
(2019) 06 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 78 Of 2003

Divisional Controller

APPELLANT

Vs

Vanji Sitaram Bagul

RESPONDENT

Date of Decision : 13-06-2019

Acts Referred:

Citation : (2019) 06 BOM CK 0052

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : D.S. Bagul

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J

1. The petitioner corporation is aggrieved by the judgment of the labour court dated 13.02.1997 vide which, complaint (ulp) no.140/1995 filed by the respondent/ employee herein, has been partly allowed and he was granted reinstatement with continuity of service without back wages. The petitioner is also aggrieved by the judgment of the industrial court dated 28.02.2002 by which, revision (ulp) no.299/1999 (old no.43/1997) filed by the petitioner corporation was dismissed.

2. None had appeared before this court in the special final hearing drive in vacation on 12.05.2017. Similarly, none appeared before this court in the special final hearing of old matters on 8th may, 2019. Today, none has caused an appearance on behalf of the respondent, despite the respondent having been served by court notice after issuance of rule.

3. I have heard the learned advocate for the petitioner and have gone through the record with his assistance.

4. The respondent had joined service with the petitioner corporation as a bus conductor in 1981. He was granted regularization in 1984. While on duty on

11.08.1991 on the route between sinnar and shahada, the respondent was apprehended of having collected ticket fare and having permitted two passengers to travel ticket-less. The misappropriated amount was rs.17/-. After serving the charge sheet, the departmental enquiry was conducted and as the respondent was held guilty of the charges levelled upon him, he was dismissed from service on 28.09.1994.

5. In an incident of a similar misconduct of misappropriation committed earlier, the respondent was dismissed from service on 07.12.1992. He moved the departmental first appeal, which was allowed and he was granted reinstatement. The second appellate authority of the petitioner corporation, having the powers of suo moto review, reviewed The decision of the first appellate authority and sustained the order of dismissal keeping in view that the respondent had indulged in misappropriation. He approached the labour court by preferring complaint (ulp) no.107/1994. He claimed before the labour court that his past service record was clean and unblemished. He was granted interim relief by the labour court on 06.07.1994. The said complaint was allowed by the judgment of the labour court. The petitioner did not challenge the said judgment keeping in view that the second dismissal from service dated 28.09.1994 was sub-judice.

6. The record with reference to the case in hand reveals that the labour court, while delivering the impugned judgment dated 13.02.1997, concluded that the enquiry held against the respondent was fair, proper and was not vitiated. It was further held that the findings of the enquiry officer are based on legal and acceptable evidence and are not perverse. This verdict has not been challenged by the workman before any higher court.

7. The law is settled that when the findings of the enquiry officer are sustained and when the enquiry is upheld, the worker is not permitted to question the probative value of evidence recorded in the enquiry or the findings holding him guilty before the same court. The only available remedy is to challenge such findings before a higher court or proceed to contest the matter only on the issue of proportionality of the Punishment.

8. The labour court considered the proportionality of punishment and concluded that the punishment awarded to the respondent was shockingly disproportionate, despite the fact that the respondent was held guilty of misappropriation.

9. The honourable supreme court has concluded, in the matters in 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.

10. 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, the dismissal from service is the only punishment available. The learned division bench of this court 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.

11. In view of the above, i find that the impugned judgment of the labour court is an outcome of misplaced sympathy since the labour court concluded that a very meager amount has been misappropriated by the respondent. Showing misplaced sympathy in such matters or in matters wherein, a grave offence or misconduct has been committed, is an anathema.

12. The learned advocate for the petitioner corporation submits, on specific instructions gathered by him that the respondent was dismissed for the third time on 13.04.2007 for a similar misconduct of misappropriation.

13. In view of the above, this writ petition is allowed. The impugned judgment of the labour court dated 13.02.1997 is quashed and set aside and complaint (ulp) no.140/1995 filed by the respondent is dismissed. Consequentially, the judgment of the industrial court dated 26.08.2002 stands quashed and set aside and the revision petition is disposed off.

14. Rule is made absolute in the above terms.