

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19108 OF 2024

Sandesh Shamrao Suryawanshi

.. Petitioner

Versus

The BEST Undertaking and Anr.

.. Respondents

.....

- Mr. C.G. Jadhav, Advocate for Petitioner.
- Ms. Kavita Anchan, Advocate for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 24, 2025.

P.C.:

1. Heard Mr. Jadhav, learned Advocate for Petitioner and Ms. Anchan, learned Advocate for Respondents.

2. The present Writ Petition impugns the following three orders: (i) Order dated 05.01.2022; (ii) Order dated 30.06.2022, both passed by the 4th Labour Court, Mumbai in Complaint (ULP) No. 05 of 2021; and (iii) Order dated 02.07.2024 passed by the Industrial Court, Mumbai in Revision Application No. 01 of 2023 arising from the said Complaint (ULP) No. 05 of 2021.

3. The facts borne out from the record are that Petitioner was employed as a Bus Driver with Ghatkopar Depot, Traffic Department of Respondent No.1 Undertaking and is a member of the BEST Worker's Union. Petitioner has been in service since 24.11.2010 i.e. for more than 9 years.

3.1. On 29.06.2018, Leave Supervisor of Respondent No.1 Undertaking submitted a Report regarding Petitioner's unauthorized absence. On the basis of the said Report, a Chargesheet was issued invoking Clause No. 23(a) read with Clause No. 20(f) and 20(k) of Standing Orders as Petitioner remained absent for more than 15 consecutive days without prior sanction or intimation.

3.2. Despite issuance of letter dated 17.07.2018 and 18.08.2019 by the Enquiry Officer, Petitioner failed to appear for the enquiry. A memorandum dated 27.09.2018 was issued and served on Petitioner's residential and native addresses thereby rescheduling the enquiry to 31.01.2019.

3.3. In the meanwhile, on 17.01.2019, Petitioner sent his medical certificate issued by PHC Satara. In view thereof, the enquiry was postponed to 01.02.2019. However, Petitioner once again failed to remain present. The enquiry was thereafter postponed to 08.06.2019.

3.4. Due to Petitioner's continuous absence, an ex-parte Enquiry was conducted. Hence, with effect from 08.02.2019, the Enquiry Officer recommended dismissal of Petitioner from service of Respondent No.1 for his misconduct arising from unauthorized absence for the period from 01.05.2018 to 28.06.2018 i.e. for 59 days. Chargesheet was filed and Respondent was dismissed from service.

3.5. Being aggrieved by the said dismissal order, Petitioner preferred two departmental Appeals. However, both the Appeals were rejected. Thereafter Petitioner filed a Complaint (ULP) No. 05 of 2021 before the 4th Labour Court, Mumbai under Items 1(a), (b), (d), (e), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short '**the said Act**'). According to Petitioner, enquiry conducted by the Enquiry Officer and Report filed was without following the principles of natural justice and denying Petitioner's right to be heard. Complaint (ULP) No. 05 of 2021 was registered and two preliminary issues were framed.

3.6. On 07.09.2021, Petitioner filed Application below Exhibit 'U-6' seeking permission to lead evidence, including production of his Medical Certificate. However, the said Application was rejected by order dated 05.01.2022 - first impugned order appended at page No. 24 of the Petition.

3.7. Thereafter, the 4th Labour Court, Mumbai framed remaining additional issues. Despite Petitioner having enclosed his documentary evidence to corroborate his case, the 4th Labour Court, Mumbai decided the issues in the negative and dismissed the Complaint (ULP) No. 05 of 2021 by order dated 30.06.2022 - second impugned order appended at page No. 31 of the Petition.

3.8. Being aggrieved by the twin impugned orders dated 05.01.2022 and 30.06.2022, Petitioner filed Revision Application No.01 of 2023 under Section 44 of the said Act before the Industrial Court. However it came to be dismissed by order dated 02.07.2024 – third impugned order appended at page No. 46 of the Petition.

4. Hence, the present Writ Petition.

5. Mr. Jadhav, learned Advocate for Petitioner would submit that the Revisional Authority has committed an error in affirming the twin orders passed by 4th Labour Court, Mumbai and has failed to consider the material irregularities in the enquiry process and denial of natural justice to Petitioner, thereby leading to dismissal of Petitioner from service.

5.1. He would submit that documents relied upon by the Enquiry Officer in the Chargesheet were never served upon Petitioner nor filed before the Labour Court, thereby depriving Petitioner opportunity to defend his case.

5.2. He would submit that ex-parte enquiry was conducted by the Enquiry Officer without granting Petitioner a fair and reasonable opportunity to participate in the proceedings.

5.3. He would submit that Petitioner was suffering from severe stomach pain and was undergoing medical treatment at his native

place in Satara. He would submit that Petitioner was advised complete rest from 04.02.2019 to 04.03.2019. Also medical certificate issued by PHC, Satara was initially submitted through his nephew however was not accepted by the office of Traffic Department, Ghatkopar Depot. Therefore the medical certificate was sent by courier and endorsement to that effect has been made on the said letter and the same is filed before the Labour Court.

5.4. He would submit that Respondent failed to consider the documentary evidence placed on record in the form of medical certificate, however the medical certificate is not questioned/objected by Respondents.

5.5. He would submit that Petitioner has rendered 9 years of service prior to the alleged misconduct and absenteeism in question occurred due to unavoidable medical and personal circumstances.

5.6. He would submit that Labour Court has solely relied on the Petitioner's past service record while awarding punishment, without considering that it is settled law that past service record cannot be a criteria to award extreme punishment and punishment cannot be disproportionate to the misconduct.

5.7. In support of his arguments, Mr. Jadhav has referred to and relied upon the decision of the Supreme Court in the case of *Chairman-Cum-Managing Director, Coal India Ltd. And Anr. Vs. Mukul*

Kumar Choudhuri and Ors. ¹

5.8. He would submit that Petitioner has not committed any serious misconduct, therefore the punishment imposed on the Petitioner is disproportionate and also no loss or prejudice was caused to the Undertaking due to Petitioner's absence and therefore the extreme measure of dismissal from service is not justified.

5.9. He would therefore submit that both impugned orders are unsustainable in law and deserve to be quashed and set aside.

6. *PER CONTRA*, Ms. Anchan, learned Advocate appearing for Respondents would support the impugned orders passed by the subordinate Courts. She would submit that Petitioner remained absent from duty without prior sanction or intimation for a continuous period of 59 days which constitutes a clear case of misconduct under the extant Standing Orders.

6.1. She would submit that chargesheet was duly served and multiple opportunities were provided to Petitioner to remain present and participate in the enquiry proceedings, but he deliberately remained absent despite being aware of the same.

6.2. In support of her arguments, Ms. Anchan has referred to and relied upon the following decisions of the Supreme Court and this Court:-

¹ (2009) 15 SCC 620

- (i) *Delhi Transport Corporation Vs. Sardar Singh*²;
- (ii) *Balasaheb Madhukar Bende Vs. The General Manager, BEST Undertaking*³; and
- (iii) *Dhondu Narayan Bandkar Vs. The General Manager, BEST Undertaking*⁴.

6.3. She would submit that Petitioner has been charged with habitual absenteeism, which squarely falls within Clause No. 20(f) of the Model Standing Orders. She would place reliance on Petitioner's past record wherein he has been punished on as many as 4 occasions in the past for similar misconduct. She would submit that earlier punishments included reduction in grade by one step, then by two steps and even suspension, all of which establish a pattern of habitual misconduct. She would therefore submit that penalty of dismissal imposed on Petitioner is not disproportionate but justified in view of his repeated acts of unauthorised absence.

7. I have considered the submissions made by Mr. Jadhav, learned Advocate for Petitioner and Ms. Anchan, learned Advocate for Respondents and perused the record of the case. Submissions made by them have received due consideration of the Court.

8. On perusal of the impugned orders it is seen that Petitioner was dismissed from service on account of alleged unauthorised absence for the period from 01.05.2018 to 28.06.2018, following an ex-parte enquiry.

² (2004) 7 SCC 574

³ WP.6804.2005, decided on 21.09.2016.

⁴ WP.3306.2010, decided on 05.12.2024.

9. It is admitted position on record that Petitioner submitted medical certificate issued by PHC Satara to substantiate his absence. However, the Labour Court rejected Petitioner's application under Exhibit 'U-6' seeking permission to lead evidence and place on record the said medical documents, without assigning adequate or cogent reasons. In my opinion such rejection amounts to denial of reasonable opportunity to Petitioner to defend himself, thereby resulting in a procedural irregularity and violation of the principles of natural justice.

10. Attention is drawn to the decision of the Supreme Court in the case of ***Chairman-Cum-Managing Director, Coal India Ltd. And Anr.*** (1st *supra*) wherein the Court analysed the doctrine of proportionality at length, particularly in paragraph Nos. 19 and 20 of the said decision which applies to the facts in the present case and they are reproduced below:-

"19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."

11. Undoubtedly, in the present case Petitioner was absent from service for a period from 01.05.2018 to 28.06.2018 i.e. for 59 days but upon being charged of such misconduct, he fairly admitted his absenteeism and explained his reasons for the same. From the aforesaid observations it can be inferred that while considering the case of unauthorised absenteeism and while imposing punishment, the Authority has to take into consideration the magnitude and degree of misconduct and other relevant circumstances after excluding the irrelevant matters before imposing punishment. From the findings of the Enquiry Officer, it has to be noted that Enquiry Officer admitted the fact of treatment of Petitioner and did not disbelieve it. Rather, the finding of the guilt was only on the ground that no prior information was given to Respondents while undergoing treatment in addition to the prior record of misconduct of Petitioner.

12. In the instant case, the facts are similar to that of the decision passed in case of ***Chairman-Cum-Managing Director, Coal India Ltd. And Anr.*** (1st *supra*) in which the employee had admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desire to disobey the order of higher authority or violate any of the Company's rules or regulations but the reason was purely personal and beyond his control. Regard being had to the factual matrix, the Court interfered in the punishment order on the ground of proportionality.

13. In the facts of the present case observed hereinabove, I am of the opinion that the Labour Court and Revisional Authority could have considered and examined the justifiability of the reason assigned by the Petitioner for his absenteeism and non-appearance in enquiry proceedings due to sudden and unforeseen medical and family exigencies duly supported by the PHC Medical certificate.

14. The Labour Court as well as the Revisional Authority failed to exercise their discretion under Section 11-A of the Industrial Disputes Act, 1947 read with Section 32 of the said Act to interfere with the quantum of punishment despite the mitigating circumstances being placed on record.

15. It is pertinent to note that Petitioner had rendered over 9 years of service prior to the impugned action. Further, the present dispute has been pending for nearly 7 years, during which period Petitioner has remained out of employment.

16. While it is true that Petitioner had previously been subjected to disciplinary action for act of absenteeism, the present misconduct or the past misconduct does not pertain to a act involving misappropriation of funds or malafide conduct thus he being subject to the extreme punishment. Hence, in my opinion on overall consideration of the reason for absenteeism in the present case punishment of dismissal imposed to be appears excessive and harsh in the facts and circumstances of the present case as discussed

hereinabove.

17. The impugned orders dated 05.01.2022 and 30.06.2022 passed by the 4th Labour Court, Mumbai in Complaint (ULP) No. 05 of 2021, and the order dated 02.07.2024 passed by the Industrial Court, Mumbai in Revision Application No. 01 of 2023 are therefore unsustainable and deserve interference of this Court. All three orders are quashed and set aside.

18. Resultantly Respondent No.1 – Undertaking is directed by this Court to reinstate Petitioner in service however considering the past conduct of the Petitioner of indictment, he shall not be entitled to any backwages. Petitioner's reinstatement is allowed without any backwages, but with continuity in service. The reinstatement of Petitioner shall be effected within a period of 4 weeks from the date of this order. Writ Petition succeeds.

19. It is made clear that Petitioner shall not be entitled to any monetary benefits, including salary or backwages, for the period between the date of dismissal and the date of his actual reinstatement.

20. In view of the above observations and findings, Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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