IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7157 OF 2018

Vinayak S/o. Ganpatrao Pawar,
Aged about 39 years, Occ. : Service,
R/o. Rahate Layout, Ravi Nagar,
Morshi, Dist. Amravati.

.... PETITIONER.

// VERSUS //

1. The Maharashtra State Road Transport, Corporation, through its Divisional Controller, Amravati.

2. The Maharashtra State Road Transport, Corporation, through its Depot Manager, Amravati.

.... RESPONDENTS.

Shri C.V.Jagdale, Advocate for Petitioner.
Shri A.S.Mehadia, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 22, 2023

Leave to correct the prayer clause is granted.

The correction be carried out forthwith.

ORAL JUDGMENT :

1. Heard.

2. **RULE**. Rule made returnable forthwith. Heard finally by consent of the parties.

3. The petitioner's dismissal as a Conductor by the respondent Corporation was set aside by the Labour Court in a complaint filed by the petitioner and the same has been reversed by the Industrial Court vide impugned judgment and order dated 17/09/2018. Hence, this petition.

4. The petitioner was working on the post of Conductor in Morshi Depot since 2005 and he was served with a charge-sheet on 03/07/2008 alleging that the petitioner has committed misappropriation. On denial of said allegations by the petitioner a departmental enquiry was initiated wherein the charges levelled against the petitioner held as proved. Thereupon, the respondent-Corporation issued show cause notice dated 29/01/2011.

5. The petitioner, feeling aggrieved by the same, filed Complaint (ULP) No.02 of 2011. The learned Labour Court, while deciding the preliminary issue Nos. 1 and 2 as regards fairness of the enquiry and perversity of the finding recorded by the Enquiry Officer, if

any, vide order dated 10/11/2017 held that the enquiry conducted by the respondent-Corporation was not just and proper and not in accordance with the principles of natural justice. The learned Labour Court further held that the findings drawn by the Enquiry Officer are perverse and therefore, the enquiry vitiates. The learned Labour Court, accordingly, granted permission to the respondent-Corporation to prove the misconduct of the petitioner.

6. Thereupon, the respondent-Corporation examined the Reporting Officer Shri Deelip Gawali and a witness Shri Bharat Mohekar to prove the misconduct of the petitioner.

7. The learned Labour Court, after examining the oral as well as documentary evidence, vide judgment and order dated 12/02/2018 allowed the complaint and thereby set aside the show cause notice dated 29/01/2011 and restrained the respondent-Corporation from terminating the services of the complainant/ petitioner on the basis of the show cause notice.

8. Feeling aggrieved by the said judgment and order dated 12/02/2018 and the order on preliminary issues Nos. 1 and 2 passed by the learned Labour Court, the respondent Corporation filed a revision

application viz. Revision (ULP) No.15 of 2018, which came to be allowed by setting aside the order dated 10/11/2017 on preliminary issue Nos.1 and 2 and judgment and order dated 12/02/2018, which is the subject matter of the present petition.

9. Shri Jagdale, learned counsel for the petitioner submits that the learned Industrial Court has committed error in setting aside the judgment and order dated 12/02/2018, and order on preliminary issues dated 10/11/2017 passed by the Labour Court. It is submitted that despite the fact that it is evident from the findings recorded by the Enquiry Officer that the findings are perverse and contrary to the evidence, the order of the Industrial Court, holding that the findings of the Enquiry Officer are not perverse is erroneous.

10. It is submitted that the respondent-Corporation failed to establish and prove the alleged misconduct against the petitioner by leading sufficient evidence before the Court. However, the learned Industrial Court, after setting aside the order dated 10/11/2017 passed on preliminary issues, has relied upon the enquiry report and thereby dismissed the complaint of the petitioner. It is therefore, prayed that the impugned judgment and order may be set aside.

11. On the other hand, Shri Mehadia, learned counsel for the respondent-Corporation submits that the charge of misappropriation is serious and in the enquiry the Corporation has proved the same. It is submitted that there is no perversity in the findings recorded by the Enquiry Officer and therefore, it has rightly been held by the learned Industrial Court that there is no perversity in the findings recorded by the Enquiry Officer.

12. He further submits that the Industrial Court has rightly rejected the complaint of the petitioner after scrutinizing the oral as well as documentary evidence. It is submitted that the Industrial Court has not committed any illegality or error in dismissing the complaint. He accordingly prayed for dismissal of the present petition.

13. In light of the rival contentions, I have perused the record and the impugned judgment and order.

14. On perusal of the evidence of respondents, it appears that the witnesses have deposed that at the relevant time issuing Clerks namely Dinesh Ade and Bhimrao Kurwade have issued ticket blocks having denomination of Rs.30/- to the petitioner-complainant. However, they have not taken entry to see CWA. It is also deposed that

issuing Clerks have issued ticket blocks, but in column 9 register, after taking entry of the block, that entry was scored by the complainant in collusion with the issuing Clerks.

15. In light of above referred charge levelled against the petitioner, if the evidence of Reporting Officer Shri D.D.Gawali, recorded before the Enquiry Officer is perused, the Reporting Officer has categorically stated that entries relating to ticket blocks in column 9 register were used to be taken by the Issuing Clerks Shri D.P. Ade, Shri Kurwade and Shri Kasdekar and not by the petitioner. He has admitted that the handwriting in the column 9 register is not of the petitioner and on finding that there is manipulation and fabrication in the column 9 register, the statements of the above named clerks Shri D.P. Ade, Shri Kurwade and Shri Kasdekar were recorded. He further admits that along with his report supplied to the petitioner, he has not supplied the statements of the above referred clerks.

16. Moreover, it is apparent from the record that in the enquiry none of the clerks was examined to say that the overwriting or any scoring in the column 9 register was done by the petitioner in collusion with those clerks.

17. Despite the above referred facts and in absence of any evidence that the petitioner made any overwriting or scoring in the column 9 register or he has tampered with the record, the Enquiry Officer has held that the charge of misconduct was proved against the petitioner.

18. It is important to note that the basis to allege that the petitioner has misappropriated the funds, was the allegation that there were overwriting or scoring in the column 9 register. Thus, once the charge in respect of fabrication of record, particularly column 9 register, is not proved and established by sufficient and cogent evidence by the respondent-corporation, the charge of misappropriation also goes. In the circumstances, I am of the opinion that the Labour Court was right in holding that the findings recorded by the Enquiry Officer are perverse.

19. In light of above recorded conclusion that the findings of Enquiry Officer are perverse, it is necessary to look into the evidence led before the Industrial Court by the Corporation to establish the misconduct.

20. The respondent-Corporation examined the Reporting Officer Shri Deelip Gawali and one Shri Bharat Mohekar and none of

the witnesses could prove the charge of misconduct against the petitioner. None of the clerks, who used to take entries in column 9 register, was examined and as such even before the learned Labour Court the Corporation failed to prove the charge of misconduct or misappropriation against the petitioner.

21. Admittedly, column 9 register is in possession of respondent-Corporation. Hence, there was least possibility that the complainant was having access to the said block and he might have scored the entries. Not only this, it also appears that the respondents failed to produce original column 9 register before the Court.

22. The Labour Court has discussed the evidence led by the Corporation before the Court and thereupon arrived at a conclusion that the Corporation has not proved the charge and accordingly the show cause notice issued to the petitioner was set aside and restrained the respondent from dismissing the petitioner.

23. The Industrial Court, without appreciating the evidence recorded by the Enquiry Officer, particularly the admissions given by the Reporting Officer-Shri Gawali, has held that the findings recorded by the Enquiry Officer are not perverse. The Industrial Court, accordingly,

placed reliance upon the enquiry report and came to the conclusion that once the enquiry is just and proper, the scope of interference is limited to the extent to see whether the punishment is proportionate or not. The learned Industrial Court, as such committed error in arriving at a conclusion that the enquiry was just and proper and the findings recorded by the Enquiry Officer were not perverse and based on evidence.

24. In the circumstances, I have no hesitation to hold that the judgment and order passed by the Industrial Court is not sustainable in the eyes of law and needs to be set aside. Accordingly, I pass the following order:

i) The writ petition is allowed.

ii) The judgment and order dated 17/09/2018, passed by Industrial Court , Amravati is hereby quashed and set aside.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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