

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.8812 OF 2024****Hanumant Maruti Bhase****....*Petitioner*****V/s.****M/s. Pune Mahanagar Parivahan
Mahamandal Ltd., Pune.****....*Respondent***

Mr. Nitin Kulkarni with Mr. Avinash Belge for Petitioner.**Ms Madhavi M. Tavanandi for Respondent.**

CORAM : SANDEEP V. MARNE, J.***Judgment dated : 18 July 2024.*****JUDGMENT :**

1) Petitioner has filed this Petition challenging the Award dated 18 December 2023 passed by the Presiding Officer, First Labour Court, Pune, in Reference (IDA) No.126 of 2017. The Labour Court has proceeded to answer the Reference in the negative. The Reference related to termination and reinstatement of Petitioner in service.

2) Petitioner was appointed in service of Respondent-Company as Conductor on 2 May 1992. While being deputed to work as Conductor on

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the bus of the Respondent on 1 March 2014 on the route of Pune station to Bhakti- Shakti Depot (Nigdi), the Checking Squad conducted inspection of the bus and submitted the report of such checking. Based on the said report, charge-sheet dated 6 March 2014 was issued to Petitioner alleging that he was detected with Rs. 102 short in cash bag and accordingly committed temporary misappropriation and consequent loss to the Respondent. It was further alleged that Petitioner was detected with six tickets of denomination of Rs.20/- in his cash bag, which were already punched. It was therefore alleged that the said tickets were kept by Petitioner for resale after collecting the same from customers. After receipt of charge-sheet, Petitioner submitted reply dated 12 March 2014 taking a defence that he had committed mistake in punching those tickets of denomination of Rs.20/- each and had collected the said tickets from the passengers and they were issued fresh tickets. This was the reason why shortage was detected. He further took a defence that after collection of erroneously punched tickets from passengers, he had thrown the said tickets and the said tickets were not found in his cash bag. He also took defence that he deposited the entire amount of sold tickets at the end of his duty and did not commit any misappropriation. In the domestic enquiry, the charges were held to be proved by the Enquiry Officer and by order dated 30 October 2015, punishment of dismissal from service was imposed on him.

3) At Petitioner's instance, industrial dispute was raised and Reference was made to the Labour Court, Pune relating to his termination and reinstatement, which was registered as Reference (IDA) No.126 of 2017. The Petitioner filed his Statement of Claim, which was resisted by

Respondent by filing written statement. The Labour Court passed order on preliminary issues on 13 December 2019 and held that the enquiry conducted against Petitioner was legal, fair, proper and in accordance with the principles of natural justice. The Labour Court however, held that the misconduct was not proved by acceptable evidence before the Enquiry Officer and that therefore his findings were perverse. The Labour Court directed the Reference to proceed further for evidence of the Respondent.

4) It appears that the Respondent thereafter led evidence of Smt. Rukmini Sanjay Hegde. Petitioner examined himself before the Labour Court. After considering the evidence on record, the Labour Court delivered final Award dated 18 December 2023 answering the Reference in negative. The Labour Court held that the punishment of dismissal imposed on the Petitioner was legal and proper. The final Award dated 18 December 2023 is the subject matter of challenge in the present Petition.

5) I have heard Mr. Kulkarni, the learned counsel for the Petitioner, who would submit that the witness-Smt. Rukmini Hegde, examined by Respondent was admittedly not a part of checking team and could not have led evidence to justify the charges levelled against the Petitioner. That the said witness merely relied upon enquiry papers in absence of any personal knowledge about the incident. That the Respondent failed to examine the Checker, who had reported about the incident and therefore it cannot be held that misconduct levelled against Petitioner is proved on the basis of evidence of Smt. Hegde. He would further submit that even otherwise, the charges levelled against Petitioner are totally baseless. That if Petitioner had issued

already sold tickets to any passengers there ought to have been excess in his cash whereas what is detected is shortage in his cash. That the factum of recovery of 6 tickets from his cash bag was clearly disputed by Petitioner and that therefore it was necessary to lead evidence of the concerned Checker, who had checked the bus on the relevant date.

6) Alternatively, Mr. Kulkarni submitted that the enquiry was held fair and proper and only findings of the Enquiry Officer were held to be perverse. That in such circumstances, there was no question of giving any opportunity for the Respondent to lead additional evidence to prove the misconduct before the Labour Court. In support of his contention, he would rely upon judgment of this Court in Ramesh ***Laxman Raul and others vs. Southern Machine Industries and Others***¹. He would also rely upon judgment of this Court in ***E.Merck India Ltd. Bombay Vs. V.N. Parulekar and others***² in support of his contention that the Labour Court is empowered under Section 11A of the Industrial Disputes Act, 1947 to reappraise evidence in domestic enquiry to satisfy itself about proof of misconduct. He would also rely upon judgment of this Court in ***Life Insurance Corporation of India and Ors. vs. Jitendra Savla***³. Lastly, Mr. Kulkarni would rely upon judgment of Aurangabad Bench of this Court in ***Chandrakant S/o Samindar Suryawanshi Vs. The Divisional Controller, Maharashtra State Road Transport Corporation***⁴. Mr. Kulkarni would therefore pray for setting aside the Award passed by the Labour Court.

1. 1988 (2) LLN. 383

2. 1991 (1) LLN 1133

3. Appeal No.12/2004 decided on 11/11/2009

4. Writ PetitionNo.12331 of 2022 decided on 7/12/2022.

7) Ms. Tavanandi, the learned counsel appearing for the Respondent, would oppose the petition submitting that the charges levelled against the Petitioner are conclusively proved, both in the departmental enquiry, as well as before the Labour Court. That part of the charge is virtually admitted by the Petitioner in his reply dated 12 March 2014. She would also rely upon the judgment of this Court in ***Subhash Gulabchand Pawar V/S. MSRTC***⁵ in support of her contention that hearsay evidence is not allergic to domestic enquiry. Relying on judgment of this Court in ***Ashok Rambhaji Tupe V/s. The Maharashtra State Road Transport Corporation & Anr.***⁶, Ms. Tavanandi would submit that non-examination of passengers in the domestic enquiry does not vitiate the same. That therefore evidence of Smt. Rukmini Sanjay Hegde based on records maintained in the office of the Respondent-Corporation cannot be discarded altogether. Without prejudice, Ms. Tavanandi would submit that if the evidence before the Enquiry Officer is perused, it is conclusively proved that the Petitioner had procured sold tickets from the passengers with the intention of re-selling the same. She would take me through the depositions recorded in the enquiry in this regard. Ms. Tavanandi would pray for dismissal of the petition.

8) Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Petitioner faced three charges of (i) detection of shortage by Rs.102/- in cash, (ii) detection of 6 tickets with denomination of Rs.20/- in the cash bag with the intention of reselling the same, (iii) violation of Circular of the Company by not approaching the Checker for closing of number and writing the word '*Nigdi*'

5. Writ Petition No. 4478 of 2022 decided on 17 July 2023.

6. 2016 (6) ALL MR 630

in his own handwriting with the timing of arrival and departure of the bus. Petitioner filed following reply on receipt of the chargesheet on 12 March 2014.

12/03/14 Sign

CR 1804

प्रति,

मा. खाते निहाय चौकशी अधिकारी,
पुणे महानगर परिवहन महामंडळ लि.
स्वारगेट, पुणे 37

नाव श्री. हनुमंत मारुती भसे, कायम CR 1804 भक्ती शक्ती डेपो (निगडी)

विषय - डिफॉल्ट केस नं. 504/13-14 बाबत खुलासा,

महोदय,

मी वरील विषयास अनुसरून खुलासा करतो की मी दि. 1/3/2014 रोजी मार्ग क. 36615 बस क. 1436 या मार्गावर सकाळ पाळीत ड्यूटिस असताना मी पुणे स्टेशन -निगडी अशी ट्रिप घेवून जात असताना मी बस मध्ये तिकीटे देण्यास सुरुवात केली एका प्रवाशाला 20 रु दराचे पहिले तिकीट क. 0276290 असे 20 रु दराचे पहिले तिकीट एका प्रवाशाला बरोबर पंच केले नंतर बस मध्ये गर्दी झाली मी घाई गडबडीत 20 रु दराची 6 तिकीटे रोंग पंच झाली ते माझ्या लक्षात आले नाही नंतर माझ्या लक्षात आले त्यावेळी मी सदर प्रवाशांकडून तिकीटे मागारी घेतली व त्यांना स्टे वरील दुसरें तिकीटे दिली आहेत. अशा परिस्थिती मध्ये मला $20 \times 6 = 120$ असे शॉटेज लागले आहे. माझी चेकर साहिबांनी कॅश चेक केली असता 102 रु शॉटेज असा शेरा चेकर साहेबांनी लिहला आहे. परंतु माझी कॅश चेक करण्यापूर्वी मी त्यांना सर्व प्रकार सांगितला होता सदर तिकीटे कॅश चेक करण्यापूर्वी मी त्यांना सर्व प्रकार सांगितला होता सदर तिकीटे कॅश बॅग मध्ये किंवा माझ्याकडे नसून मी बस मध्ये लगेच फेकून दिली होती. मी कंटोल यांसकडून नंबर व्हाज करून त्यांची सही घेतली आहे तरी सदर मी सदर दिवशी ड्युटी संपल्यानंतर कॅश भरते वेळी अपूर्ण कॅश भरलेली आहे मी कोणताही अपहार केलेला नाही तरी सदर आरोपातून मला दोष मुक्त करावे ही आपणास नम्र विनंती.

सही

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9) Thus, so far as charge of detection of sold tickets in the cash bag is concerned, Petitioner did not deny the said factum altogether. What is stated in his reply dated 12 March 2014 was that he initially issued ticket with denomination of Rs.20/- to a passenger. However later, there was rush of passengers in the bus and by inadvertence, he punched tickets of

denomination of Rs.20/-. After noticing the mistake, he took back the said wrongly punched tickets of Rs.20/- from the passengers and correct tickets were issued to them. This is how shortage of Rs.20/- x Rs.6/- = Rs.120/- was sought to be explained by him. He further stated in the reply that after checking the bus, the Checker had made a remark of shortage of Rs.120/-. However, before checking the cash, Petitioner had disclosed the entire incident to the Checker and had further clarified that the wrongly punched tickets were not with him and were thrown by him. He further stated in the reply that the shortage amount was made good by him at the end of his duty hours.

10) Perusal of the reply dated 12 March 2014 of the Petitioner would clearly indicate some truth in the report of the Checker dated 3 March 2014. The said report is placed on record by Ms. Tavanandi which was apparently filed before the Labour Court. The report clearly states that Ticket Nos. 0276291, 92, 95, 96, 97 98 were found in the cash bag of the Petitioner. The checker also detected Rs.120/- short in the Petitioner's cash bag. Petitioner does not deny the factum of 6 already issued tickets being taken back from passengers. He in fact admits that he collected 6 tickets from the passengers but attempted to give explanation for having issued the same inadvertently to the passengers. Petitioner thus did not take a stand that the report of the Checker was entirely false and virtually admitted part of the charge of having collected sold tickets from passengers.

11) The ticket checking or issuing staff cannot be expected to possess even a single sold ticket. Mere possession of sold ticket is sufficient to raise

presumption against ticket issuing staff that possession of such sold ticket was for the purpose of reselling the same. It is difficult to accept Petitioner's defence that tickets of Rs.20/- were erroneously issued by him to passengers or that he collected the same from the passengers and issued them correct tickets. The defence of throwing away the 6 tickets inside the bus is ludicrous and difficult to believe. In my view, therefore the charge of possession of sold tickets by Petitioner has been correctly held to be proved before the Labour Court.

12) Coming to the aspect of consideration of evidence, Mr. Kulkarni himself admits the position that once the enquiry is held to be fair and proper, the evidence recorded in the enquiry can be taken into consideration by the Labour Court. This submission is raised essentially to discard the evidence of Rukmini Sanjay Hegde. Mr. Kulkarni has relied upon judgments in **Ramesh Laxman Raul, E. Merck India Ltd., Life Insurance Corporation of India** and **Chandrakant Samindar Suryawanshi** (supra) in support of his contention that the Labour Court has necessary powers to appreciate the evidence led in the enquiry under the provisions of Section 11A of the I.D. Act. In ***Ramesh Laxman Raul***, the Division Bench of this Court has held in para-3 as under : -

3. Now, it is to be seen that the preliminary point raised at the hearing before the learned Labour Judge was whether the domestic enquiries held against the petitioners were in accordance with the principles of natural justice. In order to ascertain that he appreciated the evidence recorded at the enquiry proceeding placed before him and came to the conclusion that the petitioners were given full opportunity to defend them selves. In other words, he held that the principles of natural justice were not violated at the domestic enquiries. The learned Labour Judge thereafter wrongly held that the findings recorded by the enquiry officer were perverse and, therefore, the principles of natural justice were violated. Once the learned

Labour Judge was of the view that the petitioners were given full opportunity to defend themselves all that was necessary for him was to find out whether the charges levelled against the petitioners were proved and if so whether the punishment inflicted on them was in accordance with law and what relief could be given to the petitioners. It was totally wrong on the part of the learned Labour Judge to hold that the principles of natural justice were violated at the domestic enquiries because the findings arrived at by the enquiry officer were perverse. He was also wrong in giving opportunity to the first respondent to adduce further evidence to prove misconduct committed by the petitioners and to find out justification for the termination of their services. The entire approach of the learned Labour Judge in granting an opportunity to the first respondent to adduce further evidence after holding that the petitioners were given full opportunity to defend themselves at the domestic enquiries was bad in law. Consequently, the next step taken by the learned Labour Judge to read and appreciate the further evidence which he allowed the first respondent to adduce in his Court was a futile exercise and not in accordance with law. His conclusion, thereafter, on the basis of the evidence adduced before him, that the petitioners were not entitled to the relief of reinstatement with continuity of services and back-wages was also wrong. The impugned awards rejecting the demands of the petitioners, in this view of the matter, will have to be set aside and the matter will have to be relegated to the stage of the learned Labour Judge holding that the domestic enquiries were in accordance with law since the petitioners were given full opportunity to defend themselves and will have to be remanded to the Labour Court for further proceeding after he had reached a conclusion that the domestic enquiries were held observing the principles of natural justice. He is then to read the evidence that was led before the enquiry officer and come to a conclusion whether the charges levelled against the petitioners were proved and if so, whether proper punishment was inflicted on them and so to what relief they would be entitled to.

13) In my view, the submission canvassed by Mr. Kulkarni in discarding the evidence of Rukmini Sanjay Hegde, far from assisting the case of his clients, actually militates against him. If the evidence of Rukmini Sanjay Hegde is discarded and the evidence recorded in the enquiry is to be appreciated under Section 11A, it can be said that there is sufficient evidence to satisfy the test of preponderance of probability in the enquiry. In the enquiry, Mr. A.E. Sanap, Senior Checker was examined. He has clearly given

evidence about recovery of 20 sold tickets from the cash bag of the Petitioner.

14) Thus seen from any angle, the charge of detection of sold tickets in the cash bag of the Petitioner is clearly proved. The other charge of shortage of Rs.102/- is admitted by the Petitioner himself. Petitioner worked with the Respondent-Corporation for nearly 23 years and was not expected to give lame excuses for possession of sold tickets with him. In my view, therefore the Labour Court has rightly answered the Reference in the negative. While doing so, the Labour Court also took note of 57 punishments inflicted on the Petitioner in the past, which included misappropriation on six occasions, deficit deposits on 23 occasions and other misconducts on 24 occasions.

15) Considering the overall conspectus of the case, I am of the view that no error is traced in the order passed by the Labour Court. The Writ Petition being devoid of merits is **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]