

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1609 OF 2005

Maharashtra State Road Transport Corporation } **..Petitioner**

: Versus :

M.B. Kolhe } **..Respondent**

Ms. P.M. Bhansali with Ms. Amruta Kundap, for the Petitioner.

Mr. Milind Deshmukh for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : 25 April 2024.

Judgment Pronounced on : 8 May 2024.

JUDGMENT :

1) Maharashtra State Road Transport Corporation (**MSRTC**) has filed this petition challenging the Judgment and Order dated 19 September 2002 passed by the Third Labour Court, Pune in Complaint (ULP) No. 76/1992 as confirmed by the Industrial Court, Pune in Revision (ULP) No. 146/2002 and 28/2004. The Labour Court has directed Petitioner to reinstate Respondent on his original post with continuity of service from 13 April 1992 and to pay him 25% of backwages.

2) Briefly stated, facts of the case are that Respondent was working on the post of Driver in MSRTC and was posted at Narayangaon Depot. On 14 January 1990, he was deployed on route Junnar to Pune when an accident occurred and the bus driven by Respondent dashed against a pedestrian who succumbed to the injuries suffered in the accident. A chargesheet dated 21 May 1990 was issued to Respondent. He took a defence in the enquiry that on 14 January 1990 at 7.30 p.m., when the bus reached near Rajgurunagar Depot, he noticed some persons coming from the rear side of the bus in an inebriated state. Respondent applied brakes and the pedestrian went at the backside of his bus and lost his balance and fell down. That Respondent pulled out the injured person, kept him aside and proceeded to Rajgurunagar Depot. Respondent denied that pedestrian's death was attributable to his conduct. A domestic enquiry was held in the charge and the charge was held to be proved. After issuance of show cause notice dated 8 September 1992, penalty of dismissal from service was imposed on the Respondent on 13 April 1992.

3) Respondent filed Complaint (ULP) No. 76/1992 before the Labour Court, Pune challenging the order of his dismissal. The Labour Court held that the misconduct alleged against Respondent was proved. However, it proceeded to hold that the penalty of dismissal from service was shockingly disproportionate and the complaint was partly allowed directing Respondent's reinstatement w.e.f. 13 April 1992 alongwith 25% backwages.

4) Petitioner filed Revision Application (ULP) No. 146/2002 before the Industrial Court challenging the Order dated 19 September 2002.

It appears that after some delay, Respondent also filed Revision Application (ULP) No. 28/2004 to the extent of denial of 75% backwages. Both the Revision Applications were heard together by the Industrial Court and by Judgment and Order dated 28 July 2004, both the Revision Applications were rejected. Aggrieved by rejection of its Revision Application, Petitioner has filed the present petition.

5) By order dated 7 July 2005, this Court admitted the petition and stayed the Judgment and Order dated 19 September 2002 of the Labour Court and dated 23 October 2002 of Industrial Court on the condition of Petitioner depositing the amount of backwages in the Labour Court. It appears that the amount of backwages are deposited in the Labour Court by the Petitioners on 3 August 2005.

6) Ms. Bhansali, the learned counsel appearing for Petitioners would submit that the Labour Court has erred in directing Respondent's reinstatement ignoring the gravity of misconduct committed by him and that Respondent is responsible for death of a pedestrian. He did not even show the courtesy of stopping the bus and ran away from the spot with a view to avoid responsibility arising out of the accident. That the charge levelled against the Respondent has been proved and the said finding is upheld by the Labour Court. That therefore the penalty of dismissal from service imposed on Respondent is commensurate with the gravity of misconduct committed by him. That Petitioner is already saddled with the penalty of payment of compensation to victim on account of acts of the Respondent and that

additionally, Petitioner cannot be made to bear the burden of 25% wages to the Respondent for an undoubtedly long period from 13 April 1992 till he attained the age of superannuation in the year 2016.

7) *Per-contra*, Mr. Deshmukh the learned counsel appearing for Respondent would oppose the petition and support the orders passed by the Labour and Industrial Court. He would submit that both the Courts have concurrently held that the penalty imposed on Respondent is disproportionate to the misconduct proved. That therefore this Court would be loathe in interfering in such concurrent findings. He would submit that the Respondent is not responsible for the death of the pedestrian who had fallen on his own while approaching from the rear side of the bus in an inebriated state. That therefore the penalty of dismissal imposed on the Respondent is harsh and has rightly been set aside by the Labour Court. He would submit that Respondent has already attained the age of superannuation in the year 2016 and on account of interim stay granted by this Court, he has not received any wages since the year 1992. He would pray for dismissal of the petition.

8) Rival contentions of the parties, now fall for my consideration.

9) Respondent, while working on the post of Driver in MSRTC, faced the charge under Clauses- 9, 10, 11, 22 and 39 of Schedule-A of Discipline and Appeal Procedure applicable to the employees of MSRTC. He was charged with the misconduct of not owning the responsibility for

accident which resulted in death of a pedestrian and fleeing the spot by driving away the bus. The charge levelled Against the Respondent was proved in the domestic enquiry. The said finding is upheld by the Labour Court. The Labour Court has agreed with the findings of the Enquiry Officer that Respondent committed the misconduct by driving the bus in rash and negligent manner. It also held Respondent guilty of not giving intimation about the accident to the police or to the concerned official. The Labour Court has held him guilty of avoiding to face consequences arising out of the accident.

10) After holding that the charge levelled against the Respondent is held to be proved, the Labour Court went into the issue of proportionality of penalty. While answering Issue No. 2, the Labour Court proceeded to hold that the punishment inflicted by MSRTC shocked its conscience. It took into account the fact that Respondent had not committed any serious accident in the past. The reasons recorded by the Labour Court while holding the punishment to be shockingly disproportionate are to be found in para-19 of the judgment which reads thus :

19. The complainant has alleged the unfair labour practice under Item 1(a), (b), (d), (f) and (g) of Schedule IV of the Act. As my learned predecessor held that the enquiry is fair and proper, therefore Item 1(a), (d) and (f) of unfair labour practice does not attract in this case. Now I will consider the allegations under Item 1(b) and (g) of Schedule IV. The complainant alleged that respondent has given the punishment which is shockingly disproportionate punishment. The dismissal is also illegal. In this context, the Respondent has produced the service book of the Complainant. Firstly, in the chargesheet or show cause notice. Therefore,

the respondent is making an attempt to rely on the documentary evidence which is out of consideration. The Respondent has not given any opportunity to the complainant to explain about his past record. However, I noticed that the enquiry officer recorded that there is no any previous serious accident committed by the complainant. Even after perusing the same. I find one punishment was given to the complainant. I of the view that this service record of the Complainant is not much more helpful to the Respodent for the punishment of dismissal effected by the respondent vide order dated 7-4-92. After considering the facts of this case, I am the opinion that the punishment inflicted by the respondent has shocked the conscious of the court. I am not at all convinced with arguments place day the law officer of the respondent fro justifying the punishment. On the contrary, I am of the view that the Respondent could have given lesser punishment which has not been done so far. Therefore, the punishment of dismissal effected upon the complainant is certainly shockingly disproportionate punishment attracting Item 1(g) of Schedule IV.

The Respondent while exercising their right of employer has not properly considered the circumstances existing and punishment in proportionate to the misconduct. Therefore, the Respondent has committed an unfair labour practice under Item No.1(b) of Sch.IV of the Act. Therefore, I hold that the complainant has succeeded in proving the unfair labour practice under Item 1(b) and (g) of Schedule IV of the Act while terminating his services. In the circumstances, I reply issue No.2 accordingly.

11) After going through the findings recorded by the Labour Court on Issue No.2, I find that the Labour Court has not recorded proper reasons for holding that the punishment imposed on the Respondent is shockingly disproportionate. It is well settled law that Courts and Tribunals cannot go into the issue of proportionality of the penalty. The employer is the best judge to decide what penalty is appropriate for the proved misconduct. It is in very rare cases, where the Court finds that the punishment imposed is shockingly disproportionate, that the Courts or Tribunals are justified in remitting the matter back to the employer for imposition of lesser punishment. Perusal of the findings recorded by the Industrial Court again

does not inspire confidence. The Industrial Court has vaguely held that the inference drawn by the Labour Court that the punishment is disproportionate appears to be proper. The Industrial Court has not considered the gravity of misconduct where Respondent simply fled from the spot, where the accident had resulted in death of a pedestrian. The Industrial Court has erroneously assumed that the pedestrian had himself given dash to the back portion of the bus. While recording this finding, the Industrial Court has lost sight of the fact that the pedestrian was coming in opposite direction of the bus and the bus driven by the Respondent dashed against him. The accident report confirms this position. Even the eye witness to the accident, Shri. Thigle deposed before the Enquiry Officer that the bus was being driven in high speed and dashed against the pedestrian. Therefore, it is erroneous on the part of the Industrial court to assume that the pedestrian himself dashed against the bus on its rear side. The findings recorded by the Industrial Court are thus perverse and are liable to set aside.

12) Witness Shri. Thigle has deposed that after the accident, the Respondent got down from the bus, pulled up the pedestrian from the accident spot and kept him at the side of the road. The witness stated that the condition of the pedestrian was near dead. In such condition, instead of helping the injured, the Respondent kept him aside and drove the bus as if nothing had happened. He did not even think it necessary to report the incident either to the police or higher officials. This is not a conduct expected from the driver of State Road Transport Corporation. Even if it is assumed that Respondent's driving was not responsible for the death of the

pedestrian, his conduct post the accident is clearly blameworthy. It is highly objectionable for Respondent to simply flee the spot rather than helping the injured and to report the accident to police and his superior officials. In my view, apart from being responsible for causing accident resulting in death of a pedestrian, Respondent is responsible for further grave misconduct of attempting to hide the accident, as well as, in not helping the injured. If the Respondent was to take immediate steps, possibly some medical aid could have been given to the injured which may have saved his life.

13) The punishment of dismissal from service imposed on the Respondent thus does not shock my conscience. It should not have shocked the conscience of the Labour and the Industrial Court as well. I am therefore of the view that the order passed by the Labour Court and the Industrial Court are indefensible and that the same is liable to be set aside.

14) I accordingly proceed to pass the following order:

- (i) The Judgment and Order dated 19 September 2002 passed by the 3rd Labour Court, Pune in Complaint (ULP) No. 76/1992, as well as Judgment and Order dated 28 July 2004 passed by the Industrial Court in Revision Application (ULP) No. 146/2002 are set aside.
- (ii) Complaint (ULP) No. 76/1992 is dismissed.
- (iii) Petitioner-MSRTC shall be entitled to withdraw the amount deposited in the Labour Court alongwith accrued interest.

15. Writ Petition is **allowed** in the above terms. Rule is made absolute. No costs.

SANDEEP V. MARNE, J.

**NEETA
SHAILESH
SAWANT**

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NEETA SHAILESH
SAWANT

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