

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2574 OF 2017

Maharashtra State Road Transport Corporation, having its office at Vahatuk Bhavan, Dr. A. Nair Marg, Mumbai-400 008.

}....Petitioner

: Versus :

Shri. Dattatraya Ganpat Bankhele, R/o. Opp. Machar S.T. Stand, Taluka-Ambegaon, District-Pune.

} Respondent

Mr. Dhananjay Rananaware *a/w. Ms. Manjeet Lotankar for Petitioner.*
Mr. Shyam Patole, *for Respondent.*

CORAM : SANDEEP V. MARNE, J.

Reserved on : 10 April 2024.

Pronounced on : 16 April 2024.

JUDGMENT :

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

2) Maharashtra State Road Transport Corporation (**MSRTC**) has filed this petition challenging the Judgment and Order dated 12 February 2016 passed by the Member, Industrial Court, Pune by which Revision

Application (ULP) No. 60/2014 filed by the Respondent-employee is allowed and Judgment and Order passed by the Labour Court on 25 March 2014 in Complaint (ULP) No. 109/1996, is modified by increasing the quantum of backwages from 25% to 100%. The Industrial Court has accordingly directed payment of 100% backwages from 29 April 1995 till the date of superannuation or reinstatement, whichever is earlier.

3) It must be observed at the very outset that though Judgment and Order dated 25 March 2014 passed by the 2nd Labour Court in Complaint (ULP) No. 109/1996 is also challenged in the present petition, MSRTC had filed Revision (ULP) No. 28/2014 challenging Labour Court's decision in Complaint (ULP) No. 109/1996 to the extent of grant of relief of reinstatement and 25% backwages. The said Revision came to be dismissed by separate Judgment and Order dated 12 February 2016. However, the Judgment and Order dated 12 February 2016 passed by the Member, Industrial Court, Pune in Revision (ULP) No. 28/2014 has not been challenged by the Petitioner-MSRTC. Challenging the Judgment and Order dated 25 March 2014 before this Court without challenging the decision in Revision is impermissible. Therefore, the consideration in the present petition is restricted to the challenge raised by the Petitioner-MSRTC to the Judgment and Order dated 12 February 2016 passed in Revision (ULP) No. 60/2014. In short, the challenge in the present petition is restricted to increase in the quantum of backwages payable to the Respondent-employee from 25% to 100%.

4) Briefly stated, facts of the case are that Respondent was employed with MSRTC as Driver since 23 November 1978. On 17 January

1991, he was transferred from Rajgurunagar Depot to Baramati Depot and relieved on the same day. Respondent apparently did not report at Baramati. Therefore, memorandum of chargesheet dated 5 April 1991 came to be issued to him alleging that he was unauthorisedly absent from duty without sanction from 17 January 1991. Departmental enquiry was conducted into the charges. The Enquiry Officer submitted report dated 27 January 1995 that charges levelled against Respondent were proved. It appears that during the course of the enquiry as well, Respondent failed to report for duties till September 1993. It appears that during the pendency of that enquiry, another chargesheet was issued to the respondent on 18 January 1991 alleging encroachment in the premises of MSRTC at Manchar. Respondent took a defence that the alleged shed belonged to his father and that he had no connection with the same. Based on the findings recorded in the chargesheet dated 5 April 1991 by the Enquiry Officer in his report dated 27 January 1995, the Respondent was dismissed from service by Order dated 25 April 1995. He preferred Appeal before the First Appellate Authority on 8 June 1995, which was rejected on 31 January 1996. Second Appeal was preferred, which was also turned down.

5) Respondent thereafter approached the Labour Court, Pune by filing Complaint (ULP) No. 109/1996 under Item Nos.1(a), (b), (e), (f) and (g) of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (*MRTU & PULP Act*) seeking reinstatement and full backwages. The complaint was resisted by MSRTC by filing Written Statement. By Judgment and Order dated 17 May 2010, the complaint was dismissed by the Labour Court. Respondent filed Revision Application (ULP) No. 88/2010 before the

Industrial Court, which allowed the same on 25 June 2012 setting aside Labour Court's order dated 17 May 2010 and remanded the complaint to Labour Court for fresh decision. After remand, the Labour Court decided the preliminary issue on 6 October 2012 holding that the misconduct was not established and granted opportunity to MSRTC to prove the same before the Labour Court. MSRTC filed Affidavit of Evidence of Mr. Vilas Dattatraya Mali. However, the said Officer did not remain present in the cross-examination. The Labour Court therefore held that no evidence was led by MSRTC to prove the charges and therefore Respondent was entitled to be reinstated in service. However, the Labour Court restricted the amount of backwages to the extent of 25%, holding that MSRTC is a non-profit organization. The Labour Court also did not believe Respondent's contention that he could not get alternate employment after his termination.

6) Labour Court's Judgment and Order dated 25 March 2014 became subject matter of challenge before Industrial Court, at the behest of both, MSRTC as well as Respondent. MSRTC filed Revision Application (ULP) No. 28/2014 challenging direction of reinstatement with 25% backwages, whereas the Respondent filed Revision Application (ULP) No. 60/2014 challenging denial of 75% backwages. The Industrial Court delivered two separate Judgment and Orders on 12 February 2016. It proceeded to dismiss Revision Application (ULP) No. 28/2014 filed by MSRTC. So far as Revision Application (ULP) No. 60/2014 filed by Respondent is concerned, the same was allowed setting aside the decision of the Labour Court to the extent of direction to pay 25% backwages. The Industrial Court directed MSRTC to pay to the employee 100% backwages

from 29 April 1995 till reinstatement or till the date of superannuation, whichever was earlier.

7) MSRTC has filed the present petition challenging Judgment and Order dated 12 February 2016 passed by the Industrial Court, Pune in Revision (ULP) No.60/2014. As observed above, MSRTC has not challenged the decision of the Industrial Court dismissing Revision Application (ULP) No. 28/2014. Thus, the challenge in the present petition is restricted to increase of quantum of backwages from 25% to 100% by the Industrial Court.

8) I have heard Mr. Rananaware, the learned counsel appearing for the Petitioner-MSRTC. He would submit that the Industrial Court has erred in awarding 100% backwages to the Respondent, who admittedly remained absent from duties for a considerable period of time. That Respondent disobeyed the order of transfer issued on 17 January 1991 and thereafter failed to report at duty at Baramati Depot not just till the date of issuance of chargesheet but also during the course of enquiry. That he was rightly dismissed from service on account of unduly long absence and the Industrial Court has erred in awarding 100% backwages to him. That the reasons recorded by the Industrial Court for allowing the Revision filed by the Respondent are perverse. That MSRTC is a non-profit organisation and cannot be saddled with liability to pay backwages during long period from 29 April 1995 to 30 June 2008, when Respondent attained the age of superannuation. He would pray for setting aside the Order of the Industrial Court.

9) *Per-contra*, Mr. Patole, the learned counsel appearing for the Respondent would oppose the petition and support the Judgment and Order passed by the Industrial Court in Revision (ULP) No. 60/2014. He would submit that Petitioner has not even produced copy of Judgment and Order dated 12 February 2016 passed in Revision (ULP) No. 28/2014. He would submit that since rejection of Revision (ULP) No. 28/2014 is not challenged, the direction for reinstatement does not form subject matter of challenge in the present petition. According to Mr. Patole, since the direction for reinstatement is not under challenge, award of 100% backwages after termination order being found unlawful, cannot be questioned. He would submit that the Respondent has been victimised by MSRTC. That the ancestral land of the Respondent was acquired for setting up the Bus Stand at Mansar. That the real objective behind victimising Respondent was dispute between MSRTC and Respondent's father about occupation of shed near the bus station. That Respondent's father filed a suit against MSRTC in respect of that shed and he succeeded in the same. That Respondent was unlawfully harassed on account of that dispute. That absence of the Respondent has been duly explained by production of Medical Certificates. That Respondent's wife was suffering from kidney problem since 1985 and was continuously under treatment. That she underwent surgery on 14 November 1994. That in such circumstances, absence of the Respondent has been duly justified. That in any case, the absence was not too long so as to inflict the severe penalty of dismissal from service. Mr. Patole would pray for dismissal of the petition.

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

11) In the chargesheet issued to the Respondent, he faced the charge of remaining unauthorisedly absent since 17 January 1991. It is the case of MSRTC that Respondent was transferred from Rajgurunagar Depot to Baramati Depot by Order dated 17 January 1991 and was relieved on the same day. MSRTC thus accused Respondent of not reporting for duties at Baramati by disobeying the order of transfer. It is admitted position that till the date of issuance of chargesheet on 5 April 1991, Respondent had failed to report to duties. It appears that during pendency of the disciplinary proceedings also, Respondent had failed to report to duties. This is evident from the averments made by the Respondent in his complaint that the Enquiry Officer took cognizance of absence till September 1993. It is thus apparent that Respondent remained absent continuously from 17 January 1991 till September 1993. The period of absence is thus more than 2 ½ years and could not have been brushed aside as minor or incidental. The Labour Court has set aside the punishment of dismissal and has directed reinstatement only on account of failure on the part of MSRTC in presenting its Officer/Witness for cross-examination. Thus, it is the conduct of the concerned officers of MSRTC, which has resulted in Labour Court setting aside the punishment of dismissal. It was the duty of the concerned officer to remain present for cross-examination. If there were any genuine difficulty for him not to remain present for cross-examination on a particular day, appropriate application ought to have been made before the Labour Court. Alternate course of action was to file evidence of another officer who could present himself for evidence. However, due to negligence on the part of the concerned officers, MSRTC has been made to suffer financial burden of paying backwages to

Respondent. This Court expresses displeasure over the conduct of the concerned officers of MSRTC in not leading evidence in support of the charges levelled against Respondent.

12) Be that as it may. The order directing reinstatement with 25% backwages has attained finality since MSRTC has not challenged Judgment and Order dated 12 February 2016 passed in Revision Application (ULP) No. 28/2014. Therefore, the limited issue that needs to be considered in the present petition is whether the Industrial Court was justified in increasing the quantum of backwages from 25% to 100%.

13) There is no dispute to the position that Respondent was absent from duties. As observed above, the period of absence is undoubtedly long from 17 January 1991 to September 1993. It is not exactly clear as to when did the Respondent report for duties. However, from the averments made in the complaint, it appears that sometime in September 1993, Respondent had resumed his duties. Respondent has given vague justification for this period of absence by relying on sickness of his wife. According to the Respondent, his wife suffered from kidney disease since the year 1985 and was operated on 14 November 1994. In my view, this vague justification offered by the Respondent cannot explain long period of absence from 17 January 1991 till September 1993. However, as observed above, the order directing reinstatement is not under challenge and therefore it is not necessary to delve further into the aspect of entitlement of the Respondent to be reinstated in service. At the same time, Respondent cannot be rewarded with 100% backwages when he admittedly remained absent from 17 January 1991 till September 1993. The

fact that Respondent did not perform duties during this period is not in dispute. What is in dispute is whether the absence from duties was justified or not. Even if Respondent had any valid ground for his absence, the same ought to have been backed by leave application supported by Medical Certificates submitted from time to time. It appears that the Respondent did not follow the procedure of obtaining leave for his absence. There is admitted violation on the part of the Respondent in not securing sanctioned leave for his absence. In that view of the matter, whether Respondent can be rewarded with 100% backwages when he admittedly remained absent and did not follow the procedure of taking prior leave ? The Industrial Court has not applied its mind to this vital aspect and has mechanically increased the amount of backwages from 25% to 100%. As a matter of fact, in the light of absence of dispute about performance of duties by Respondent during the period concerned, failure on the part of MSRTC's witness to remain present for cross-examination was not even fatal. If not dismissal, Respondent undoubtedly deserved some punishment for his long absence from duties. In absence of challenge by MSRTC to the order directing reinstatement, it would not be appropriate for this Court to delve deeper into that direction passed by the Labour Court. However, at the same time, Respondent cannot be rewarded 100% backwages since he is admittedly responsible for absence as well as for non-following of procedure. The Industrial Court has proceeded to award 100% backwages only on account of MSRTC's failure to prove gainful employment by Respondent during the intervening period. MSRTC is a Transport Undertaking of the State Government. It is a matter of public knowledge that MSRTC has been facing losses every succeeding year and is able to manage its operations by providing public

service on account of aid provided by the State Government. In such circumstances, it would be unjust to reward Respondent with 100% backwages, especially where the period of absence is not under dispute. In my view, therefore ends of justice would meet, if the quantum of backwages payable to the Respondent are reduced to 50%.

14) There is some debate between the parties whether Respondent was actually reinstated in service or not. The Labour Court has observed in para-12 of its judgment that Petitioner had reinstated him in service for 35 months. This contention was disputed by the Respondent in his Revision Application stating that he was never reinstated. There is neither any document nor averment in the petition to show that the Respondent was actually reinstated in service or not. Respondent has attained the age of superannuation on 30 June 2008. Therefore, the period of backwages would be payable to the Respondent from the date of his termination i.e. 25 April 1995 till either the date of his reinstatement (if any), or in any case till the date of his superannuation on 30 June 2008. It appears that the Respondent filed Misc. Application (ULP) No. 12/2016 for recovery of amount of Rs.19,50,000/- from MSRTC which has been allowed by Order dated 19 June 2019 and accordingly recovery Certificate for amount of Rs.19,50,000/- has been issued.

15) Considering the long intervening period from 25 April 1995 to 30 June 2008 coupled with Respondent's long absence from service, in view, award of 50% backwages would be appropriate in the facts and circumstances of the case. The intervening period shall however be treated as duty for the purposes of retirement benefits.

16) I accordingly proceed to pass the following order:

(i) The Judgment and Order dated 12 February 2016 passed by the Industrial Court, Pune in Revision (ULP) No. 60/2014 is set aside and the Judgment and Order dated 25 March 2014 passed by the Labour Court, Pune in Complaint (ULP) No. 109/1996 is modified to the extent that Petitioner shall pay to the Respondent 50% backwages from the date of termination till the date of reinstatement or the date of superannuation, whichever is earlier.

(ii) The order as well as the Recovery Certificate dated 19 June 2019 shall accordingly stand modified in view of reduction of backwages from 100% to 50%.

(iii) The intervening period from date of dismissal till date of retirement shall be computed for duty for payment of retirement benefits.

(iv) Petitioner-MSRTC shall pay 50% backwages as well as all retirement benefits to Respondent as directed above within 8 weeks.

17) With the above directions, the Writ Petition is **partly allowed**. Rule is made partly absolute.

SANDEEP V. MARNE, J.

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