

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2853 OF 2005

Dilip Bandu Patil

....*Petitioner*

V/s.

The Divisional Controller & Ors.

....*Respondents*

Mr. Suresh S. Palkar, Senior Advocate *for the Petitioner.*

Ms. Pinky M. Bhansali *a/w. Ms. Dharini Jain, for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Date : 9 January 2025.

P.C. :

1) The petition challenges the judgment and order dated 6 April 2005 passed by the Industrial Court, Satara dismissing Revision (ULP) No. 12/2005 and confirming the judgment and order dated 7 January 2005 passed by the Labour Court, Satara. The Labour Court dismissed the complaint (ULP) No. 100/1998 filed by the Petitioner by its judgment and order dated 7 January 2005. In the complaint, the Petitioner had challenged the show cause notice dated 3 June 1998 by which penalty of dismissal from service was proposed to be imposed upon him after he was found guilty in respect of the charge of remaining unauthorisedly absent from 21 September 1996 to 30 November 1996.

2) I have heard Mr. Pakale, the learned Senior Advocate appearing for the Petitioner and Ms. Bhansali, the learned advocate appearing for Respondent-MSRTC. After having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that the Petitioner was appointed on the post of Assistant Artisan (Electrician) with the Respondent-MSRTC since 18 November 1979. He was served with the chargesheet dated 19 December 1996 alleging unauthorised absence for the period from 21 September 1996 to 30 November 1996. The Petitioner gave an explanation that he could not attend duties on account of his sickness as he was suffering from Malaria. In the enquiry, the charge was held to be proved and show cause notice dated 3 June 1998 was issued proposing to impose the penalty of dismissal from service upon him.

3) Petitioner challenged show cause notice dated 3 June 1998 before the Labour Court, Satara in Complaint (ULP) No.100/1998 which came to be dismissed by judgment and order dated 7 January 2005. Dismissal of the complaint has been upheld in Revision by the Industrial Court, Satara by judgment and order dated 6 April 2005. It appears that during the pendency of the complaint before the Labour Court and the Revision before the Industrial Court, Petitioner was protected by interim orders and accordingly show cause notice dated 3 June 1998 could not be implemented and he continued to remain in service. This Court granted interim order in favour of the Petitioner on 3 May 1995 by protecting him from termination. The said interim order was continued while admitting the petition by order dated 16 September 2005. On account of interim orders passed by this Court, Petitioner continued in service and retired after attaining the age of superannuation on 30 November 2009.

4) Mr. Pakale would submit that since the Petitioner has already retired from service on 30 November 2009, nothing really would survive in the show cause notice dated 3 June 1998 and that Petitioner must be paid all retiral benefits. On the other hand, Ms. Bhansali, would highlight the position that the Petitioner was a case of chronic absenteeism as he was punished on 12 different occasions from 1986 to 1996 out of which, 9 punishments were for unauthorised absence.

5) Considering the fact that the Petitioner has already retired from service on 30 November 2009 there is no question of his dismissal at this stage. At the same time, absence from duties is not really disputed by the Petitioner. In my view, therefore the appropriate course of action to be followed in the facts and circumstances of the present case is to permit the Respondent-MSRTC to impose substituted and reduced penalty on the Petitioner on the date of issuance of the show cause notice. Considering the period of absence, as well as past punishments imposed on the Petitioner, ends of justice would meet if the penalty of withholding of increments of 3 years imposed on the Petitioner on 3 June 1998 instead of the punishment of dismissal from service. This would ensure that the Petitioner receives all his retiral benefits. I accordingly proceed to pass the following order :

(i) Orders dated 6 May 2005 passed by the Industrial Court, Satara and 7 January 2005 passed by the Labour Court, Satara are set aside.

(ii) Show cause notice dated 3 June 1998 shall stand modified and Respondent-MSRTC is granted liberty to impose the punishment of withholding of increment for a period of 3 years on the Petitioner without cumulative effect.

6) The Respondent-MSRTC shall accordingly calculate the amount of excess payment made to the Petitioner on account of imposition of penalty withholding of increments for 3 years and shall recover the same from the amount of retiral dues payable to him.

7) All retiral benefits payable to the Petitioner including Provident Fund, after making the above adjustment shall be released within a period of 3 months.

8) With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]