



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12101 OF 2019**

Ananta Rajaram Walunj
Rupee Nagar, Nigdi, Pune

....Petitioner

V/S

Grupo Antolin Pune (P) Ltd.
Ranjangaon, Taluka Shirur, Dist. Pune

....Respondent

Mr. Nitin A. Kulkarni with Mr. Ramchandra R. Muley and Mr. Avinash Belge *for the Petitioner.*

Mr. Ishan Agrawal with Mr. Kush Khandelwal and Mr. Ashutosh Mishra i/b Nyaayam Associates LLP *for Respondent.*

**CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 16 JULY 2026.
PRONOUNCED ON : 27 JULY 2026.**

J U D G M E N T :

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final hearing and disposal.

2. By this Petition, Petitioner has challenged the Awards dated 16 October 2018 and 19 June 2019 passed by the learned Member, Industrial Tribunal, Pune, answering Reference (IT-2A-2) No.46 of 2013 in the negative. Reference was at the instance of the Petitioner in connection

with his demand for reinstatement in service by setting aside dismissal order dated 9 August 2013.

3. Petitioner was employed in the factory of Respondent at MIDC, Ranjangaon, Taluka Shirur, District Pune. While so working, Petitioner was deputed to work at Respondent's Warehouse at Chakan, Pune. For traveling to the Warehouse at Chakan, Petitioner was paid transport allowance of Rs. 3/- per km. Petitioner accordingly claimed transport allowances for 60 km every day for onward and return journey from his home at Nigdi, Pune to Chakan during January and February 2011. Later, the Petitioner claimed transport allowance in respect of distance of 48 km during March 2011 to March 2012. Petitioner claims to have discovered even shorter route and claimed transport allowance for distance of 44 km during April 2012 to June 2012. It appears that a verification of distance was carried out by the Respondent through Shri Sanjaykumar Singh, Driver on 18 August 2012, who reported that one way distance from Petitioner's home to the warehouse at Chakan was only 16.5 km.

4. Accordingly, a show-cause notice was issued on 17 September 2012 to the Petitioner alleging claiming of excess conveyance allowance during January 2011 to June 2012 in respect of inflated distance. Petitioner gave reply to the show-cause notice on 29 September 2012 and expressed remorse for the incident stating that the same arose out of misunderstanding. On 28 January 2013, a charge-sheet was issued to the Petitioner proposing to conduct an enquiry into the allegation of excess drawl of conveyance allowance of Rs.17,868/-. Petitioner replied

to the charge-sheet and denied the charges. Enquiry was conducted into the charges in which the Petitioner participated. At the end of the enquiry, report was submitted by the Enquiry Officer holding that the charges were proved. Based on the report of the Enquiry Officer, Order dated 9 August 2013 was passed dismissing the Petitioner from service. Petitioner raised Reference under Section 2A (2) of the Industrial Disputes Act, 1947 (**ID Act**) which was registered as Reference (IT-2A/2) No.46 of 2013 before Industrial Tribunal at Pune. Petitioner filed his Statement of Claim, which was resisted by Respondent by filing Written Statement. Based on pleadings, the Industrial Tribunal framed preliminary issues relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer. Petitioner examined himself as a witness. The Industrial Tribunal passed order on preliminary issues on 16 October 2018 answering both the issues against the Petitioner and in favour of the Respondent. The enquiry was held to be fair and proper and the findings of the Enquiry Officer were held to be not perverse. Petitioner thereafter led evidence on the issue of legality of punishment. Respondent did not lead any evidence. By Award dated 19 June 2019, the Industrial Tribunal has answered the Reference in the negative. Aggrieved by Award dated 19 June 2019, the Petitioner has filed the present Petition.

5. Mr. Kulkarni, the learned counsel appearing for the Petitioner submits that the Industrial Tribunal has grossly erred in answering the Reference in the negative. He submits that Petitioner has not committed any misconduct. That the claim for conveyance allowance for 60 km was based on initial longer route used by the Petitioner. That there are

several routes for accessing the warehouse of the Respondent. That immediately after securing knowledge of shorter route, Petitioner claimed lesser conveyance allowance for only 48 km from March 2011 onwards. That he discovered another shorter route and claimed allowance for 44 km from April 2012. That if the Petitioner had any *mala fide* intention, he would not have voluntarily reduced the distance for claiming conveyance allowance. That whatever conveyance allowance was claimed by the Petitioner, was always sanctioned by the superior officers. That other workers against whom similar misconduct was alleged were let off and by accepting an apology, were reinstated in service. That Petitioner has also tendered an apology, but is given discriminatory treatment. That the Industrial Tribunal has not considered the issue of proportionality of penalty. That the misconduct proved against the Petitioner is not serious and stems out of difference in computation of the distance in respect of various routes. That the charge does not involve an act of misappropriation. He therefore submits that the punishment is harsh and shockingly disproportionate to the proved misconduct. He prays for setting aside the Award of the Industrial Tribunal as well as the punishment of dismissal.

6. The Petition is opposed by Mr. Agrawal, the learned counsel appearing for the Respondent. He submits that Petitioner is found guilty of serious misconduct of misappropriation and therefore punishment of dismissal is clearly warranted. He submits that the enquiry is held after affording full opportunity of defence to the Petitioner. That the misconduct is virtually admitted by the Petitioner and in any case, proved by leading cogent evidence. That the Driver of Respondent has

conducted verification of the distance in presence of the Petitioner. That Petitioner has acted dishonestly by claiming excessive conveyance allowance and has thereby caused financial loss to the employer. That the case involves loss of faith and therefore the employer is justified in keeping out a dishonest employee by dismissing him from service. He relies on judgments of the Apex Court in Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.) and Ors. vs. Secretary, Sahakari Nourara Sangha and others¹ and U.P. State Road Transport Corporation vs. Suresh Chand Sharma². He prays for dismissal of the Petition.

7. Rival contentions urged on behalf of the parties now fall for my consideration.

8. Petitioner faced the charge of claiming undue conveyance allowance during the period from January 2011 to June 2012 by claiming excessive distance of travel from his home to the warehouse. As observed above, Petitioner was deputed at factory's warehouse at Chakan for performing the work of product assembly, quality/quantity and line sequencing. As per company's policy, transport allowance for traveling to the warehouse by a two-wheeler at the rate of Rs.3/- per km was payable to the Petitioner. Petitioner initially claimed conveyance allowance in respect of 60 km for January to February 2011, which was reduced to 48 km from March 2011 to March 2012 and was further reduced to 44 km during April 2012 to June 2012. According to the Respondent, the distance both ways was only 35 km. Petitioner was initially issued a show-cause notice on 17 September 2012 and while

1 (2000) 7 SCC 517

2 Civil Appeal No.3086 of 2007, decided on 26 May 2010.

denying the allegation he had expressed regret and had demanded written instructions to avoid future misunderstandings by his letter dated 29 September 2012, which reads thus:

आपले दिनांक - 17/09/2012 रोजीचे पत्र मिळाले. पत्रात नमूद करण्यात आलेला प्रकार सत्याला धरून नाही व घडलेला प्रकार केवळ गैरसमजातून निर्माण झालेला आहे. असे असून देखील झालेल्या प्रकाराबाबत दिलगिरी व्यक्त करीत आहे.

मी या पत्राद्वारे आपणास अशी विनंती करीत आहे कि प्रवास भत्याबाबत कंपनीचे ध्येय धोरण व रूल्स बाबत मला लिखित स्वरूपात कळविण्यात यावे जेणे करून गैरसमजाला वाव मिळणार नाही.

मी आपणास अशी विनंती करतो की घडलेला प्रकार गैरसमजातून घडलेला असल्यामुळे पुढील कार्यवाही टाळावी.

9. Thereafter the Respondent-employer issued chargesheet to Petitioner on 28 January 2013 alleging charge against the Petitioner:

आपण आपण वाहतुक भत्ता क्लेम करतांना आपण आपले घर ते कामाचे ठिकाण (जाऊन येऊन) किलोमीटर ३५ होते पण आपण जानेवारी २०११ ते फेब्रुवारी २०११ मध्ये ६० (जाऊन येऊन) किलोमीटर प्रतिदिनप्रमाणे क्लेम केले होते व सदरचे किलोमीटर हे जास्त क्लेम करत आहात असे तुमच्या निदर्शनास आणल्यानंतर तुम्ही मार्च २०११ ते मार्च २०१२ मध्ये ४८ (जाऊन येऊन) किलोमीटर प्रतिदिनप्रमाणे क्लेम करावयास सुरवात केली. त्यानंतर पुन्हा व्यवस्थापनाने आपल्या निदर्शनास आणून दिले की आपले ४८ किलोमीटर हे पण जास्तीचे आहेत व त्यानंतर आपण एप्रिल २०१२ ते जुन २०१२ मध्ये ४४ (जाऊन येऊन) किलोमीटर प्रतिदिनप्रमाणे क्लेम करावयास सुरवात केली. व अशा प्रकारे खोटे किलोमीटर दाखवून दिनांक जानेवारी २०११ ते जुन २०१२ पर्यंत कंपनीकडून रक्कम रु १७८६८ (रुपये सतरा हजार आठशे अडसस्ट फक्त) लबाडीने व फसवणुक करून वसुले केली आहे.

10. While responding to the charge-sheet, Petitioner denied the charges, and took a defence that there were multiple routes to access the warehouse and that the Petitioner initially used longer route to reach the warehouse and as and when he discovered shorter routes, he claimed allowance in respect of reduced distance.

11. In the enquiry, the charge has been proved. As observed above, the order on preliminary issues went against the Petitioner vide order dated 16 October 2018. Not much is argued by Mr. Kulkarni on the aspect of fairness in the enquiry.

12. Coming to the aspect of perversity in the findings of the Enquiry Officer, it is seen that the Respondent examined Shri Sanjaykumar Tejnarayan Singh as its witness. The said witness had apparently conducted the exercise of verification of distance on 18 August 2012. He deposed that he took Petitioner to Chakan and after adjusting the trip meter to '0', he reached Petitioner's house and deposed that the distance was 16.5 km. However, he also deposed that "लॉन्ग कटसे गयेतो इनका २२ किमी वनसईड होता है." (*if longcut is taken one side is 22 km*). Thus, the witness was not certain about the exact distance, and it appears that he gave deposition about distance in respect of two routes. Even Enquiry Officer has taken note of this aspect and has recorded following finding:

"सरळ रस्त्याने गेल्यास एकमार्गी फक्त १६.५ किलोमीटर होतात व आरोपपत्रित कामगार यांच्या रस्त्याने गेल्यास एकमार्गी २२ किलोमीटर होतात."

(*if straight route is taken only 16.5 km and if route of delinquent employee is used it is 22 km one way*)

13. The report of the Enquiry Officer, I must say is sketchy. The findings recorded by him are vague which are as under:

८. व्यवस्थापनाने पुराव्यादाखल कागदपत्रांचे सादरीकरण केले. आरोपपत्रित कामगार बांनी आरोप मान्य जरी केले नसले तरी पुराव्यास आव्हान दिले नाही. आरोपपत्रित कामगार यांनी खुलासे तसेच त्यांचे बचावाचे निवेदन सादर केले. त्यामध्ये त्यांचे म्हणणे असे मांडले की त्यांना जो रस्ता माहित होता त्याने ते गेले व त्या रस्त्याचे किलोमीटर क्लेम केले. सबब व्यवस्थापनाने सादर केलेली कागदपत्रे निर्विवाद ठरली. त्यामुळे मी विचारार्थ घेतलेल्या मुद्यांस माझे उत्तर होकारार्थी आहे.

९. घटनाक्रमाचा व रेकॉर्डवरील कागदपत्रांचा साक्षेप घेता, आरोपपत्रित कामगार यांच्या गैरवर्तनाबाबत व्यवस्थापनाचे म्हणणे नाकारण्याजोगी एकही बाब मला आढळून आली नाही. व्यवस्थापनाने सिद्ध केले आहे की आरोपपत्रित कामगार यांनी गैरवर्तन केले आहे व ते त्यांना लागू असलेल्या नमुनेदार स्थायी आदेशाच्या तरतुदीनुसार गैरवर्तन या सदरात मोडते

१०. आरोपपत्रित कामगार यांचे वर्तन हे त्यास लागू असलेल्या नमुनेदार स्थायी आदेशाच्या वर उल्लेख केलेल्या बाबींनुसार गैरवर्तन असल्याने मी आरोपपत्रित कामगार श्री. अनंत वाळुंज यांना दोषी ठरवतो.

14. The Enquiry Officer had both the figures of 16.5 km and 22 km quoted by the witness Sanjaykumar Singh. It was Petitioner's specific defence that the route used by him involved distance of 22 km one way. In that view of the matter, how the charge of claiming excess conveyance allowance in respect of the period April 2012 to June 2012 is held to be proved is difficult to comprehend. It becomes difficult to hold that findings of the Enquiry Officer are supported by the evidence on record. The evidence on the contrary appears to support Petitioner's version of availability of a route involving one-way distance of 22 km. Though Petitioner has not seriously disputed the distance of 16.5 km verified by the witness Sanjaykumar Singh, some weightage also needs to be given to the deposition of the witness about distance of 22 km for alternate route. Therefore, the whole of the charge cannot be held to be proved and there is some evidence to disprove part of the charge relating to the period April 2012 to June 2012, when Petitioner had claimed allowance for distance of 44 km. Remaining part of the charge about distance of 60 km for January and February 2011 and distance of 48 km for March 2011 to March 2012 can be held to be proved.

15. Coming to the issue of proportionality of punishment, I have already held that the charge in respect of period April 2012 to June 2012 is erroneously held to be proved in ignorance of the evidence of the witness of distance of 22 km by alternate route. This leaves the charge in respect of first two periods of January and February 2011 (60 km) and March 2011 to March 2012 (48 km). Undoubtedly, there is a vast difference between the distance figure of 44 km and first distance figure of 60 km. Therefore, Petitioner can be held responsible for misleading the Company in claiming transport allowance in respect of January and

February 2012 for distance of 60 km. There is substantial difference of about 16 km and when seen from the light of last claimed distance of 44 km by Petitioner himself, there is excess claim of about 35% by the Petitioner for the two months of January and February 2011.

16. So far as the second period from March 2011 to March 2012 is concerned, the distance claim was 48 km and the excess is less than 10%. Considering that transport allowance at the rate of Rs.3/- per km was being paid, the excess claim was only Rs.12/- per day during March 2011 to March 2012. Substantial portion of that amount must have been spent on purchase of fuel by the Petitioner. Thus, in respect of first two periods also there are certain mitigating factors. Petitioner had also taken a defence that there were multiple routes available to reach warehouse and he was not aware of shorter routes. This is not to give a clean chit to the Petitioner, but this can be considered as one of the mitigating factors.

17. Mr. Agrawal has contended that charge of misappropriation is proved against the Petitioner. I am unable to agree. The case involves making of wrongful claim in respect of distance for transport allowance. It appears that the Respondent itself was not sure about the exact distance and went on sanctioning the claims for varied distances over a period of time. The charge itself indicates that Respondent initially objected to claim for distance of 60 km, after which Petitioner reduced it to 48 km. The Respondent paid allowance for over a year for 48 km and then brought to the notice of the Petitioner that even 48 km were excessive. Petitioner thereafter brought the claim down to distance of 44

km. Thus, while the Petitioner was not sure about the distance, even Respondent appears to be unsure about the same.

18. Petitioner had rendered about 13 years of service and it appears that his past record was clean and unblemished. The case does not involve misappropriation of funds of the employer or causing deliberate financial loss to it. The charge basically relates to claiming wrongful distance for transport allowance. This misconduct cannot be treated as misappropriation of monies. Therefore, reliance of Mr. Agrawal on judgment of *Janatha Bazar* (supra) becomes inapposite. In that case, the employee concerned was found responsible for shortage of goods and admissions were given that the goods were deliberately misappropriated by sending the same to sales counter without keeping accounts. It is in the light of this serious charge that the Apex Court held that the case did not warrant display of sympathy by reinstating the employees in service. In *U.P. State Road Transport Corporation* (supra) the charge proved was about carrying 10 passengers in the bus by the conductor without ticket but after recovering the fare from them. The charges thus clearly involved misappropriation of funds. Both the judgments therefore would have little application to the facts of the present case.

19. Considering the totality of circumstances, in my view, the punishment of dismissal imposed on the Petitioner appears to be grossly disproportionate to the proved misconduct. As observed above, misconduct in respect of third period from April 2012 to June 2012 is not proved. The misconduct in respect of the second period from March 2011 to March 2012 involves difference of just 4 km. It is only in respect of the first period of January and February 2011 that the difference in distance was substantial, but the claim for that period was in respect of only two

months. Petitioner appears to have reduced the distance immediately after an objection was raised by the Respondent. The Respondent also needs to blame itself in sanctioning conveyance allowance for 48 and 44 km. The charge indicates that Respondent had objected to the distance claimed by the Petitioner and after he reduced the distance, such reduced distance was accepted by the Respondent. There thus appear to be some mitigating factors in favour of the Petitioner, reducing the seriousness of misconduct proved against him.

20. Ordinarily, this Court would not have interfered with the quantum of punishment as it is for the employer to choose the punishment to be imposed for the proved misconduct. This Court cannot sit in appeal over the judgment of the employer and hold that lesser punishment was warranted for the proved misconduct. However, in the present case, Respondent has chosen to impose the harshest possible punishment of dismissal from the services of the Petitioner. Considering the nature of charge proved against him coupled with existence of various mitigating factors and clean past record, the punishment appears to be shockingly disproportionate to the proved misconduct.

21. Though Petitioner has sought to introduce the case of other similarly situated workers being reinstated on tendering of apologies, this claim was neither pleaded in the Statement of Claim nor any evidence was led by the Petitioner to prove the said claim. He did not even name the employees who were allegedly reinstated. In cross-examination, Respondent clearly denied the said case set up by the Petitioner. It therefore becomes difficult to hold that any discretionary treatment was meted out to the Petitioner.

22. Having held that punishment imposed on the Petitioner is shockingly disproportionate to the proved misconduct, the next issue that arises for consideration is about the nature of relief that can be granted in favour of the Petitioner. It appears that current age of the Petitioner is about 46 years. He has worked for 13 long years with the Respondent before he was terminated. He is not in service since 9 August 2013. Thus, for the last 13 long years, the Petitioner has lost track of the work environment under the Respondent. The relationship between the parties has also soured on account of pendency of litigation during last 13 years. Petitioner is also found to have committed some misconduct, and he is not exonerated out of the charges. In such circumstances, I deem it appropriate not to award reinstatement or backwages in favour of the Petitioner even though I am of the view that punishment imposed on him is shockingly disproportionate. Instead, it would be appropriate to award lumpsum compensation to the Petitioner in lieu of reinstatement and backwages. Considering the peculiar facts and circumstances of the case, ends of justice would meet if Petitioner is awarded lumpsum compensation of Rs. 8,00,000/- in lieu of reinstatement and backwages.

23. The Petition accordingly succeeds in part and I proceed to pass the following order:

- i) Award dated 19 June 2019 passed by the Presiding Officer, Industrial Tribunal, Pune in Reference (IT-2A/2) No.46 of 2013 is set aside.

- ii) Dismissal of the Petitioner is held to be illegal and void.
- iii) Respondent shall pay to the Petitioner lumpsum compensation of Rs. 8,00,000/- in lieu of reinstatement and backwages.
- iv) Beyond compensation of Rs. 8,00,000/- Petitioner shall not be entitled to any other service related benefits from the Respondent.
- v) The awarded compensation shall be paid to the Petitioner within a period of two months, failing which awarded sum shall carry interest at the rate of 8% per annum from the date of expiry of the stipulated period.

24. With the above directions, Writ Petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)