

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8700 OF 2023**

Nagesh Prakash Galiyal Petitioner
Versus
Divisional Controller, Maharashtra State
Road Transport Corporation And Anr. Respondents

....

Mr. Machhindra A. Patil, a/w. Mr. Vijay R. Garad for the Petitioner.
Mr. Nitesh Bhutekar, a/w. Mr. Aniket Nangare for the Respondents.

....

CORAM : SANDEEP V. MARNE, J.
DATED : 09 JANUARY 2024.

P.C. :

The challenge in the present petition is to the Part-I Award dated 13 February 2023 passed by the Industrial Court, Solapur, by which preliminary issue relating to conduct of enquiry in fair and proper manner and perversity in the findings in enquiry are answered against the Petitioner.

2. It appears that Petitioner faced the charge of temporary misappropriation of amount of Rs.182/- as he failed to issue ticket to two passengers. After another Conductor intercepting those passengers without ticket, Petitioner subsequently deposited amount of Rs.182/- in the Treasury. In the disciplinary enquiry, the charge is held to be proved and by Order dated 27 March 2014, punishment of stoppage of two increments came to be imposed on the Petitioner. His First and Second Appeals against the punishment have been rejected. Petitioner has accordingly filed Complaint (ULP) No.113 of 2017 before Industrial Court, Solapur challenging the

penalty order. The Industrial Court proceeded to frame preliminary issue of fairness in the enquiry and perversity in the findings recorded by Inquiry Officer. By Part-I Award dated 13 February 2024 the Industrial Court answered preliminary issue against Petitioner by holding that disciplinary enquiry is in fair and proper and that there is no perversity in the findings recorded by the Inquiry Officer. Aggrieved by Part-I Award dated 13 February 2024, Petitioner has filed the present petition.

3. Mr. Patil, the learned counsel appearing for Petitioner would take me through the chargesheet as well as various findings recorded by the Industrial Court in the Part-I Award. According to Mr. Patil, it has been held in the enquiry that the petitioner did not have intention of temporarily misappropriating the amount. That the Industrial Court itself has held that only allegation proved against the Respondent is with regard to negligence. According to Mr. Patil, for misconduct of negligence, penalty of stoppage of increment for two years is not warranted under the provisions of the Regulations framed by the Respondent-Corporation.

4. *Per Contra* Mr. Bhutekar, the learned counsel appearing for Respondent-Corporation would oppose the petition and support the Order passed by the Industrial Court.

5. After having considered the submissions canvassed by learned counsel appearing for parties and after perusal of the Part-I Award dated 13 February 2023, it is seen that the Industrial Court is yet to apply its mind to the aspect of proportionality of penalty. This would be decided while delivering Part-II Award by the Industrial Court. As of now, the Industrial Court has merely answered the preliminary issues of fairness in the enquiry

and perversity in the findings of the Inquiry Officer. Since the Industrial Court has held that the enquiry is held in fair and proper manner and there is no perversity in the findings of the Inquiry Officer, it is not necessary for the Respondent-Corporation to lead evidence before the Industrial Court to prove misconduct. The Industrial Court would now proceed to decide whether penalty imposed on Petitioner is commensurate with gravity of misconduct, which is ultimately found to be proved in the enquiry.

6. True it is that findings recorded by the Industrial Court in paragraph No.13 of its Order show that only the misconduct of negligence is found to be proved against Petitioner and that the charge of temporary misappropriation is apparently not held to be proved. Whether penalty of withholding of two increments is commensurate with the charge of negligence, is something which Industrial Court could decide while rendering Part-II Award.

7. Reliance is placed on Regulations framed by the Respondent-Corporation, which according to Mr. Patil, envisage imposition of penalty warning or censure for misconduct of negligence. Industrial Court would consider provisions of said Regulations and take an appropriate decision in that regard. As of now, no error is traced in Part-I Award passed by the Industrial Court in holding that the enquiry is conducted in fair and proper manner and there is no perversity in the findings. Leaving open issue of proportionality of penalty to be decided while delivering Part-II Award by the Industrial Court, present petition is disposed of.

SANDEEP V. MARNE, J.

KISHOR
VISHNU
KAMBLE

Digitally signed
by KISHOR
VISHNU
KAMBLE
Date:
2024.01.12
10:19:35 +0530