

Shabnoor

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

WRIT PETITION NO.6908 OF 2002

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Chief Executive Officer, Satara

... Petitioner

V/s.

Vilas B. Gujale

... Respondent

None for the Petitioner.

Mr. Sharad T. Bhosale, for Respondent No.2.

Mr. Sanjay D. Rayrikar, AGP, for State/Respondent
No.1.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2024

P.C.:

1. The petitioner is challenging the order passed by the Industrial Court setting aside the judgment and award passed by the Labour Court dismissing respondent's complaint alleging unfair labour practice under Item 1, Schedule – IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971.

2. The respondent was appointed as Gramsevak in the petitioner's Zilla Parishad on 31 October 1985. Thereafter, he was transferred to Panchayat Jawali as Gramsevak. According to the petitioner, the respondent was suffering from Tuberculosis (T.B.)

and, therefore, required to go to his native place in Solapur District for treatment during the period from 1 January 1990 to 17 November 1990. He, therefore could not attend his duty. He was placed under suspension. The departmental enquiry was conducted against him for charges including misappropriation of Government fund.

3. According to the respondent, without giving proper opportunity of hearing, the inquiry officer proceeded with the enquiry. He was forced to admit the guilt by the officer of petitioner. Therefore, he admitted the guilt and based on such admission he was dismissed from services on 4 April 1991. According to the respondent, therefore, the finding recorded by the inquiry officer were perverse and shockingly disproportionate to be misconduct alleged. According to the respondent exercise of such power is colourable. Therefore, he filed a complaint before the Labour Court seeking relief of reinstatement along with continuity of his service and full back wages.

4. The petitioner filed written statement and pointed out that despite issuance of various notices on 30 November 1989, 16 December 1989 and 11 January 1990, the respondent remained absent from duty. The respondent recovered Grampanchayat taxes from residents of various villages but failed to deposit the amount with the Government. The petitioner issued notice calling for his explanation. The respondent furnished his explanation on 20 January 1990 admitting misappropriation of amount. The petitioner, therefore, initiated departmental proceeding against

the respondent. The respondent on 4 August 1990 filed a reply in the said enquiry and admitted the charges levelled against him. The inquiry officer, therefore, placed material on record and in absence of medical evidence to support treatment of Tuberculosis held respondent guilty of misconduct. The respondent was accordingly dismissed from services.

5. The respondent, therefore, filed Complaint (U.L.P) No.43/1991. The Labour Court by the judgment and award dated 10 August 2000 dismissed the complaint recording a finding that the respondent admitted in his cross-examination that he failed to deposit the recovered amount of taxes. The Labour Court recorded a finding that the respondent committed misappropriation of Grampanchayat fund which is public money. The material on record proved unauthorized absenteeism. The Labour Court, therefore, dismissed the complaint. The respondent challenged the judgment of the Labour Court before the Industrial Court. The Industrial Court set aside the well reasoned judgment of Labour Court holding that since the respondent admitted his guilt and subsequently deposited the amount, sympathetically approach towards respondent needs to be adopted as he is poor person. He, therefore, recorded a finding that the punishment imposed on respondent was shockingly disproportionate.

6. The petitioner, therefore, filed the present writ petition.

7. The learned Advocate for the petitioner is absent; however, on perusal of the judgments of the Labour Court and the Industrial Court, it appears that the exercise of jurisdiction by the Revisional

Court is perverse as the finding recorded by the Industrial Court are against the well settled principles of services.

8. Learned Advocate for the respondent submitted that the respondent was suffering from Tuberculosis and, therefore, he required to visit his native place at Solapur District. According to him, therefore he could not deposit the amount nor he could present for rendering service. However, the Labour Court based on material on record recorded a finding of fact that the respondent failed to produce medical evidence to support of treatment of Tuberculosis. The Labour Court recorded a finding that the explanation of respondent was suffering from Tuberculosis has been furnished after the enquiry. Such ground was not raised before the enquiry.

9. Having considered the material on record, it appears that the period in which the respondent collected taxes was from 16 October 1986 till 21 December 1989. The averments in the complaints regarding illness are from 1 January 1990 till 17 November 1990. Therefore, the submission on behalf of the respondent that the respondent could not deposit the amount immediately after recovering from the illness cannot be accepted. It is not in dispute that the respondent admitted in reply to show cause notice that he misappropriated Grampanchayat tax amount. He also accepted in reply to charge-sheet before the inquiry officer that the charges levelled against him are correct. The charges against the respondent are misappropriation of public money and unauthorized absenteeism. The misconduct of misappropriation or

corruption is held to be misconduct by the Apex Court in the case of **Management, Pandiyan Roadways Corporation Ltd. Vs. N. Balakrishnan** reported in (2007) 9 SCC 755 and in the case of **the Divisional Controller, KSRTC Vs. M. G. Vittal Rao**, reported in (2012) 1 SCC 44.

10. The only reason weighed with the Revisional Court to interfere with the well reasoned judgment of Labour Court was the conduct of respondent to admit charges of misappropriation and subsequent deposit of misappropriated amount. In my opinion, it was expected from the Industrial Court to decide the revision application based on legal provisions and legal principles and ought not to have decided the legal issue involved on the ground of sympathy. Once, the inquiry officer in a departmental enquiry records the finding of misconduct in relation to charge of misappropriation of public money, the Court in absence of exceptional reasons ought not to have interfered with the award of dismissal from services. Therefore, in my opinion, the petitioner has made out a case for setting aside the order of Industrial Court as the order is perverse.

11. Hence, Rule is made absolute in terms of prayer clause (b).

12. The writ petition stands disposed of in above terms. No costs.

13. At this stage, learned Advocate for the respondent seeks stay to the effect of judgment; however, considering the charges levelled against the respondent and considering the fact that this

Court while admitting the petition had granted Rule and stayed the effect of judgment of Industrial Court, no case for stay of this judgment is made out. Request is rejected.

(AMIT BORKAR, J.)