

12 December 2023

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12847 OF 2018
WITH
INTERIM APPLICATION NO. 3420 OF 2023**

Mallikarjun Dhullappa Rajmane

...Petitioner

V/s.

Divisional Controller

...Respondent

Mr. Suhas Inamdar, for the Petitioner.

Ms. Gargi Warunjikar i/by. **Mr. Nitesh Bhutekar**, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Resd. On: 7 DECEMBER 2023.

Pron. On: 12 DECEMBER 2023.

JUDGMENT:

1. By the present petition, Petitioner has challenged the Award dated 27 June 2016 passed by the Labour Court, Solapur in Reference (IDA) No. 23 of 2015 to the extent of non-grant of backwages upon reinstatement of Petitioner w.e.f. 8 June 2011. Petitioner is working on the post of Driver with the Respondent-Transport Corporation since the year 1985 consequent to disciplinary proceedings held on the charge of absence from duty, the Respondent-Corporation imposed the

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penalty of dismissal from service on the Petitioner w.e.f 8 June 2011. At the instance of the Petitioner, Reference was made to the Labour Court, Solapur and numbered as Reference (IDA) No. 23 of 2013. Petitioner filed Statement of Claim in the Reference which was resisted by the Respondent-Corporation by filing its reply. The Labour Court has rendered Part-I Award on preliminary issues on 11 June 2016 holding that the Departmental Enquiry was legal, fair and proper and that the findings were not perverse. Petitioner examined himself as a Witness. The Respondent-Corporation did not examine any witness. The Labour Court thereafter proceeded to deliver Part-II Award dated 27 June 2016 and has held that the penalty of dismissal from service imposed on the Petitioner is disproportionate. The Labour Court has thereafter set aside the dismissal order and has directed the Respondent to reinstate the Petitioner w.e.f. 8 June 2011. The Labour Court has held that forfeiture of two annual increments permanently would be an appropriate penalty considering the nature of charge proved against the Petitioner. The Labour Court has denied backwages to Petitioner. Petitioner retired from service on attaining the age of superannuation on 31 May 2018. After retirement, Petitioner has filed the present petition to the limited extent of denial of backwages by the Labour Court. By Order dated 12 December 2019, this Court has admitted the petition by issuance of Rule. Petitioner has filed Interim Application No. 3420 of 2023 seeking expeditious hearing of the petition. Petition is taken up

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for final hearing with the consent of the learned counsel appearing for the parties.

3. Mr. Inamdar the learned counsel appearing for the Petitioner would submit that the Labour Court has erred in denying backwages to the Petitioner. That the only allegation levelled against the Petitioner was absence from duty for 7 days from 26 October 2010 to 2 November 2010 and for a further period of six days from 6 November 2010 to 11 November 2010. That for such miniscule misconduct of absence of 13 days, harsh penalty of dismissal could not have been imposed. That though the Labour Court has rightly set aside the penalty, it has failed to appreciate that Petitioner was unlawfully kept away from duties for a long period during 8 June 2011 till 24 December 2016 when he was actually reinstated in service. That award of backwages upon grant of relief of reinstatement is a normal rule. That Petitioner led evidence before the Labour Court that he was not gainfully employed. That the said assertion on the part of the Petitioner was neither contested nor disproved by Respondents by leading any evidence. That the Respondent-Corporation failed to examine any witness before the Labour Court. That Petitioner thus proved before the Labour Court that he was not gainfully employed. In such circumstances, award of backwages was eminent. He would pray for setting aside the Order of Labour Court to the extent of denial of backwages.

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4. *Per-contra*, Ms. Warunjikar, the learned counsel appearing for the Respondent-Corporation would oppose the petition and support the order passed by the Labour Court. She would submit that there is gross delay in filing the present petition. The fact that the Petitioner did not immediately set up a challenge to the order of Labour Court would clearly indicate acquiescence in denial of backwages. That past record of Petitioner is not free from blemish when he was repeatedly subjected to disciplinary proceedings. That he was dismissed from service on previous occasion as well. She would invite my attention to paragraphs-7 to 12 of the Written Statement filed before the Labour Court demonstrating imposition of various penalties on the Petitioner in past. She would submit that considering his past record, the Labour Court could not have actually set aside the order of dismissal. However, now that the order of dismissal is set aside and Petitioner is reinstated in service, grant of backwages would be like putting a premium over the illegality committed by the Petitioner. That Petitioner was an inalcitrant employee who repeatedly engaged in misconduct and in such circumstances, the Labour Court has rightly not awarded backwages to Petitioner. That the order of dismissal is set aside by way of indulgence and exhibition of such indulgence by the Labour Court in favour of Petitioner does not mean that he cannot turn around and seek payment of full backwages. She would pray for dismissal of the petition.

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5. I have considered the contentions canvassed by the learned counsel appearing for the parties. Petitioner was charged with misconduct of remaining absent from 26 October 2010 to 2 November 2010 and from 6 November 2010 to 11 October 2010. Thus, the total period of unauthorized absence is for 13 days. In ordinary course, absence of 13 days cannot be a reason for imposition of harsh penalty of removal from service. However, there are two factors which clearly can justify imposition of slightly harsher penalty for absence of such small period. Firstly, Petitioner was working as Driver and must have been scheduled for driving buses of the Respondent-Corporation on fixed routes. The Traffic Department of the Corporation is required to prepare a Schedule in advance about deployment of various drivers and conductors for operation of various buses. Sudden unauthorized absence by a Driver without any prior intimation could disrupt the entire schedule where the Respondent-Corporation may have to make emergency arrangement for plying the buses on scheduled routes. In the event of inability of the Respondent-Corporation to make available alternate driver, the passengers are put to inconvenience in addition to cause of losses to the Respondent-Corporation. This aspect must be borne in mind while determining gravity of misconduct of absence by a Driver employed by the Respondent-Corporation. The second factor is about past record of the Petitioner. The Respondent-Corporation made following averments in para-12 of its Written Statement :

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That, the charges against the Second Party are proved in the enquiry by evidence on record. The past service record of the Second Party is very bad. Previously the Second Party was awarded the punishment of stoppage of increment 16 times and also awarded punishment of dismissal and fine for 7 times for like misconduct. His past record was also bad. He did not improve himself and again committed serious misconduct of misappropriation of S.T. amount. Considering his past unsatisfactory service record and gravity of present misconduct the Second Party is not entitled to any relief from this Hon'ble Court. The awarded punishment is not entitled to any relief from this Hon'ble Court. The awarded punishment is quite fair legal and proper. It cannot be said that the same is disproportionate.

6. Thus, the Petitioner was repeatedly subjected to disciplinary proceedings and his increments were apparently stopped for as many as sixteen times. He was once dismissed from service. He was also imposed fine on seven occasions apparently for misconduct of absence from duty. It does appear that Petitioner was habitual in remaining absent. He appears to have become inalcitrant and was not ready to improve. This appears to be the reason why the Respondent-Corporation was required to take extreme step of dismissing him from service as there was no improvement in the conduct of the Respondent. Fortunately for Petitioner, the Labour Court has set aside the penalty of dismissal by invoking the doctrine of disproportionality. Though considering the facts and circumstances of the case, it could well be argued that

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considering the past conduct of the Petitioner, the penalty of dismissal was not disproportionate so as to shock conscience of the Court. Fortunately for the Petitioner, the Respondent-Corporation has not challenged the order of the Labour Court. The Order is implemented and Petitioner is reinstated in service on 24 December 2016. Shortly thereafter, he has retired from service on attaining the age of superannuation on 31 May 2018.

7. It must also be borne in mind that Petitioner is not exonerated completely. The Labour Court has imposed the penalty of permanent stoppage of two increments of Petitioner. Thus, he is not completely absolved in respect of the misconduct alleged against him. The misconduct is proved, Petitioner is held guilty and is ultimately visited with the penalty of permanent stoppage of two increments.

8. The issue for entitlement of backwages is required to be decided in the light of the above three facts of (i) nature of discipline expected from a Driver employed in State Transport Corporation, (ii) past conduct of the employee and (iii) non-exoneration in the disciplinary proceedings. After considering the said three factors, it is difficult to hold that Petitioner can be awarded backwages as a natural consequence of setting aside his termination order. Infact, this Court would be constrained to observe that Petitioner is rather lucky to get himself reinstated in service despite repeated indulgence in misconduct and habitually remaining absent thereby disrupting the

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operations of the Respondent-Corporation. To expect payment of backwages after exhibiting such conduct by the Petitioner is like putting a premium over the irregularities committed by the Petitioner. In my view, therefore the Labour Court has rightly denied backwages to the Petitioner. I do not find any patent error in the order passed by the Labour Court.

9. No doubt, the Petitioner made an averment in Statement of Claim, as well as in his Affidavit in evidence that he was not gainfully employed. However, that alone may not be sufficient for the purpose of award of backwages. Petitioner's entitlement to backwages must be considered in the light of the nature of misconduct committed by him as well as his past record.

10. It appears that the Award of the Labour Court was passed on 27 June 2016 whereas the Petitioner has joined services in pursuance of the Order of the Labour Court on 27 June 2016. In respect of this period from 27 June 2016 to 23 December 2016, the Petitioner would be justified in demanding backwages, since he is not responsible for delay in joining services. Accordingly, the Petitioner is held entitled for payment of full salary and allowances during the period 27 June 2016 to 23 December 2016.

11. The impugned Award passed by the Labour Court dated 27 June 2016 is accordingly upheld. The Writ Petition is dismissed with no order as to costs. However, the Respondent-

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Corporation shall pay to the Petitioner full salary and allowances during the period 27 June 2016 to 23 December 2016. Rule is discharged.

SANDEEP V. MARNE, J.

Note : Corrections are carried out in para-10 only pursuant to speaking to minutes Order dated 19 December 2023.