

**(2012) 10 BOM CK 0009**

**In the Bombay High Court**

**Case No : Writ Petition No. 3141 of 2012**

Kawadu Sakharam Chaudhary

APPELLANT

Vs

M.S.R.T. Corporation and Others

RESPONDENT

---

**Date of Decision : 20-10-2012**

**Acts Referred:**

**Citation : (2013) 137 FLR 265**

**Hon'ble Judges : Vasanti A. Naik, J**

**Bench : Single Bench**

**Advocate : C.V. Jagdale, for the Appellant; V.G. Wankhede and A.M. Deshpande, for the Respondent**

---

## **Judgement**

Vasanti A. Naik, J.—By this petition, the petitioner impugns an order passed by the Industrial Court, Chandrapur on 12.6.2012 allowing a revision filed by the respondent-Corporation and setting aside the judgment passed by the Labour Court on 17.2.2010. The petitioner was working as a conductor with the respondent-Corporation. While he was discharging duty on 1.7.2008, the bus was checked and it was found that certain passengers were travelling without tickets. Though the petitioner had recovered the fare from passengers, it was found that tickets were not issued to them. After departmental enquiry was conducted against the petitioner, a show-cause notice was issued to the petitioner as to why he should not be dismissed from service. The petitioner approached the Labour Court against the show-cause notice.

The Labour Court on an appreciation of the evidence on record, came to the conclusion that the enquiry held against the petitioner was fair and proper and the principles of natural justice were followed. The Labour Court found that the Corporation had proved the charges against the petitioner. The Labour Court, however, held that the punishment of dismissal was disproportionate to the act of misconduct committed by the petitioner and instead of the punishment of dismissal, it was necessary to impose a punishment of stopping of one increment by cumulative effect. The order of the Labour Court was challenged by the

petitioner before the Industrial Court.

2. The Industrial Court on an appreciation of the evidence on record found that the Labour Court was not justified in holding that the punishment inflicted upon the petitioner was shockingly disproportionate to the act of misconduct committed by the petitioner. It was held by the Industrial Court that the petitioner was found guilty of misappropriation and in view of the provisions of the Discipline and Appeal Procedure, he was rightly dismissed from service. The Industrial Court considered the default card which show that the petitioner had committed misconduct on seventeen occasions and of those occasions, nine times the petitioner was held guilty of misappropriation. In the aforesaid set of facts, the Industrial Court found that there was no propriety in taking a lenient view in the matter and reducing the punishment.

3. Shri Jagdale, the learned Counsel for the petitioner, submitted that the punishment of stopping of one increment by cumulative effect was justified and proper and the punishment of dismissal was disproportionate to the act of misconduct committed by the petitioner. It was canvassed on behalf of the petitioner that the Vice Chairman-cum-Managing Director of the Corporation had delegated the power to the Divisional Traffic Officer to conduct the enquiry and since the enquiry was not conducted by the Divisional Traffic Officer and was conducted by the Divisional Traffic Superintendent, the enquiry was vitiated. It is submitted that in view of Rule 18 of the Discipline and Appeal Procedure, only the appointing authority or an officer superior to the appointing authority could have initiated the enquiry and could have dismissed the petitioner. It is submitted that this submission being a legal submission, could be raised for the first time in writ jurisdiction. The learned Counsel for the petitioner relied on the unreported judgment of this Court in Letters Patent Appeal No. 260/2010 (Manik S/o Bapurao Bopache v. Executive Engineer Bhandara Irrigation Division, Bhandara and another, 1991 LAB I.C. 1653) and a decision in (Bombay Mothers & Children's Society v. General Labour Union (Red Flag) and another) to substantiate his submission.

4. Shri Wankhede, the learned Counsel for the respondent Nos. 1 and 2, submitted that considering the default card of the petitioner and considering the proved charges, the Industrial Court rightly held that the Labour Court could not have interfered with the punishment imposed on the petitioner. The learned counsel submitted that the submission made on behalf of the petitioner that the Divisional Traffic Superintendent was not empowered to hold the enquiry is incorrect and relied on certain documents filed along with the affidavit in reply to substantiate his submission. The learned Counsel submitted that the enquiry was properly conducted by the authority empowered to conduct the same and the same cannot be vitiated on this ground.

5. Shri Deshpande, the learned Assistant Government Pleader for the respondent Nos. 3 and 4, supported the order passed by the Industrial Court and sought for the dismissal of the writ petition.

6. On hearing the learned Counsel for the parties and on a perusal of the impugned order, it appears that the Industrial Court was justified in reversing the order of the Labour Court. The petitioner was involved in an act of misappropriation and on a consideration of the default card it was found that the petitioner was involved in seventeen acts of misconduct of which nine acts pertained to misappropriation. Considering the background of the petitioner, no leniency could have been showed to the petitioner as the petitioner did not mend his ways in spite of several warnings and imposition of minor punishments on him. The Industrial Court rightly held that the Labour Court could not have interfered with the quantum of punishment when the Labour Court was of the view that the enquiry was fair, the charges were proved and the principles of natural justice were followed. There is no scope for interference with the impugned order passed by the Industrial Court.

7. I am not inclined to consider the other submission made on behalf of the petitioner that the enquiry was vitiated as it was not conducted by the Divisional Traffic Officer, who was authorized by the Vice Chairman-cum-Managing Director of the Corporation to conduct the enquiry. This ground was not raised by the petitioner either before the Labour Court or before the Industrial Court. Though the issue in regard to the jurisdiction of an authority to conduct an enquiry or to pass an order of dismissal is a legal issue, in the instant case, it is based both on law and facts inasmuch as both the parties are referring to several circulars and are asking this Court to interpret them. In my view, the second submission in regard to the absence of authority with the Divisional Traffic Superintendent to hold the enquiry is an afterthought and is a lame attempt made on the part of the petitioner to save his service. Hence, no interference with the impugned order is called for. In the result, the writ petition fails and is dismissed with no order as to costs.

The Counsel for the petitioner seeks a continuation of the interim order for a period of one month. The learned Counsel for the respondent Nos. 1 and 2 Corporation strongly opposes the prayer. I am not inclined to continue the order as I find that, on 10.7.2012, though this Court was not convinced with the submissions made by the learned Counsel for the petitioner in regard to the competence of the enquiring authority to initiate the departmental enquiry, a submission was made by the petitioner that this aspect of the matter was not considered by the Industrial Court. This matter surely could not have been considered either by the Labour Court or by the Industrial Court as this point was not raised by the petitioner before any of the two Courts. Hence, it appears that the interim relief is granted on a statement made on behalf of the petitioner which led the Court to believe that the question of jurisdiction of the Authority to conduct the enquiry was raised before the Labour and the Industrial Court but still the Industrial Court had not considered the same. Hence, the prayer is rejected.