

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

WRIT PETITION NO.13482 OF 2019

Mahadeo Govardhan Mohite
Age: 62 years, Occ. Pensioner,
R/o. Shri. Vaishnav Sadan,
27/2023, Ramnagar, Osmanabad,
Tq. & Dist. Osmanabad.

... Petitioner
(Orig. Complainant)

Versus

Divisional Controller,
M.S.R.T.C., Near Ambedkar Statue,
Osmanabad
Tq. & Dist. Osmanabad.

... Respondent
(Orig. Respondent)

...
Advocate for Petitioner : Mr. Sudhir K. Chavan
Advocate for Respondent : Mr. Anilkumar B. Dhongade
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17th AUGUST, 2023

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.
2. This petition filed under Article 227 of the Constitution of India, takes exception to the judgment and order dated 05/02/2019, passed by learned Member, Industrial Court, Latur, in Complaint (ULP) No.88/2016, thereby dismissing the complaint filed by petitioner.

3. Brief facts of the case, shorn of unnecessary details, are that:-

On 08/06/2015, petitioner while working as Head Mechanic with the respondent corporation, was leaving the place of duty. At that time, his two wheeler was checked by the security guard and in the dickey of his two wheeler certain articles belonging to the respondent corporation like ring spanner, open spanner, adjustable spanner, box spanner tommy, cutting plier and hammer, were found. Departmental inquiry was initiated against petitioner by leveling charge of theft. He was suspended on 13/06/2015 and on the same day charge-sheet was served on him. He replied the charge-sheet on 19/06/2015, thereby denying all the charges. Thereafter, departmental inquiry was conducted and petitioner was dismissed from service on the ground of dishonesty, by order dated 29/06/2015.

4. Petitioner preferred departmental appeal, which was partly allowed by order dated 02/05/2016. The appellate authority has come to conclusion that charge of theft is not proved against petitioner. However, it is held that said incident is published in local newspaper, due to which image of the corporation is tarnished. Hence, the punishment of dismissal from service is set aside and imposed punishment of reduction of basic pay by three stages with permanent effect.

5. Petitioner challenged the said punishment by filing Complaint (ULP) No.88/2016, under Section 28 read with Schedule IV Item 9 and 10 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labor Practices Act, 1971. The Industrial Court dismissed the complaint. Hence, the present petition.

6. Heard learned advocate for petitioner and learned advocate for respondent. Perused the writ petition memo, annexures thereto, the impugned order and citations relied upon by the respective parties.

7. Learned advocate for petitioner contends that punishment imposed on petitioner is shockingly disproportionate to the misconduct alleged against him. According to him, said misconduct cannot be attributed to the petitioner. He further submits that petitioner stood retired on superannuation on 03/06/2015 and thereafter he has filed complaint challenging the punishment order. In support of his submission, he relied on *Sachin Charlus Mirpagar Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Ahmednagar and Another, 2019 (5) Mh.L.J. 189*. Copy of the judgment and order dated 04/03/2020, in R.C.C. No.444/2015, is placed on record by the learned advocate for petitioner, contending that petitioner is acquitted from the charge of theft in respect of the said incident.

8. Learned advocate for respondent, on the other hand, supported the impugned order. He submits that petitioner has accepted the findings of inquiry officer recorded in the departmental inquiry and has not challenged fairness of the departmental inquiry held against him. Therefore, he is estopped from questioning quantum of punishment imposed on him. He submits that Industrial Court has recorded proper reasons while dismissing the complaint and no case is made out by the petitioner to interfere in the order impugned in present petition.

9. Admittedly, the first appellate authority has recorded a finding that charge of theft levelled against petitioner, is not proved during the departmental inquiry. It is specifically held, it has not come on record as to whom the articles allegedly found in the dickey of petitioner's two wheeler, were issued. Admittedly, the said dickey had no lock. As the vehicle of petitioner was within the eyesight of security guard, it was easy for the security guard to notice petitioner keeping the said articles in the dickey. Since the dickey did not have any lock, possibility cannot be ruled out that somebody else might have kept those articles in the dickey. It is further held that, neither a single witness is examined, nor any evidence is led to prove that said articles were kept by the petitioner in the dickey. Therefore, a clear finding of fact is recorded

by the first appellate authority that merely because articles were found in the dicky of two wheeler of petitioner, it is not possible to held that petitioner has committed theft and therefore, charge of theft levelled against petitioner is not proved.

10. The first appellate authority, thereafter, proceeded to held that since the said incident was reported in daily news paper namely 'Lokmat', image of the corporation is tarnished and therefore, set aside the punishment of dismissal from service and imposed the punishment of reduction of basic pay by three stages permanently. The said finding recorded by the first appellate authority is perverse and cannot be sustained in the facts of the present case. There is nothing on record to show that the incident was reported by petitioner to the local newspaper. Petitioner would be the last person to report such incident to the newspaper, wherein his image itself would be tarnished along with the image of the corporation.

11. If the petitioner was not responsible for reporting said news and/or publication of the said news in the local newspaper, how the petitioner could be held responsible for tarnishing image of respondent corporation. This aspect is ignored by the Industrial Court while dismissing complaint of the petitioner.

12. Industrial Court while dismissing the complaint has

mislead and misconstrued the ratio in ***Damoh Panna Sagar, Rural Regional Bank Vs. Munna Lal Jain, (2005) 10 SCC 84***, wherein it is held that,

"The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision- making process and not the decision.

To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

13. Industrial Court has lost sight of the fact that first appellate authority's decision in the present case, is illogical. Punishment is imposed on the petitioner for the act, which cannot be attributed to him. In that view of the matter, impugned order passed by the Industrial Court cannot be sustained in peculiar facts of the present case.

14. There is no merit in the argument of learned advocate

for respondent that since petitioner has accepted findings of the first appellate authority and has accepted retiral benefits, he is estopped from challenging the punishment imposed on him. May be the petitioner was under impression that, if he does not accept the punishment at that point of time, i.e. at the verge of retirement, he may not get his retiral benefits and that is why petitioner has challenged the punishment only after accepting the retiral benefits.

15. For the aforestated reasons, impugned order is vitiated on the ground of non-application of mind and for misinterpretation of the decision in *Damoh Panna Sagar* (supra). Fact remains that the petitioner is acquitted in criminal case leveling charge of theft against him.

16. In *Sachin Charlus Mirpagar* (supra), findings recorded by the learned Single Judge of this Court in similar facts, support the case of petitioner. In that case, charge-sheet was issued to petitioner for the reason that he was arrested and was in police custody for more than 48 hours. His involvement in the alleged case of robbing a lady was published in Marathi Dainik Pudhari newspaper and that tarnished image and reputation of the corporation. Charge of theft and tarnishing image of corporation amounted to an act of moral turpitude. Petitioner therein, challenged second show-cause notice by filing the complaint. He

was granted *ex-parte* ad-interim relief and was continued in employment. By the impugned order, Labour Court rejected his interim relief application. The said order was confirmed by the Industrial Court. This Court held that,

"22. The learned counsel for the Corporation strenuously submits that, the Corporation was not dealing with the charge of theft, but intended to prove that the conduct of the petitioner, which was published in the newspaper, led to the tarnishing of its image and reputation. I am unable to accept the said contention for the reason that, unless the offence was proved against the petitioner, it cannot be concluded that, he was guilty of an act which amounted to moral turpitude. Unless a charge of moral turpitude is proved, an employee cannot be deprived of his employment.

23. The Learned counsel for the Corporation has gone into the charge-sheet threadbare and has read it-out in the open Court. He submits that, the only charge leveled upon the petitioner was that the news of his arrest was published in Daily Pudhari dated 21-1-2017. Hence, the management initiated the inquiry against the petitioner. So also, the petitioner was kept in Police custody for ten days, which is not disputed. The charge leveled upon him was that he was brought the employer to disrepute. I find that no employer can proceed against an employee for an incident unconnected with the establishment or its premises, alleging that the employer was brought to disrepute, unless the employer can prove that the employee had committed an offense that brought the employer to disrepute.

24. In the instant case, the petitioner has been exonerated of the charge of having committed a theft, under Section 392 of Indian Penal Code. As such, no offence is proved against him. Consequentially, the Corporation cannot take a stand that, the petitioner has committed an act which amounted to moral turpitude. Had such an offence been proved in criminal trial, the Corporation could have then dispensed with the services of the petitioner, even without any enquiry, in

view of the settled law that, if an employee is convicted, the employer can dispense with his services, without conducting an enquiry.”

17. For the aforestated reasons, writ petition is allowed. Impugned order dated 05/02/2019, passed by learned Member, Industrial Court, Latur, in Complaint (ULP) No.88/2016, is hereby quashed and set aside. Complaint (ULP) No.88/2016 is allowed.

18. Petitioner is held entitled for all the consequential benefits. Rule is made absolute.

(NITIN B. SURYAWANSHI, J.)