

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4572 OF 2023

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Dagadu Vasant Mudgal

...Petitioner

Versus

Maharashtra State Road Transport
Corporation

...Respondent

Mr. Shrikrishna Ganbawale, a/w Kush Lahankar, for the
Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 12th APRIL, 2023

ORDER:-

1. Heard Mr. Ganbawale, the learned Counsel for the petitioner.

2. The petitioner assails legality, propriety and correctness of the judgment and order dated 8th February, 2023 passed by the learned Member, Industrial Court at Kolhapur in Revision Application (ULP) No.59 of 2018, whereby the revision application preferred by the petitioner assailing the order dated 1st January, 2018 passed by the Labour Court in Complaint (ULP) No.38 of 2011 holding that the enquiry initiated against the petitioner was legal and the findings recorded by the Enquiry Officer were not perverse, came to be dismissed by affirming the order of the Labour Court.

3. Petitioner was working as a Conductor with the respondent – Corporation. On 31st May, 2009, an Inspector inspected the tickets and cash at hand with the petitioner. It was found that the petitioner had reissued already punched tickets. Tickets for excess amount were issued to the passengers. The cash at hand was found short by Rs.212/-. The petitioner thus allegedly committed misconduct under Clauses 7(e), 10 and 22 of the Service Rules. Eventually enquiry was conducted and a show cause notice as to why the petitioner be not dismissed from service came to be issued.

4. The petitioner filed Complaint (ULP) No.38 of 2011 alleging unfair labour practice under Item 1(a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (“the Act, 1971”). By a judgment and award Part-I dated 1st January, 2018, the learned Judge, Labour Court, was persuaded to decide the preliminary issues of the enquiry being legal and findings not being perverse against the petitioner. The matter was carried in revision. By the impugned order the revision application came to be dismissed.

5. Mr. Ganbawale, the learned Counsel for the petitioner, urged two ground to assail the impugned orders. There was no

charge of misappropriation. However, the Courts below misdirected themselves in observing that the petitioner was guilty of misconduct on the premise that the petitioner misappropriated the amount. Attention of the Court was invited to the charge-sheet (Exhibit-A) wherein the petitioner was not charged with misappropriation of the amount. Second, the petitioner was deprived of an effective opportunity of hearing as the passengers whose statements were recorded during the course of initial enquiry were not offered to the petitioner for cross-examination.

6. On the first count, the Labour Court was of the view that it was not imperative to examine the passengers whose statements were recorded during the course of inspection. Moreover, the petitioner never sought the examination of those passengers during the course of enquiry. In any event, according to the Labour Court, the non-examination of the passengers was not fatal in a disciplinary proceedings.

7. No fault can be found with the aforesaid approach of the Labour Court. It is not the case that the passengers were examined during the course of disciplinary enquiry and no opportunity to cross-examine them was availed to the petitioner. It does not seem that the petitioner, during the course of

enquiry, urged that he be given an opportunity to either examine those passengers or cross-examine them with regard to the statements made by them during the course of inspection. Non-examination of passengers, in the backdrop of the charge, even otherwise, does not seem to be such a lacuna as to render the enquiry illegal.

8. The challenge to the impugned orders on the aspect of the alleged perversity of the findings based on absence of charge of misappropriation also does not carry much substance. There was material to indicate that the petitioner had reissued already punched tickets and an explanation was sought to be offered that he was required to reissue the tickets as he had refunded the amount to one of the passengers. That explanation did not find favour with the Enquiry Officer. Implicit in the said explanation was the admission that the already punched tickets were reissued in the breach of the Rule. Likewise, the finding that the cash at hand was found short by Rs.212/- was based on cogent material. In the circumstances, the findings recorded by the Enquiry Officer cannot be termed as perverse.

9. So far as the contention of Mr. Ganbawale that the Courts below unjustifiably observed that there was misappropriation by the petitioner, it would be suffice to clarify that the Labour

Court while passing the Part-II award would proceed on the premise that Part-I award was restricted to the consideration of the legality of the enquiry and perversity of the findings and shall not be influenced by the observations in respect of the alleged misappropriation.

10. The petition thus stands dismissed subject to the aforesaid clarification.

[N. J. JAMADAR, J.]