



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

901 WRIT PETITION NO. 6961 OF 2017

The Divisional Controller Maharashtra State Road Corporation Dhule

VERSUS

Shamkant Wamanrao Choudhary

...

Advocate for the Petitioner : Mr. Bagul D. S.

AGP for Respondents-State: Mr. S. G. Joshi

Advocate for Respondents : Mr. S. U. Chduahri

...

**WITH
CONT. PETITION NO. 126 OF 2024
IN WP/6961/2017**

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CORAM : ROHIT W. JOSHI, J.

Dated : September 02, 2026

ORAL JUDGMENT :

1. Heard finally with consent of learned advocates for the respective parties.

2. The present respondent was working as a conductor with the petitioner/MSRTC. On 4th July 2006, a conductor, namely D. K. Sonwane, was discharging his duties as a conductor on a bus carrying passengers from Dhule to Jalgaon. A surprise check of the bus was conducted when the bus was near Erandol. During the course of checking tickets, it was noticed that the said conductor, Mr. Sonawane, possessed forged tickets of denominations of Rs. 10/- and Rs. 40/-. During the course of investigation, it was revealed that the tickets were being printed with the help of one Mr. Ramesh Wadile, who was

running a printing press. The said conductor, Sonawane, revealed that the present respondent and one other conductor had also manipulated tickets in a similar manner. In view of the allegations levelled, a criminal offence came to be registered against the said conductor, Mr. Sonawane, the present respondent, and Mr. Ramesh Wadile. Based on the charge-sheet filed by the prosecution, Regular Criminal Case No. 244 of 2008 came to be registered against the respondent and the other two accused persons. All three accused came to be acquitted vide judgment dated 24th January 2013 passed by the learned Chief Judicial Magistrate, Dhule.

3. It will be pertinent to state that apart from the criminal prosecution, disciplinary proceedings were also initiated against the present respondent. The present respondent filed his reply to the charge-sheet denying the charges. He also moved an application seeking a stay of the departmental proceedings on the ground that criminal prosecution pertaining to the same allegations was pending before a competent court of law. It was stated that the evidence, both documentary and oral, in the criminal case and the departmental proceedings was the same, and therefore it would be unjust to proceed with the departmental inquiry pending the criminal trial, since cross-examination of the petitioner's witnesses would disclose the defence, causing prejudice in defending the criminal case. The petitioner/MSRTC, however, continued with the inquiry

after rejecting the application for stay of departmental proceedings. The respondent employee did not participate in the inquiry. The inquiry proceeded ex-parte, wherein the petitioner examined one witness. Based on the inquiry report, the punishment of termination of services was imposed upon the respondent. The respondent challenged the order of termination by filing a complaint, being Complaint (ULP) No. 16 of 2009, under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act). The said complaint came to be dismissed by the learned Judge, Labour Court, Dhule, vide judgment dated 18th April 2012. Aggrieved by the dismissal of his complaint, the respondent preferred a revision under the said Act, registered as Revision Application (ULP) No. 13 of 2013. The learned Industrial Court initially dismissed the revision application vide judgment dated 21st July 2014. As stated above, the respondent was acquitted in the criminal case. The respondent preferred a writ petition before this Court, being Writ Petition No. 6708 of 2016, which came to be partly allowed by an order dated 7th July 2016. This Court quashed and set aside the judgment dated 21st July 2014 passed by the learned Industrial Court and directed it to decide the revision afresh in light of the acquittal of the respondent in the criminal case. Accordingly, the revision was taken up for hearing again. The learned Industrial Court allowed the revision application vide judgment dated 7th November 2016, by virtue of which the

judgment delivered by the learned Labour Court was quashed and set aside, the order of termination of services was set aside, and directions were issued to reinstate the respondent in service till the date of his superannuation and to pay arrears of salary from the date of termination until superannuation. Such directions were required to be issued since the respondent had superannuated while the revision was pending before the Industrial Court.

4. Mr. Bagul, learned advocate for the petitioner/MSRTC, vehemently argues that the learned Labour Court had considered the entire controversy in its right earnest. He contends that acquittal in a criminal case cannot by itself be a reason for exonerating a delinquent employee in disciplinary proceedings. He contends that the respondent employee did not participate in the inquiry despite repeated opportunities. He further argues that the learned Industrial Court committed a manifest error of law and jurisdiction in reversing a well-reasoned judgment delivered by the Labour Court, relying simpliciter on the acquittal in the criminal case without adverting to the settled legal principle that the yardsticks as regards standard of proof in a criminal case and departmental proceedings are completely different.

5. Per contra, Mr. S. U. Chaudhari, learned advocate for the respondent employee, justifies the revisional order passed by the

Industrial Court. He contends that the evidence and charges in the criminal case and departmental inquiry were identical, and under such circumstances, an acquittal by a judicial pronouncement must result in setting aside the termination order. He places strong reliance on the judgment of the Hon'ble Supreme Court in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. (AIR 1999 SC 1416)**. He further contends that one Prakash Chetram Shinde who was involved in a similar incident was acquitted in Criminal Case. He states that termination of Mr. Shinde set aside by the learned Labour Court and the said order was maintained by the learned Industrial Court, and further that Writ Petition filed by MSRTC against the said order was withdrawn.

6. In reply, Mr. Bagul points out that in the case of Prakash Shinde, the Labour Court had allowed the complaint before the criminal case was decided because the departmental inquiry itself was found to be vitiated, whereas in the present case, the respondent did not participate in the inquiry.

7. Mr. Bagul draws attention to the judgment dated 8th February 2017 passed by this Court in Writ Petition No. 10763 of 2016, whereby this Court upheld the termination of the co-accused conductor, Devidas Sonawane, who was acquitted in the criminal case.

8. The first contention raised by the learned Advocate for the petitioner is that the learned Industrial Court has clearly misinterpreted the Judgment of the Hon'ble Supreme Court in the case of *Capt. M. Paul Anthony* (supra). Mr. D. S. Bagul submits that although the Judgment states that, in a case where the criminal prosecution and departmental inquiry are based on the same facts and same evidence, the proceedings in the departmental inquiry cannot be stayed as a matter of course. He further contends that acquittal of the delinquent employee in the criminal case will not *ipso facto* result in setting aside the penal action in the departmental inquiry.

9. As regards stay of departmental proceedings pending the criminal case, perusal of the Judgment in the case of *Capt. M. Paul Anthony* (supra) will reveal that the Hon'ble Supreme Court has held that there is no bar in proceeding with disciplinary inquiry and criminal prosecution simultaneously. It is, however, held that it will be desirable to stay departmental proceedings till conclusion of the criminal case in cases where both, departmental proceedings and criminal case, are based on an identical set of facts and the same evidence. However, the Hon'ble Supreme Court has qualified that departmental action can be stayed only if the charges are of grave nature and it involves adjudication of complicated questions of law

and fact. The Hon'ble Supreme Court has also cautioned that if the criminal proceedings do not culminate within a reasonable period, departmental action cannot be deferred till the culmination of the criminal case. It is categorically held that it is desirable that if the employee is not guilty, he is exonerated at the earliest and if he is guilty, he is got rid of at the earliest.

10. Applying the ratio of **Capt. M. Paul Anthony** (supra) to the facts of the present case, it must be stated that the facts of the present case do not present any adjudication of complicated issues. The tickets were found at the residential house of the respondent employee, based on which departmental action is taken against him. It was a simple case of recovery of offending material at the residential house of the respondent. The general principle that both the proceedings can continue simultaneously will, therefore, be applicable to the facts of the present case. The contention that departmental proceedings ought to have been stayed till final disposal of the criminal case is liable to be rejected.

11. The general principle that the standard of proof required in a disciplinary proceeding and a criminal case are altogether different cannot be disputed. It is a well-settled legal principle that acquittal in a criminal case cannot *ipso facto* result in setting aside disciplinary action taken by the employer against an erring employee. However,

as rightly pointed out by Mr. Chaudhari, in cases where the evidence in disciplinary proceedings and the criminal case is identical, due regard must be given to the fact of acquittal of the employee in the criminal case. However, there has to be a fair assessment of the evidence that has come on record in the criminal case, the reasons recorded by the learned Court while acquitting the delinquent and the evidence that has come on record in the departmental proceedings.

12. In the present case, forged tickets were recovered from the residential house of the respondent during a search conducted following disclosures made by Devidas Sonawane, who was caught with forged tickets during a raid. The raid was conducted at the residential house of the present respondent. During the said raid, forged tickets were found at the residential house of the present respondent. During the course of prosecution, witnesses Nos. 2 and 3 were examined to prove the fact of seizure of forged tickets.

13. A perusal of the judgment of the learned Chief Judicial Magistrate indicates that the acquittal was granted because independent witnesses were not examined to prove the fact of forged tickets being found at the residence of the respondent. The evidence of the witnesses is not completely discarded. However, having regard to the fact that, in a criminal case, the charge has to

be proved to the hilt, the learned Magistrate deemed it appropriate to hold that the evidence of independent witnesses should have been recorded by the prosecution to bring home the charge. The learned Industrial Court failed to notice this vital aspect while setting aside the Judgment and order passed by the learned Labour Court and consequently quashing and setting aside the punishment of termination of services imposed upon the respondent.

14. It must also be stated that the departmental action is not based on the criminal case alone. An independent inquiry is conducted by the petitioner in which the procedure contemplated was scrupulously followed. The respondent chose not to participate despite several opportunities being granted to him. The learned Labour Court has properly dealt with the controversy while dismissing the complaint filed by the respondent employee.

15. In view of the aforesaid, it will not be possible to take a different view of the matter in the case of the present respondent. The relevant observations in the said Judgment are reproduced hereinbelow for ready reference:

“15. On interrogation, the respondent stated that two more Conductors, namely, Shri Chaudhari and Shri Deshmukh are involved. Based on this information, the Dhule Police sent a wireless message and carried out a raid on the house of Shri Chaudhari. His house was searched in his presence and similar

such tickets were found. The printer on which the conversion of such tickets was being done was also found. A raid on the house of the respondent also resulted in discovering several such tickets, which were to be used. It was on the basis of this evidence that the petitioner conducted an enquiry.

16. There is no dispute that the respondent has been acquitted in the criminal trial. It is equally undisputed that in these circumstances, the petitioner has lost faith, trust and confidence in the respondent. On considering the material available and the fact that the search of the house of the respondent revealed fake tickets, is in itself sufficient to conclude the involvement of the respondent since no bus conductor is permitted to carry unused tickets and store them in his residence.

20. It also cannot be ignored that the respondent was prosecuted for offenses punishable under Sections 420, 468, 471 read with 34 of the IPC. The enquiry was conducted on the ground that he has prepared false tickets, used fake tickets and as such, had collected fare from the passengers who were not allotted authentic tickets. The aspect, therefore, that the passengers have virtually travelled ticket-less after paying the fare to the bus conductor could be considered even as a stand alone charge. For all these reasons, the enquiry officer concluded that the respondent was guilty of the charges levelled upon him."

16. Apart from the merits of the matter, the learned Advocate for the respondent also submits that, having regard to the fact that the respondent has superannuated from service long back, a lenient view should be taken and lesser punishment should be imposed. The said prayer also cannot be considered in view of the settled legal principle that in cases of misappropriation of funds leniency can never be shown to a delinquent employee. It will also be appropriate

to state that a similar request was made by the other conductor in Writ Petition No. 10763 of 2016, which was turned down by this Court vide aforesaid Judgment dated 08/02/2017. Relevant observations while rejecting the request, which are incorporated in paragraph 18 of the Judgment, are reproduced hereinbelow for ready reference:

“18. The Honourable Apex Court in Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourakana Sangha Etc. [(2000) 7 SCC 517], and the learned Division Bench of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33], has concluded that mis-conducts involving the element of mis-appropriation have to be dealt with sternly and with an iron hand. In my view, considering the boldness with which employees like the respondent commit acts of mis-appropriation, no sympathy can be shown towards such employees, lest it would indicate that such employees can get away with such acts. Fear is that like minded employees would become emboldened for committing mis-appropriation and embezzlement.”

17. The learned Advocate for the respondent also contends that one Prakash Shinde, who was also found to be involved in the similar incident, was acquitted and was reinstated in service pursuant to orders passed by the learned Industrial Court in his favour. It is contended that the petition preferred by MSRTC against the said order passed by the learned Labour Court and Industrial Court was withdrawn. The learned Advocate contends that a similar yardstick needs to be adopted in the case of the present respondent as well.

18. As regards the case of Prakash Shinde, as rightly pointed out by the learned Advocate for the petitioner, the said employee had participated in the inquiry. His complaint was allowed by the Labour Court on the ground that the inquiry was not conducted properly. Although he was also acquitted in the criminal case, he was tried in a different case. Apart from this, it will also have to be borne in mind that the case of another employee, who was co-accused with the present respondent in a criminal case, is dismissed by this Court in the aforesaid petition by a reasoned Judgment. This Court is bound by the said Judgment delivered in an identical set of facts arising with respect to the same employer and two employees working on the same post against whom similar allegations are made. The fact that the present respondent did not participate in the disciplinary inquiry also cannot be ignored.

19. Another contention raised by the learned Advocate for the respondent is that the disciplinary authority himself has acted as the Inquiry Officer and, as such, the inquiry must be held to be vitiated on this very ground, since he prosecuted himself and acted as a Judge. The said contention cannot be accepted in view of Rule 18 of the Discipline and Appeal Rules of the petitioner/ MSRTC. Relying upon the said provision, this Court has rejected the contention that the disciplinary authority cannot act as an Inquiry Officer in the

following cases :

- (a) Writ Petition No. 12302 of 2021 (Shri Sandip Vasant Bhole vs. Divisional Traffic Superintendent (Aparadh), Maharashtra State Road Transport Corporation, Jalgaon, decided on 29/11/2022),**
- (b) Writ Petition No. 11502 of 2022 (Namdeo Tukaram Mokashe Vs. Maharashtra State Road Transport Corporation, decided on 22/11/2022), And**
- (c) Writ Petition No. 960 of 2022 (Sarjerao Baburao Pawar vs. Divisional Traffic Superintendent (Apradh), Maharashtra State Road Transport Corporation and Another, decided on 15/07/2024).**

20. In the light of the reasons recorded above, this Court is of the considered opinion that the learned Industrial Court erred in allowing the revision application merely on the basis of the acquittal of the respondent in the criminal case initiated against him. The learned Industrial Court failed to advert to the reasons recorded by the learned Labour Court while exercising revisional jurisdiction over the Judgment and order of learned Labour Court.

21. The Writ Petition, therefore deserves to be allowed and is accordingly allowed by quashing and setting aside the Judgment and order dated 07th November 2016 passed by the learned Incharge Member, Industrial Court, Dhule, in Revision Application ULP No. 13 of 2013 and by confirming the Judgment and order dated 18/04/2005

passed by the learned Labour Court, Dhule, in Complaint ULP No. 16 of 2009.

22. Contempt Petition No.126 of 2024 is filed alleging breach of the undertaking dated 23rd September 2021 furnished by the respondent to this Court during the pendency of Writ Petition No. 6961 of 2017, wherein the respondent had undertaken not to press for implementation of the Industrial Court's order. Since the main Writ Petition No. 6961 of 2017 challenging the said judgment of the Industrial Court has been allowed today by setting aside the Industrial Court's order, nothing survives for consideration in the contempt petition. Contempt Petition No. 126 of 2024 stands disposed of accordingly.

(ROHIT W. JOSHI, J.)

vj gawade/-.