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**(1998) 01 BOM CK 0047**

**Bombay High Court (Aurangabad Bench)**

**Case No:** Writ Petition No. 4477 of 1995

| | | |
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| Bastimal Shirsath | | APPELLANT |
| | Vs | |
| Maharashtra State Road Transport Corporation and another | | RESPONDENT |

**Date of Decision:** Jan. 15, 1998

**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 11
- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 30(2), 44
- State Transport Corporation Act - Section 34

**Citation:** (1998) 3 ALLMR 614 : (1998) 3 BomCR 707 : (1998) 79 FLR 499 : (1998) 2 MhLj 556

**Hon'ble Judges:** B.H. Marlapalle, J

**Bench:** Single Bench

**Advocate:** S.S. Jadhav, for the Appellant; S.C. Bora, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

B.H. Marlapalle, J.
The petitioner was a conductor with about 10 years service in the Maharashtra State Road Transport Corporation which is a State undertaking of the Government of Maharashtra. On 1-12-1989 he was a conductor on the bus running between Aurangabad-Shahada and the bus had its night halt at Shahada. At about 10 a.m. the watchman on duty in Shahada Depot heard some commotion in the bus and on rushing to the bus he found that the petitioner and the driver of that bus were shouting loudly. The Depot Manager was called and when the watchman went to the petitioner and the driver in the said bus, the petitioner allegedly stated that he had consumed liquor and therefore, they were both sent to the Police Station at Shahada. The Police referred both the

petitioner and the driver with him for medical examination and about 11-30 p.m. the medical Officer conducted their medical examination on the same day. Charge-sheet dated 13-2-1990 was issued to the petitioner alleging acts of misconduct on his part as set out under Items 10, 11, 22 and 42 of Annexure A to the Discipline and Appeal Procedure, 1951 of the said Corporation.

2. A domestic enquiry was instituted into the said charges levelled against the petitioner and the concerned Officers namely Shri D.W. Devare, Depot Manager, Shri Kuwar, Security Guard, Shri B.G. Gavate, Head Art and Shri B.N. Suryawanshi, Traffic Controller from Shahada Depot were examined during the departmental enquiry. The petitioner was given full opportunity to cross-examine all these witnesses on the basis of the statements they had made on the day of alleged incident of misconduct and even the medical certificate issued by the doctor was also brought before the Enquiry Officer. It is pertinent to note that at no point of time the petitioner has challenged the veracity of the medical certificate. The petitioner did not bring any witnesses in his defence and he was allowed to file his defence statement. On assessing the oral and documentary evidence, the Enquiry Officer submitted his report and held the petitioner-employee guilty of all charges levelled against him. A second show-cause notice was issued to the petitioner alongwith the finding recorded by the Enquiry Officer and his say was called upon, on the finding recorded against him and also the quantum of punishment.

3. Taking into consideration the Enquiry Officer"s finding, the say submitted by the employee and the oral and documentary evidence submitted before the enquiry Officer, the Corporation concurred with the finding of enquiry Officer and decided to award the punishment of dismissal, in pursuance of which the petitioner was dismissed from service by order dated 22-5-1990 with effect from 24-5-1990.

4. The same order of dismissal came to be challenged before the Labour Court at Aurangabad in Complaint (U.L.P.) No. 213/90 filed u/s 28 read with Item No. 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices, Act, 1971 (hereinafter referred to as Act for short). An application for interim relief was also filed u/s 30(2) of the Act alongwith the complaint and the same seems to have been dismissed by the Labour Court. On assessment of the oral and documentary evidence brought before the Labour Court including departmental enquiry proceeding, the Labour Court accepted the findings of the Enquiry Officer and held that the enquiry was conducted in keeping with the principles of natural justice and there was no reason to impair the enquiry. The Labour Court also accepted the finding that the charge was duly proved against the petitioner and the punishment of dismissal awarded to the petitioner could not be considered to be shockingly disproportionate as was claimed by the petitioner. The petitioner therefore, approached the Industrial Court u/s 44 of the Act and filed Revision Application (U.L.P.) No. 14/93 and impugned finding of the Labour Court rejecting the complaint filed by the petitioner by judgment dated 3-2-1993. After hearing both the parties at length the learned member of the Industrial Court was pleased to reject the revision application by his judgment and order dated 7-4-1995 and

thus the findings recorded by the Labour Court were confirmed and it was concurrently held that the Corporation did not engage in any act of unfair labour practice as alleged by awarding the punishment of dismissal from service.

5. In addition to the findings recorded by the Enquiry Officer, the statement of witnesses and the officers of the Corporation from Shahada Depot were also recorded and arrest Panchanama was also recorded on 1-12-1989 at the Shahada Police Station. The Panchas confirmed that the petitioner was smelling of alcohol, he had lost his balance, he had rashes on his body and lips. The medical report which was also before the Enquiry Officer and was not challenged by the petitioner stated that on clinical examination of the petitioner he was found to be smelling of alcohol, his speech was incoherent and his pupils were dilated and he was under the influence of liquor. The samples of blood and urine of the petitioner were taken for analytical examination and it was confirmed that the petitioner had consumed liquor. Before the Enquiry Officer the petitioner resorted to a lame plea stating that he had not consumed any liquor and stated that he had taken a tonic "Drakshasav" and that as he was tired after a long journey he went to the doctor who gave him injection which, as per the petitioner perhaps, resulted into his smelling of liquor.

6. The behaviour of the petitioner as alleged in the charge-sheet of consuming liquor and shouting in the bus has not only confined to only itself but it led to public commotion and on the next day the passengers were put to inconvenience and to avoid further delay and loss to the Corporation, the Shahada Depot had to arrange for a substitute crew. There is no doubt that a criminal case was registered against the petitioner and he is reported to have been acquitted in the same subsequently.

7. The learned Counsel for the petitioner has stressed her arguments mainly on the quantum of punishment and she suggested that even if it is assumed that the petitioner was guilty of the charge of consuming liquor in the bus on 1-12-89 at about 10 p.m. as alleged, that itself will not justify the action of awarding punishment of dismissal from service specially when the petitioner had a clean record of service and he was a first time offender. She has more particularly relied upon the judgment of Jaswant Singh v. Pepsu Roadways Transport Corporation and another, reported in AIR 1984 Supreme Court 358 and submitted that in every case of misconduct of an employee of a public Corporation, the action of punishment is not justifiable. The punishment of dismissal should be resorted in extreme cases and after considering the past record of service etc. The learned Counsel has also relied upon a recent judgment of the Supreme Court in the case of B.C. Chaturvedi Vs. Union of India and others, and urged upon this Court to invoke its extraordinary writ jurisdiction and modify the punishment of dismissal to any other lesser punishment. The Supreme Court in the case of B.C. Chaturvedi (supra) has held that in a given case the High Court has the powers to modify punishment awarded by the employer even in public service and if such power is invoked by the High Court, it will not be an illegality.

8. In the instant case both the courts below namely the Labour Court as well as the Industrial Court have recorded concurrent findings regarding the charge proved against the petitioner, the enquiry having been conducted properly and the gravity of the charge. Both the courts below have also held that the punishment of dismissal awarded to the petitioner is not shockingly disproportionate to the nature of charges proved against him. The learned Counsel for the Corporation, in this regard, has relied upon the Division Bench judgment of this Court in the case of Divisional Controller, Maharashtra State Road Transport Corporation, Division Office Vs. Dnyaneshwar Khokle and Another, and submitted that once the courts below have given concurrent findings even on the quantum of punishment, this Court will not ordinarily interfere with such findings. The relevant observations of this Court in the case of Divisional Controller, M.S.R.T.C (supra) read thus (Para 8) :

"Whether the punishment of dismissal was so disproportionate to the misconduct as to shock the conscience of the Court may now be considered. When the two authorities have concurred to hold that punishment was not so disproportionate, this Court will not ordinarily interfere with that finding unless a case of perversity or arbitrariness is made out."

9. It is true that in cases of complainants who are removed from service under the provisions of Model Standing Orders or settled standing orders framed under the Industrial Employees (Standing Orders) Act, 1946, it is a mandatory requirement that while awarding punishment of dismissal, the employer is required to take into consideration not only the nature of charge proved against delinquent employee, but also the past record of service and other extenuating circumstances. In the instant case there is exhaustive procedure laid down which is styled as Maharashtra State Road Transport Corporation Employees Discipline and Appeal Procedure 1951, framed u/s 34 of the State Transport Corporation Act. These regulations governed the procedure (or discipline and appeal and they are in the nature of statutory provisions. These Rules as amended from July 1989 are applicable to the petitioner''s case inasmuch as the instance of number of misconducts was committed on 1-12-89. Items 10, 11, 22 and 42 of Annexure A to the said Discipline and Appeal Procedure read as under ;

■10■ xSjf''kLri.kk]

■11■ egkeaMykph xaHkhj gkuh vFkokj tuirsph xSjlks; fdaok nksughe/;s i;Zolku gks.kkjs vR;ar g;x;hps orZu]

■22■ dks.kR;kgh iz''kkldh; vkns''kkapk Hkax dj.ks]

■42■ dkekoj vlrkuk o@ fdaok dkekP;k osys O;frfjDr egkeaMykP;k vkokjkr fdaok okgukar vYdksgksy( e|( mRrstd nzO; fdaok Hkknd nzo ?ksrY;kps vk<y.ks fdaok R;kP;k vaeyk[kkyh vl.;kps vk<y.ks**

10. Clause 7 of the said Discipline and Appeal Procedure deals with the quantum of punishment to be awarded for act proved against each of the items of Annexure A. There is no dispute that for an act of misconduct proved under Item 10, 11, 22 the punishment of dismissal, removal from service, relieving from service or termination of service is not provided. However, for acts of misconduct as set out under Item 42 of Schedule A to the Discipline and Appeal Procedure if proved the punishment dismissal, termination, relieving or removing from service is provided. The learned Counsel for the Corporation therefore, urged before this Court that so long as the punishment of dismissal from service is in consonance with the Discipline and Appeal Procedure Rules and when both the courts below have given a concurrent finding that the punishment of dismissal was not shockingly disproportionate amounting to unfair labour practice on the part of the Corporation, there is no case made out for this Court to interfere with the quantum of punishment while exercising its powers of superintendence under Article 227 of the Constitution.

11. Though the Industrial adjudicators, at the first instance on trial, have been provided with powers of modifying the punishment and such powers can be seen in section 11-A of the Industrial Disputes Act, in complaint of unfair labour practice regarding finding of the employer being guilty of unfair labour practice is a sine qua non for the adjudicators to interfere with the punishment as well as the quantum of punishment. In the instant case both the courts below, on assessment of the documentary evidence before them, reached a conclusion that there was no reason to interfere with the punishment awarded to the employee. In the case of employees of public undertaking as well as in the case of public servants while granting any relief or modifying the order of punishment, it is necessary to keep in mind the consequences, in the public interest, of such reliefs. The petitioner had behaved in a manner which has not only resulted into loss of revenue to the Corporation but also it caused public nuisance and the image of the Corporation was at stake. Even his behaviour after he was charged has not been of such a nature so as to view his case sympathetically. Perhaps if he had accepted the charge and prayed for mercy before his employer, rather than disputing and contesting the charge, the employer might have considered his case and awarded some lesser punishment than the dismissal. It will not be proper for this Court to invoke its writ jurisdiction in a case of this nature by taking support of the Supreme Court judgment in the case of B.C. Chaturvedi (supra) and substitute the punishment specially when both the courts below held that the punishment was not disproportionate and this Court is bound by the Division Bench judgment in the case of Divisional Controller, Maharashtra State Road Transport Corporation (supra).

12. For the reasons stated hereinabove, no case is made out to interfere with the concurrent findings recorded by the lower courts as well as the quantum of punishment and the petition must fall.

13. In the result, petition is dismissed and the Rule is discharged with no order as to costs.

14. Petition dismissed.