

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9364 OF 2022

Shambhu Bhagwan Londhe

.... Petitioner

Versus

Competent Authority,

Divisional Traffic Superintendent & Ors. .... Respondents

....

**Mr. R. K. Mendadkar**, a/w. Ms. Priyanka Shah for Petitioner.

**Mr. P. P. Pujari**, AGP for State.

....

**CORAM : SANDEEP V. MARNE, J.**

**DATED : 19 DECEMBER 2023.**

**P.C. :**

By this petitioner Petitioner challenges the Award of Presiding Officer-2, Labour Court, Nashik dated 16 March 2021 in Reference (ID) No.139 of 2017.

2. Petitioner was working on the post of Driver in the Respondent State Transport Corporation and was deputed to drive a bus on route .. On 11 July 2008 while driving bus an accident was took place which resulted in death of two passengers and injuries to 35 passengers. Additionally damage was caused both to the bus of the State Transport Corporation as well as to the truck with which the bus collided. Petitioner was subjected to Criminal Trial. During pendency of the prosecution the State Transport Corporation initiated

domestic enquiry by issuance of charge sheet. After conducting enquiry the Inquiry Officer held that the charge levelled against the Petitioner was proved. Petitioner was accordingly issued Show Cause Notice dated 17 March 2011 proposing imposition of punishment of dismissal from service. Petitioner replied the Show Cause Notice. After considering Petitioner's reply, the Respondent issued Order dated 20 March 2011 imposing punishment of dismissal from service on the Petitioner.

3. Later in the Criminal Prosecution Petitioner came to be acquitted by the Judicial Magistrate First Class by Judgment and Order dated 26 December 2016.

4. At the instance of Petitioner Reference was made by the Deputy Commissioner of Labour, Nashik in respect of Petitioner's dismissal from service. Reference was listed as Reference (ID) No.139 of 2017. In the Reference the Labour Court framed preliminary issue as to whether the enquiry was conducted in fair and proper manner and the findings in the enquiry report are perverse or not. By Part-1 Award dated 05 September 2019 Labour Court answered both the issues against the Petitioner. Labour Court held that enquiry conducted against Petitioner was fair, proper and as per the principles of natural justice. The Labour Court further held that the findings recorded in the enquiry were not perverse. It appears that the Petitioner did not challenge Part-1 Award dated 05 September 2019. Even in the present petition the Part-1 Award dated 05 September 2019 is not in challenge. Thus, Part-1 Award dated 05 September 2019 has attained finality.

5. The Labour Court thereafter proceeded to decide the issue Nos.3, 4 and 5 about illegality in the termination Order and prayer of the Petitioner for reinstatement in the service.

6. By impugned Award dated 16 March 2021 the Labour Court has proceeded to answer the Reference in negative and has refused to set aside the penalty of dismissal from service and relief of reinstatement to the Petitioner.

7. Petitioner is aggrieved by the Award dated 16 March 2021 and has filed present petition.

8. Mr. Mendadkar, the learned counsel appearing for Petitioner would submit that Petitioner has been acquitted in respect of same charge by the JMFC by Order dated 26 December 2016. He would submit that in the Criminal proceeding Petitioner has been acquitted from the same charge by taking into consideration same evidence. The Criminal Court has recorded finding that allegations alleged against Petitioner are not proved. That the Petitioner honourably acquitted in the Criminal Trial. Mr. Mendadkar would further contend that acquittal in Criminal Trial based on same charge and same evidence would entail Petitioner to reinstatement in service.

9. So far as domestic enquiry is concerned, Mr. Mendadkar would submit that Petitioner took specific defence that he was trying to save cyclists on the left side of the road and while doing so the accident occurred. That there is no evidence on record to demonstrate any rash or negligent driving on the part of Petitioner. He would further submit that the Petitioner himself has injured in the accident and has been awarded compensation / damages by Civil Court. In such circumstances considering the fact that the Petitioner is

not responsible for the accident coupled with his acquittal in Criminal Trial, penalty of dismissal remains unwarranted. He would pray for setting aside the Award passed by the Labour Court.

10. After having considered submissions canvassed by the learned counsel appearing for Petitioner it is seen that Petitioner was charged with the misconduct of rash and negligent driving resulting in accident of bus of State Transport Corporation which caused death of 02 passengers and injury to 35 passengers. Petitioner was prosecuted under the provisions of Indian Penal Code and Motor Vehicle Act. By Judgment and Order dated 26 December 2016 Petitioner has been acquitted in the Criminal Trial. However after going through the Judgment of the Criminal Court, it is seen that Petitioner has been given benefit of doubt for ordering his acquittal. I paragraph No.11 of the Judgment the Criminal Court has clearly held that Petitioner is given benefit of doubt as case of the prosecution does not proved beyond reasonable doubt. Therefore there is no honourable acquittal by the Criminal Court as stated by Petitioner.

11. Law is otherwise well settled that mere acquittal in Criminal Trial would have no effect on the findings recorded in the domestic enquiry. The purpose for which the two proceedings are conducted is entirely different. Burden of proof in bot the proceedings are different. While in the Criminal Trial the charge is required to be proved beyond reasonable doubt and in the domestic enquiry charge can be held to be proved by preponderance of probabilities. Even if there is some evidence in support of charge, it is permissible in the domestic enquiry to punish the employee. Therefore mere

acquittal in the Criminal Trial would not, *ipso facto* entitle Petitioner for reinstatement in service.

12. Also relevance to the fact that charge sheet was issued to the Petitioner in addition to the charge of causing death of 02 passengers and injuries to 35 passengers, charge of causing loss of Rs.1,50,000/- to the bus and Rs.35,000/- to the truck coming from opposite direction was also levelled. The an additional charge levelled in the domestic enquiry which has also been proved.

13. Coming to the Award of the Labour Cout, as observed above Part-1 Award has attained finality. Thus, there can be no dispute to the proposition that enquiry is held in proper manner. The findings are not perverse. The only issue is whether penalty imposed may be proportionate in absence of challenge to Part-1 Award. Petitioner cannot questioned the correctness of findings recorded in the domestic enquiry which are held to be not perverse by the Labour Court in the Part-1 Award dated 05 September 2019.

14. Coming to the aspect of proportionality, it would be contended, by no stretch of imagination, that the Petitioner against whom charge of rash driving already been proved and where accident resulted in death of 02 passengers and injury to 35 passengers, penalty of dismissal from service would be would be disproportionate to the misconduct proved. Penalty has not directed conscious of the Labour Court and it is not direct my conscious. The law with regard to proportion of penalty is also well settled. It is not for the Courts or Tribunals to interfere in the quantum of penalty awarded by the

employer unless the Courts or Tribunals arrive at a finding that the penalty has shockingly disproportionate.

15. In my view therefore no case is made out for interference by this Court to exercise power under Article 227 of the Constitution of India. Writ Petition, being devoid of merits, is dismissed without any order as to costs.

**SANDEEP V. MARNE, J.**

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