

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

WRIT PETITION NO. 1772 OF 2018

Sandeep S/o Vyankatrao Deshmukh,
Aged about years, Occ. Service,
R/o Plot No.62, Balaji Nagar, Gokhale
Layout, Behind Gramsevak Bhavan,
Navsari, Amravati 444 604.

...Petitioner

// VERSUS //

1. The Divisional Traffic Superintendent
 M.S.R.T. Corporation, Akola Division,
 Akola

2. The Divisional Controller,
 M.S.R.T. Corporation,
 Akola Division, Akola

... Respondents

Shri R.B.Khan, Advocate for the petitioner.

Shri P.S.Gawai, Advocate for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.

DATED : 22nd FEBRUARY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 20th November, 2017 passed by the Industrial Court, Akola, dismissing the complaint (ULP) No. 80 of 2010, filed against the order of imposition of punishment of reducing his basic wages by two stages on permanent basis, is under challenge.

3. Learned counsel for the petitioner points out that the learned Industrial Court has failed to consider that the alleged misconduct was not intentional but it was at the most of negligence. It is submitted that the inquiry was conducted on three charges based on one incident namely the passenger boarded at Amravati and he was supposed to travel upto Karanja but he travelled without ticket from Karanja to Washim. It is submitted that, because of his illness he was fell asleep and could not get down at his destination Karanja and when the bus was checked on next destination at Washim, the reporter was found the said passenger without ticket from Karanja to Washim.

4. Learned counsel for the petitioner further submitted that the statement of the said passenger was sufficiently shows that the petitioner issued the ticket to him for Amravati to Karanja and as the passenger himself has given sufficient reason for not getting down at the destination Karanja, at the most it can be said that the petitioner has failed to issue ticket to the said passenger from Karanja to Washim. Therefore, it is submitted that the quantum of punishment is disproportionate whereby the basic wages by two stages were reduced permanently. It is submitted that learned Industrial Court failed to appreciate the said fact. It is submitted that the alleged incident is the only incident and there is no allegation of any misconduct committed by the petitioner prior to the said incident.

5. It is further submitted that even the fair opportunity was not given to defend the case. It is submitted that in absence of the reporter,

the petitioner was asked to cross-examine the reporter and taking the advantage of the reply of the petitioner that he does not want to cross-examine the reporter, the Court has held that sufficient opportunity was given. It is submitted that in absence of reporter for asking the petitioner to cross-examine him is itself is not permissible. In support of his submission, he has placed reliance of Pravin Kumar Vs. Union of India and others¹

6. On the other hand, learned counsel for the respondents states that the Court while dismissing the complaint has categorically held that the employer has imposed the punishment by taking lenient view and accordingly the learned Industrial Court has rightly refused to interfere with the punishment imposed by the respondent employer.

7. In the above referred backdrop, I have perused the writ petition, documents filed alongwith the writ petition and the impugned judgment and order.

8. In the case of *Pravin Kumar Vs. Union of India and others* (supra), the Hon'ble Supreme Court of India has observed thus:

“36. In our considered opinion, the appellant's contention that the punishment of dismissal was disproportionate to the allegation of corruption, is without merit. It is a settled legal proposition that the Disciplinary Authority has wide discretion in imposing punishment for a proved delinquency, subject of course to principles of proportionality and fair play. Such requirements emanate from Article 14 itself, which prohibits State authorities from treating

1 2020(9) SCC 471

varying-degrees of misdeeds with the same broad stroke. Determination of such proportionality is a function of not only the action or intention of the delinquent, but must also factor the financial effect and societal implication of such misconduct. But unlike in criminal cases, in matters of disciplinary proceedings courts only interfere on grounds of proportionality when they find that the punishment awarded is inordinate to a high degree, or if the conscience of the Court itself is shocked. Thus, whereas imposition of major penalty (like dismissal, removal, or reduction in rank) would be discriminatory and impermissible for trivial misdeeds; but for grave offences there is a need to send a clear message of deterrence to the society. Charges such as corruption, misappropriation and gross indiscipline are prime examples of the latter category, and ought to be dealt with strictly.”

9. Learned Industrial Court after holding that the inquiry was conducted fairly and the parties were heard on the quantum of punishment, passed the impugned judgment and order.

10. There is no dispute that the alleged incident is the only isolated incident, wherein the acts which the disciplinary action was taken against the petitioner. Considering the statement of passenger who himself admitted that he wanted to travel from Amravati to Karanja and the ticket was issued to him from Amravati to Karanja. However, because of his ill-health, he fell asleep and did not get down on his destination Karanja and when the bus was checked at Washim, he was found without ticket from Karanja to Washim.

11. It is not the case that the said passenger travelled from Amravati to Washim without ticket. There is no evidence brought on record by the respondent, in inquiry to show that the petitioner

intentionally did not issue the ticket from destination Karanja to destination Washim. Thus, it cannot be said that the petitioner failed without any reasonable cause to issue ticket to the passenger and thereby permitted him to travel from destination Karanja to destination Washim ticketless.

12. Thus, considering the charges leveled against the petitioner and the actual incident which took place in the light of the statement of the passenger, I am of the opinion that the learned Industrial Court has not considered the issue of quantum of punishment in right perspective.

13. Moreover, while observing that the employer has already taken the lenient view, the Court has not observed that in the given facts and circumstances what would be the maximum punishment. Unless, the Court observes with reason what would be the maximum punishment in the given case, the findings recorded by the Industrial Court that the view taken by the employer is lenient view, cannot be accepted.

14. In the circumstances, I am of the opinion that considering the isolated incidents and the factual matrix of the same, the quantum of punishment needs to be decided afresh by the Industrial Court. Accordingly, I pass the following order.

i. The writ petition is partly allowed;

- ii. The judgment and order dated 20th November, 2017 passed by the Industrial Court in Comp. (ULP) No. 80 of 2010 is hereby quashed and set aside;
- iii. The matter is remanded back to the Industrial Court to decide the issue as regards the quantum of punishment in the light of the findings recorded by this Court.
- iv. The learned Industrial Court is directed to take the decision, in any case, not beyond six months.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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by
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K NAIR
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