

(2008) 11 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 5941 of 2007

Smt. Rabiya Khatun and Others

APPELLANT

Vs

The M.S.R.T.C.

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Citation : (2008) 119 FLR 1110

Hon'ble Judges : Vasanti A. Naik, J

Bench : Single Bench

Advocate : Jagdale, for the Appellant; Wankhede, for the Respondent

Judgement

Vasanti A. Naik, J.—Heard Shri Jagdale for the petitioners, and Shri Wankhede for the respondent.

2. By this petition, the petitioners impugn the order passed by the Labour Court, Akola, on 13.2.2001 dismissing the Complaint ULP No. 19 of 1995 filed by the original complainant Shri Abdul Rehman, as also the judgment passed by the Industrial Court, Akola, on 2.2.2007, in Revision ULP No. 30/2001 confirming the judgment passed by the Labour Court, Akola, on 13.2.2001.

3. The petitioners are the legal heirs of original complainant who was working as a driver with the respondent-Corporation since the year 1982. The Corporation had issued a charge-sheet to the complainant for remaining absent from duty for a period of about 114 days, without making the necessary application and without any intimation to the Corporation. After holding a departmental enquiry against the complainant, the complainant was dismissed from service with effect from 27.11.1992.

4. It was the case of the complainant before the Labour Court that the punishment of dismissal was shockingly disproportionate to the alleged act of misconduct committed by him. The Court had recorded a finding that the complainant was absent without intimation for a period of 114 days and the punishment of dismissal cannot be said to be shockingly disproportionate to the

act of misconduct commuted by the complainant. While passing the impugned order, the Labour Court considered the past service record of the complainant which was produced by the respondents along with the list at Exh. 33. The record showed that minor penalties were imposed on the complainant for similar misconduct. In this background, according to the Labour Court, the punishment of dismissal was not disproportionate. The findings recorded by the Labour Court were upheld by the Industrial Court in the revision filed by the complainant.

5. Shri Jagdale, the learned Counsel for the petitioners, submitted that it was necessary for the Corporation to consider the past service record of the complainant before passing the order of dismissal in view of the provisions of Clause 6(b) of the Discipline and Appeal Procedure. In this case, according to the learned Counsel for the, petitioners, the past record was not considered by the respondent and this violated the provisions of Clause 6(b) of the Discipline and Appeal Procedure.

6. Shri Wankhede, the learned Counsel for the respondent, supported the judgments passed by both the Courts and relied on the decision reported in (2006) 5 SCC 1371, canvass that absence for long period cannot be treated to be a minor misconduct and cannot be treated leniently.

7. I have perused the impugned orders as well as the other documents which are annexed to this petition. The enquiry report clearly shows that the Enquiry Officer had duly considered the past service record of the complainant before proposing the punishment. It is further relevant to note that the complainant has not even whispered in his complaint that his past service record was clean and unblemished. It is also not the case of the petitioners before this Court that minor punishments were not imposed on the complainant at any point of time before the complainant was dismissed from service. In this background, both the Courts have rightly held that the punishment of dismissal imposed on the original complainant was net disproportionate to the act of misconduct committed by him.

8. For the reasons aforesaid, writ petition is dismissed.

9. Shri Jagdale, the learned Counsel for the petitioners, submits that this Court may mention that the observations made in this order would not come in the way of the petitioners in the proceedings filed by them for grant of gratuity which was payable to the original complainant.

10. It is, therefore, made clear that the dismissal of the present petition would have no bearing on the proceedings filed by the petitioners for grant of gratuity and they should be decided on their own merits and in accordance with law.