

(2016) 12 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 9233 of 2012 With Civil Application No. 16135 of 2016

Divisional Traffic Supdt.

APPELLANT

Vs

Dajiba Fakirrao Shinde

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Citation : (2017) 152 FLR 556

Hon'ble Judges : Mr. Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Mr. A. D. Wange, Advocate, for the Petitioner; Mr. S. B. Kadu, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J. (Oral)—The petitioner/Corporation is aggrieved by the concurrent findings of the Labour Court dated 18/12/2009 partly allowing Complaint (ULP) No.13/2003 and the judgment of the Industrial Court dated 01/08/2012 by which Revision (ULP) No.16/2010 filed by the MSRTC has been dismissed.

2. I have considered the strenuous of Mr.Wange, learned Advocate for the petitioners, who has vehemently criticized the impugned judgments. He submits that an opportunity to conduct a de novo enquiry was not given to the Corporation after the enquiry was vitiated and the findings of the Enquiry Officer were branded as perverse in the same judgment by which the complaint was partly allowed. He, therefore submits that allowing of the complaint by the Labour Court is unsustainable and for the same reasons, the judgment of the Industrial Court is also rendered perverse.

3. He strenuously submits that the respondent/clerk was held guilty of misappropriation in the domestic enquiry. His act of misappropriation amounts to moral turpitude. Gratuity therefore stands forfeited under the Payment of

Gratuity Act and the Rules. Though the respondent has been reinstated in service, has superannuated and has been given his retiral pensionary benefits, gratuity has not been paid as the offence for which he has been punished constitutes moral turpitude.

4. Learned Advocate for the respondent/employee relies upon the judgment of the Hon''ble Supreme Court dated 06/12/2016 in Civil Appeal No.11807/2016 in the matter of Jorsingh Govind Vanjari v. Divisional Controller, MSRTC, Jalgaon He specifically points out paragraph Nos. 15 and 17 of the judgment of the Hon''ble Apex Court and submits that committing offence of misappropriation has not been held to be an act of moral turpitude by the Hon''ble Apex Court.

5. I have considered the submissions of the learned Advocates.

6. There is no dispute that long standing law of more than 60 years laid down by the Hon''ble Apex Court mandates that the fairness of the enquiry and the fairness of the findings of the Enquiry Officer are to be dealt with peremptorily and are to be decided by the Part I judgment of the Labour Court or the Tribunal, as the case may be. (See Workmen of Motipur Sugar Factory Private Ltd., v. The Motipur Sugar Factory Private Limited, AIR 1965 SC 1803, Delhi Cloth and General Mills Company Limited v. Ludh Budh Singh, 1972(1) SCC 595, Shambhu Nath Goyal v. Bank of Baroda, AIR 1984 SC 289, The Workmen of M/s Fire Stone Tyre and Rubber of India Private Ltd., v. The Management and others, AIR 1973 SC 1227 1973(1) SCC 813 and Bharat Forge Company Ltd., v. A.B. Zodge and another, AIR 1996 SC 1556.)

7. However, once the enquiry is vitiated, the employer is to be given an opportunity of conducting a denovo enquiry only if this right is reserved in the written statement, as is the view of the Hon''ble Apex Court (5 Judges Bench) in the matter of Karnataka Road Transport Corporation v. Lakshmiddevamma, AIR 2001 SC 2090. The Labour Court as well as the Industrial Court have observed by perusing the written statement of the corporation that the right to conduct a denovo enquiry was not reserved by the Corporation. In this backdrop, the Labour Court cannot be faulted for deciding the complaint without giving an opportunity to the petitioner to conduct a denovo enquiry.

8. There is no dispute that the respondent is awarded the punishment of dismissal from service on charges of misappropriation. No de novo enquiry was conducted by the Corporation before the Labour Court. In similar circumstances, the Hon''ble Supreme Court in paragraph No.15 of its judgment in the matter of Jorsingh Govind (supra) has observed as under :

"15. The Labour Court, on the available materials on record, found that the termination was unjustified on the basis of the perverse finding entered by the inquiry officer. There was no attempt on the part of the management before the Labour Court to establish otherwise."

9. This Court, in the matter of Jorsingh Govind (supra), in WP No.3268/2014 had

refused gratuity to the employee by its judgment dated 08/07/2015. Since the charges were not proved before the Labour court by the Corporation, the Hon"ble Apex Court, by its judgment dated 06/12/2016 in Jorsingh Govind (supra) has observed in paragraph No.17 as under :

"17. In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude."

10. In the light of the above, since no charge was proved before the Labour Court after the enquiry was vitiated, the respondent/employee is presumed to be innocent. Learned Advocate for the petitioner strenuously submits that the past service record of the respondent/employee is seriously blemished with 56 punishments for various misconducts. However, I am not depriving the respondent of the gratuity keeping in view the observations of the Hon"ble Supreme Court in paragraph No.17, reproduced above.

11. In so far as the back wages are concerned, the Industrial Court has reduced the back wages of 50% as granted by the Labour Court and has directed payment of only 25% back wages. The respondent has not challenged this judgment.

12. In the light of the above, this petition, being devoid of merit, is dismissed. Rule is discharged. The respondent/employee can withdraw the amount of back wages deposited in this Court along with accrued interest by presenting an application supported with tangible evidence in the form of Income Tax PAN card and Election Commission Voter ID card. Needless to state, the petitioner/ Corporation shall settle the legal dues of the respondent while making the payment of unpaid dues including gratuity, within a period of 12 weeks from today.

13. Pending civil application does not survive and is disposed of.