. In fact, as noted above, the Labour Court itself found that the petitioner had failed to prove perversity in findings of the Enquiry Officer. Therefore, the Industrial Court was justified in holding in favour of the respondent-corporation. The findings of the Enquiry Officer show that the petitioner had indeed received amounts from passengers and he had failed to issue tickets for the said amounts. This was a clear case of causing financial loss to the respondent-corporation and therefore, the penalty imposed upon the petitioner could not be said to be shockingly disproportionate.

13. Even otherwise the material on record shows that on three earlier occasions, similar allegations were levelled against the petitioner for which minor penalties were imposed. The record of the petitioner was therefore, not suitable for showing any indulgence insofar as penalty was concerned. The Industrial Court correctly took into consideration these aspects of the matter, while holding in favour of the respondent-corporation.

14. Insofar as the judgment on which the petitioner has placed reliance i.e. judgment of the Hon'ble Supreme Court in the case of *VRamana(supra)*, the same would be of no assistance to the petitioner, for the reason that in the said judgment it is clearly stated that when the Court comes to a conclusion that the penalty imposed on an employee is shockingly disproportionate, it cannot substitute its own decision as regards the penalty that can be imposed. It is expected that the matter is sent back to the employer for imposition of appropriate penalty. In the present case, this Court has found that the penalty imposed upon the petitioner could not be said to be shockingly disproportionate and therefore, the said judgment can be of no assistance to the petitioner.

15. On the other hand, the learned counsel for the respondent-corporation is justified in relying upon the judgment in case of *Regional Manager(supra)*, wherein the Supreme Court in similar circumstances concerning the case of a bus Conductor found that causing financial loss to the Corporation is a serious matter warranting appropriate penalty.

16. In view of the above, this Court finds that there is no merit in the present writ petition and accordingly it is dismissed.

- +

JUDGE