

(2019) 06 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No. 1143 Of 1999

Divisional Controller And Ors

APPELLANT

Vs

Isan Dhada Nagarale

RESPONDENT

Date of Decision : 13-06-2019

Acts Referred:

Citation : (2019) 06 BOM CK 0051

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : D.S. Bagul

Final Decision : Partly Allowed

Judgement

Ravindra V. Ghuge, J

1. None had appeared for the parties when this matter was taken up in the special final hearing drive in vacation on 06.05.2019. Even today, none appears for the respondent though an appearance is entered by an advocate.

2. I have heard the learned advocate for the petitioner Corporation and with his assistance, i have gone through the petition paper book.

3. The respondent, original complainant before the labour court, was working as a conductor with the petitioner corporation. On 21.01.1994, a surprise checking squad intercepted the bus at hirabonde (nagsari). The respondent was found having collected ticket fare from three passengers and had not issued any ticket. He resisted the checking squad and misbehaved with them. He was charged and a disciplinary enquiry was conducted by appointing an enquiry officer. Having been found guilty of the misconduct, he was dismissed from service by way of punishment on 18.05.1994.

4. The respondent approached the labour court by preferring complaint (ulp) no.76/1996 under the mrtu & pulp act, 1971. By judgment dated 18.04.1998, impugned in this petition, the labour court partly allowed the complaint and

granted the relief of reappointment as a fresh appointee within one month. Both the parties approached the industrial court by preferring revision (ulp) nos.484/1998 and 493/1998. By judgment dated 08.12.1998, the industrial court dismissed both the revision petitions. This court, by order dated 08.03.1999, admitted this writ petition and made rule returnable on interim relief. However, no interim relief was subsequently granted.

5. The learned advocate for the petitioner corporation submits, On instructions, that as a consequence of the above, the respondent was continued in employment.

6. As per the affidavit in reply filed by the respondent in this petition on 07.07.1999, he was 49 years of age. As such, he must have superannuated at the age of 60 years in the year 2010 and must be about 69 years of age as on date.

7. I find from the judgment of the labour court dated 18.04.1998 that it proceeded to decide all the issues at the same time though the law is crystallized for the last 60 years in view of the judgments of the honourable supreme court delivered in workmen of the motipur sugar factory pvt.ltd. Vs. The motipur sugar factory, air 1965 sc 1803, delhi cloth and general mills company limited v/s ludh budh singh, 1972 (1) scc 595, workmen of m/s firestone tyre & rubber company of india v/s management, air 1973 sc 1227 : 1973 scr (3) 587, shambhu nath goyal v/s bank of baroda, 1984(4) scc 491 and bharat forge company ltd. V/s a.b.zodge, 1996 (73) flr 1754 : air 1996 sc 1556, which have been considered by this court in msrtc, beed v/s syed saheblal syed nijam, 2014 (iii) clr 547 : 2014(4) mh.l.j. 687 and maharashtra state cooperative cotton growers marketing federation limited vs. Vasant ambadas deshpane, 2014 (i) clr 878 : 2014 (3) mh.l.j. 339, that two Preliminary issues regarding fairness of enquiry and findings of the enquiry officer need to be decided initially. If the enquiry is set aside for any reason whatsoever, the law laid down by the honourable supreme court (five judges bench) in the matter of ksrtc v/s lakshmiddevamma, 2001 (2) clr 640 would become applicable as a de-novo enquiry will have to be conducted.

8. In the case in hand, though two issues regarding fairness of the enquiry and the findings of the enquiry officer are required to be dealt with initially, the labour court delivered the judgment on all the issues after recording the purshis of the complainant that he is giving up his challenge to the fairness of the enquiry and he is also giving up his claim for back wages. The parties, therefore, did not lead oral evidence and relied on the record and proceedings of the enquiry.

9. It is obvious from the conclusions of the labour court that though the charge of misappropriation of rs.10.50 was proved, the labour court concluded that the findings of the enquiry officer are perverse and interfered with the punishment only on the ground that the punishment is shockingly disproportionate.

10. I find that the judgment of the labour court is apparently perverse and erroneous since it cannot deliver the verdict that the findings of the enquiry officer are perverse at the final stage and more so, when the worker had filed the purshis that he was not questioning the enquiry.

Similarly, in the light of the law laid down by the honourable supreme court in the above cited cases and especially in *bharat forge company ltd. V/s a.b.zodge* (supra) and *ksrtc v/s lakshmiddevamma* (supra), if the findings of the enquiry officer are held to be perverse, the entire enquiry stands vitiated and a de-novo enquiry has to be conducted by the employer.

11. Considering the passage of time and in view of the observations made by the honourable supreme court in the matter of *kum.pushpa ramdas zatake vs. The divisional controller, maharashtra state road transport corporation in special leave to appeal no.22618/2017* decided on 09.07.2018, this is a fit case to be granted a "quietus" as the respondent/ employee continued in service by virtue of the impugned judgment of the labour court.

12. The honourable supreme court has held, in the case of *janatha bazar (south kanara central cooperative wholesale stores ltd.) Vs. Secretary, sahakari noukarara sangha*, 2000(7) scc 517 : air 2000 sc 3129, that the quantum of amount misappropriated is not a decisive factor. Once an employee is held to have indulged in misappropriation, dismissal from service is the only punishment available. The learned division bench has held, in the case of *p.r.shele vs. Union of india and others*, 2008 (2) mh.l.j. 33, that the amount of Misappropriation is not to be taken into account and once an employee is held to have committed misappropriation, the extreme punishment of dismissal from service deserves to be awarded.

13. The honourable supreme court has concluded, in the matters of *damoh panna sagar rural regional bank vs. Munna lal jain*, 2005 (104) flr 291 and *biecco lawrie limited and another vs state of west bengal and another*, [(2009) 10 scc 32], that the court cannot interfere with the quantum of punishment if the punishment is disproportionate. The court can cause an interference in the quantum of punishment only if it concludes that the punishment awarded is shockingly disproportionate and it shocks the judicial conscience of the court.

14. In view of the above, in order to ensure that a perverse and erroneous judgment delivered by the labour court would not continue to exist in law, this writ petition is partly allowed. The impugned judgment of the labour court dated 18.04.1998 is quashed and set aside. Consequentially, the judgment of the industrial court dated 08.12.1998 stands quashed and set aside. However, considering the passage of time, this court having refused interim relief to the petitioner corporation and the respondent having continued in employment and superannuated almost 10 years ago, the service benefits already extended to the respondent/ employee shall now not be recovered from him. Even if Gratuity is paid, the same shall not be recovered from him and this litigation would be

granted a "quietus".

15. Rule is made partly absolute in the above terms.