



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO. 960 of 2022

Sarjerao Baburao Pawar

....Petitioner

VERSUS

Divisional Traffic Superintendent (Apradh)
Maharashtra State Road Transport Corporation
& another

.....Respondents

.....

Mr. S. R. Patil, Advocate for the Petitioner.

Mr. B. S. Deshmukh, Advocate for Respondents.

CORAM : R. M. JOSHI, J.

DATE : 15th JULY, 2024.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition is filed by the Conductor of MSRTC taking exception to the order dated 20.04.2019 passed by the Labour Court, Jalgaon in complaint (ULP) No. 12/2015 whereby the preliminary issues of fairness of enquiry and correctness of findings of enquiry are held against him. He has also grievance against the order passed by the Industrial Court in Revision Application No. 15/2019 confirming the said order.

3. It is the case of the Petitioner that he was appointed on the post of Conductor of MSRTC in the year 1989 and has rendered 20 years of service till his dismissal on 17.12.2010. It is his contention that MSRTC had issued charge-sheet against him alleging that he has deliberately not issued tickets to passengers even after receiving fare amount from them and thereby has caused loss to the Corporation. It is alleged that on 19.06.2009, he was working as a Conductor on Bus No. MH 12 CH 8273 from Dharangaon to Babhulgaon. Pursuant to issuance of charge-sheet, an enquiry was conducted and the disciplinary authority after conducting enquiry has imposed punishment of dismissal against the Petitioner. It is the case of the Petitioner that the passengers were not examined in the enquiry so also cash which was in hand was tallying with the tickets issued by him. Against his order of dismissal dated 17.12.2010, complaint (ULP) No. 12/2015 was filed before the Labour Court, Jalgaon. Preliminary issues were framed as to whether the enquiry is fair and proper and the findings of Enquiry Officer are proper. These issues were decided against the Petitioner hence revision came to be filed unsuccessfully.

4. Learned counsel for Petitioner submits that the learned Labour Court has committed error in not taking into consideration the fact that the enquiry has been conducted by the Disciplinary Authority who has issued charge-sheet and has also passed order of dismissal of the Petitioner. It is his further submission that the Labour Court has failed to appreciate that the Divisional Traffic Superintendent is not proper authority to take disciplinary action and impose punishment on the Petitioner. It is thus his submission that it is a fit case for setting side the orders passed by the Labour Court which is confirmed by the Industrial Court.

5. On the other hand, learned counsel for the Corporation submits that no specific plea was raised before the Labour Court challenging the authority of the Disciplinary Authority to take action of issuance of charge-sheet as well as imposing punishment on the Petitioner. It is his submission by relying upon judgment in case of Namdeo Tukaram Mokalhe vs MSRTC in **Writ Petition No. 11502/2022** wherein it is held that once before the Labour Court no contention with regard to the competency of Disciplinary Authority is raised, it is not open for the Petitioner to challenge the same at later point of time. With regard to the challenge to same person who has

issued charge-sheet, having conducted enquiry as well as imposed punishment is concerned, a reference is made to Rule 18 of Disciplinary and Appeal Rules applicable to MSRTC which permits Disciplinary Authority to conduct disciplinary enquiry and also impose punishment. To support his submissions, he placed reliance on following judgments :-

- (i) Sandip Vasant Bhole vs. Divisional Traffic Superintendent (Aparadh) Maharashtra State Road Transport Corporation And another(Writ Petition No. 12302/2021).
- (ii) The Divisional Controller, Maharashtra State Road Transport vs. Deepak Namdeo Adangale (Writ Petition No. 6209/2015)
- (iii) Maharashtra State Road Transport Corporation vs. Rajendra Mohanlal Chhangani (Writ Petition No. 6653/2019).

6. Discipline and Appeal Rules applicable to the Maharashtra State Road Transport indicate that Rule 18 permits the Disciplinary Authority to conduct enquiry. This Court in the judgment of Sandip and Deepak (supra) has held that conduct of enquiry by the Disciplinary Authority as well as imposition of punishment by him is in consonance with the rules applicable to the Corporation. Hence, no fault can be found in the same nor it can

become a ground to set aside the order of termination. In view of relevant Rules and judgments of this Court, no different view deserves to be taken on the issue and therefore, Court finds no substance in the contention sought to be raised on behalf of the Petitioner to that effect.

7. As far as contention of learned counsel for the Petitioner about locus standi of the person who has issued charge-sheet, conducted enquiry and issued order of dismissal is concerned, perusal of complaint does show any exception being taken to the same. In absence of any pleadings in the plaint, now it is not open for the complainant to claim that the authority concerned had no locus standi to pass such order of dismissal. Merely because ground is raised in the revision application, it is not open for the Petitioner to contest the said issue, as ground raised in the revisional application is not pleaded before the Labour Court. By following the judgment of this Court in case of Namdeo (supra) it is held that since the Petitioner has not raised this issue with regard to competency of the Disciplinary Authority before the Labour Court, it is not open for the Petitioner to raise the same in revision or in this Petition.

8. Learned counsel for Petitioner has sought to argue that the Labour Court has passed cryptic order for upholding the conduct of enquiry as well as findings of the Enquiry Officer. Perusal of the said order passed by Labour Court shows that the Court has gone into the proceeding before it and has found that the enquiry is proper. It is also specifically observed that nothing is brought on record to indicate that the Petitioner was not given opportunity of hearing or to defend himself. Before this Court also, from the record and proceeding of Labour Court, Petitioner was not able to show that the enquiry was not fair and proper.

9. With regard to findings of Enquiry Officer, though the learned Labour Court has not dealt with the said evidence led before the Enquiry Officer in detail, however, reference is made to the evidence of the driver and one of the passengers. It is specifically stated that there is specific statement of witness on the basis of which it can be said that the charges levelled against the Petitioner stood proved. Needless to say that the charge under domestic enquiry is to be proved on the basis of preponderance of probabilities and no strict proof thereof is required to be established. Having regard to the evidence led before the Enquiry Officer, this Court finds

no perversity in the findings recorded by the Courts below more particularly in exercise of limited writ jurisdiction. This Court, does not wish and cannot re-appreciate the evidence on record to draw any different findings than recorded by Labour Court.

10. Having regard to the aforestated discussion, there is no merit in the Petition. Petition stands dismissed.

(R. M. JOSHI)
Judge

dyb