

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

WRIT PETITION NO.12210 OF 2024

Dagadu Vasant Mudgal
Age 56 years, Occ. Service
R/o Vadange, Tal. Karveer
Dist. Kolhapur

....Petitioner

V/S

Maharashtra State Road Transport Corporation
Kolhapur Division,
through its Division Traffic Superintendent,
M.S.R.T.C., Kolhapur – 416 001.

....Respondent

Mr. S.R. Ganbawale a/w Mr. Kush M. Lahankar *for the Petitioner.*
Mr. Nitesh Bhutekar a/w Ms. Priyanka Lanke *for Respondent-MSRTC.*

CORAM: SANDEEP V. MARNE, J.

DATE : 3 SEPTEMBER 2024.

ORAL JUDGMENT

1 **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final hearing and disposal.

2 It must be observed at the very outset that entertainment of Complaint by Labour Court challenging mere show-cause notice for imposition of punishment has led to the unique conundrum in the present Petition. Petitioner-employee faced disciplinary enquiry initiated vide a charge-sheet dated 16 June 2009 involving various charges such as reselling of sold tickets, shortage in cash, illegality in issuance of tickets etc. In the enquiry the charge was held to be proved and show-cause notice was issued on 23 April 2011 proposing imposition of punishment of dismissal from service. Instead of responding to the show-cause notice, Petitioner-employee was advised to file Complaint (ULP) No.38 of 2011 before Labour Court, Kolhapur in which following prayers were made:

- “7. It is therefore prayed that the enquiry may be made and it may be declared that respondent has engaged in unfair labour practice. The respondent may be directed to cease and desist from engaging in unfair labour practice and the complainant may be given relief as under:
- a. The ad-interim relief as prayed for may be granted.
 - b. The respondent may be directed not to dismiss the complainant as proposed.
 - c. The cost of this complaint may be awarded.
 - d. Any other just and equitable relief in favour of complainant may be granted.
 - e. The complainant craves leave to add, alter and amend the complaint as and when required.”

3 Thus Petitioner-employee sought a vague prayer not to dismiss him from service. The Complaint was not only entertained by the Labour Court, but it proceeded to pass interim stay in favour of Petitioner-employee restraining the Respondent-employer from imposing punishment in pursuance of the show-cause notice dated 23 April 2011.

4 The Labour Court thereafter framed preliminary issues relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer. It is inconceivable as to how the Labour Court could have framed preliminary issues relating to fairness of enquiry and perversity in the finding of Enquiry Officer in a Complaint seeking mere restraint order from dismissal of the Petitioner-employee. The disciplinary proceedings were still incomplete. Disciplinary proceedings get completed only when final punishment is imposed or when the employee is exonerated. In the present case, the disciplinary proceedings were still pending when the Labour Court entertained Complaint (ULP) No.38 of 2011 and proceeded to determine validity of such enquiry and of findings of Enquiry Officer. By Part-I Award dated 1 January 2018, the Labour Court decided both the preliminary issues against Petitioner-employee holding that the enquiry was fair and proper and that the findings of the Enquiry Officer are not perverse. Petitioner-employee filed Revision Application (ULP) No.59 of 2018 before Industrial Court, Kolhapur, challenging the Part I Award and the Revision Application came to be dismissed by the Industrial Court by order dated 8 February 2023. Petitioner-employee challenged the said order of Industrial Court dated 8 February 2023 before this Court by filing Writ Petition No.4572 of 2023, which came to be dismissed by clarifying that the Labour Court, while passing Part-II Award, shall not be influenced by observations in respect of the alleged misappropriation. The said clarification was issued on account of apprehension expressed by the Petitioner-employee that though misappropriation is not a part of charge, finding recorded by the Labour and Industrial Courts about alleged misappropriation would be used by the Labour Court while passing the Part II Award.

5 The Labour Court has thereafter proceeded to deliver Part-II Award on 21 October 2023 dismissing the Complaint. In its Part-II Award, the Labour Court has now dealt with the issue of proportionality of punishment by altogether ignoring the fact that no punishment has yet to be imposed on the Petitioner-employee. In absence of any actual punishment being imposed, the Labour Court proceeded to determine proportionality of 'proposed punishment'. The Labour Court has recorded following findings in paragraphs 9 and 10 of its Award dated 21 October 2023:

“9. Complainant is duly bound to prove that punishment given to him is shockingly disproportionate. Not only disproportionate punishment but it is shockingly. Once this Court held enquiry is legal and proper, cannot go into the merits of the findings of the enquiry. This Court is under an obligation to see whether punishment given to Complainant is shockingly disproportionate. Adv. appearing on behalf of Respondent strongly relied on D & A procedure. I have perused minutely D & A procedure. There are two types of misconducts as well as two types of punishments. For minor misconduct minor punishment will attract. Likewise for major and serious misconduct Rule 7 (e) will apply. Rule 7(e) provides punishment of dismissal or discharge. It is alleged that Complainant misappropriated amount of Respondent. By way of judgment of Part-I and findings of this Court it is held that procedure adopted by Respondent against the Complainant is legal and valid. Once this Court form and opinion about the legality and perversity of findings, should not be interfered in the process of punishment. Awarding or inflicting punishment being solely discretionary powers vested on the part of Respondent or employer.

10. As per D & A procedure for misappropriation, Rule 7(e) provides dismissal or discharge from service. Respondent followed due procedure of law while conducting enquiry against Complainant. Proposed punishment of dismissal is also not shockingly disproportionate. The proposed punishment is as per D & A procedure therefore this Court cannot restrict, forbid or prohibit Respondent to inflict or award lesser or higher punishment. As early said awarding and inflicting punishment is part of discretion of Respondent. As per D & A procedure enquiry is conducted. Complainant found guilty Enquiry is legal and there being no perversity in the findings. Therefore, Complainant is not entitled any kind of relief. Complainant failed to prove

that Respondent has engaged in unfair labour practices and proposed punishment is shockingly disproportionate. Complainant is not entitled for any relief as sought.”

6 The Award passed by the Labour Court dismissing the Complaint has been confirmed by the Industrial Court by dismissing Revision Application (ULP) No.73 of 2023. Aggrieved by the decisions of Labour and Industrial Court, Petitioner-employee has filed the present Petition.

7 I have heard Mr. Ganbawale, the learned counsel appearing for Petitioner and Mr. Bhutekar, the learned counsel appearing for Respondent-MSRTC.

8 As observed above, the unique situation is created in the present case on account of entertainment of the Complaint by the Labour Court relating to the prayer for injunction Respondent-employer from dismissing Petitioner-employee. In my view, once the enquiry is held, charge is proved and show-cause notice is issued, the Respondent-employer must be permitted to take the disciplinary proceedings to its logical end by passing appropriate final order. By show cause notice dated 23 April 2011, Petitioner-employee was merely directed to make a representation against the proposed punishment. There is no reason for inferring that Respondent-employer would impose only the punishment suggested in the show cause notice. If the Petitioner-employee was to file Reply to the show-cause notice, final decision would have been taken by the Disciplinary Authority and in the event of such final decision is adverse to Petitioner-employee, cause of action would have arisen for him to challenge the said punishment order by filing the substantive Complaint before the Labour Court. However, the action of the Petitioner-employee in

rushing to the Labour Court at the interlocutory stage of the disciplinary proceedings and entertainment of such half-baked Complaint by the Labour Court has given rise to unique problem in the present case.

9 The unique problem which prevails today in the case is that though the disciplinary proceedings are yet to be complete, the Labour Court and the Industrial Court have not only upheld the enquiry, findings of Enquiry Officer but also the proposed punishment. Thus even before completion of the enquiry and passing of any final order, the Labour Court's jurisdiction was invoked for seeking a certificate of fairness in the enquiry and absence of perversity in the findings of the Enquiry Officer. Ordinarily the said preliminary issues can be gone into only in a substantive Complaint challenging the final order of punishment. To put a premium on the irregularities, the Labour Court has decided the issue of proportionality in absence of any punishment being imposed on the Petitioner-employee. Deciding the issue of proportionality in respect of non-existent penalty is grossly inappropriate. After receiving representation from Petitioner-employee to the show-cause notice, it is for the Disciplinary Authority to take appropriate decision in the case. It is when final penalty order is issued, the issue of proportionality of such penalty can be gone into.

10 This Court is of the view that the Respondent-employer has inherent right of punishing the Petitioner-employee against whom charge in the disciplinary enquiry is held to be proved. An industrial adjudicator cannot intervene the proceedings and prevent the Respondent-employer from taking the disciplinary proceedings to their logical end. In my view therefore, the

Respondent-employer must be permitted to pass a final order in pursuance of show-cause notice dated 23 April 2011. However, on account of adjudication of issues relating to fairness of enquiry and perversity in the findings of the Enquiry Officer, it becomes questionable as to whether Petitioner-employee can be permitted to raise the very same issue once again in the event any adverse penalty is imposed on him in pursuance of the show cause notice. Such a course of action would obviously tantamount adjudication of same issue twice. This is the reason why the Labour Court ought to have avoided entertainment of the Complaint during pendency of disciplinary proceedings and ought to have allowed the Respondent-employer to pass a final order in pursuance of the show cause notice.

11 The next issue is the course of action to be adopted in the light of unique facts and circumstances of the present case. Part I Award relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer has already attained finally upto this Court. The only issue remained was about correctness of the penalty that would be imposed on the Petitioner-employee. In the light of these unique facts and circumstances of the case, in my view, the Respondent-employer can be permitted to pass a final order in pursuance of show cause notice dated 23 April 2011 and in the event punishment of dismissal is imposed, the Petitioner-employee can be permitted to challenge the same only to the extent of correctness of such punishment as well as proportionality thereof. The issues of fairness in the enquiry and perversity in the findings of Enquiry Officer, which have already attained finality, need not be reopened again.

12 Mr. Ganbawale would submit that Petitioner-employee is left with two years of service before his retirement. He would further submit that there is no charge of misappropriation in the charge-sheet and that therefore dismissing him at this belated stage would result in gross injustice to him. In my view, all these points can be agitated by the Petitioner-employee while replying the show cause notice dated 23 April 2011. Merely because of punishment of dismissal is suggested in the show-cause notice dated 23 April 2011, it is not necessary that the Disciplinary Authority is bound to impose the suggested punishment. The Disciplinary Authority is required to take into consideration the representation made to the show cause notice by the Petitioner-employee and consider all the points raised therein, including the point of necessity to the punishment of dismissal as this stage in the light of his retirement in offing.

13 The Writ Petition is accordingly disposed of by permitting the Respondent-employer to pass a final order in pursuance of show-cause notice dated 23 April 2011. Petitioner-employee shall file Reply to the show-cause notice within a period of four weeks from today. The final order shall be passed by the Disciplinary Authority after taking into consideration points urged by the Petitioner-employee in reply to the show-cause notice. In the event any adverse punishment is imposed on him by the Disciplinary Authority, he would be at liberty to challenge the same in a fresh Complaint. While deciding such Complaint, the scope thereof shall be restricted only to the issue of proportionality of penalty and correctness thereof. While deciding the said issue of proportionality and correctness of penalty, nothing observed in Part II Award dated 23 October 2023 by the Labour Court and in the order

dated 5 August 2024 passed by the Industrial Court would be considered. All the points of both sides on the issue of proportionality and correctness of penalty are expressly kept open.

14 With the above observations, the Writ Petition is **disposed of.** Rule is made absolute.

(SANDEEP V. MARNE, J.)

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