IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2799 OF 1995

The Divisional Controller,
Divisional Office,
Maharashtra State Road
Transport Corporation, PETITIONER
Kothla Road, Ahmednagar

VERSUS

Subhash Bhanudas More,
Age-Major, Occu-Ex-driver,
R/o Main Road, Jamkhed, RESPONDENT
Taluka Jamkhed, Dist.Ahmednagar

Mr.M.K.Goyanka, Advocate for the petitioner.
Mrs.V.H.Sangole, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/07/2015

ORAL JUDGMENT :

1. This petition was admitted by order dated 29/06/1995 and by way of interim relief, this Court has stayed the directions of the Labour Court and Industrial Court to pay back wages to the respondent.

2. I have heard Mr.Goyanka, learned Advocate on behalf of the petitioner and Mrs.Sangole on behalf of the sole respondent.

3. As I advert to their contentions, it needs to be noted that the respondent Driver has been reinstated by the petitioner on 02/08/1995 and he has superannuated on 31/07/2008. Provident Fund accumulations have already been paid. Gratuity is still not paid. Back wages have been stayed by this Court.

4. I have considered the submissions of the learned Advocates. The undisputed factors emerging from this case are as under :-

a. The respondent Driver was appointed in service in 1981.
b. On 09/05/1988, he collided with a Pedestrian within the ST Depot at Kolhapur, leading to the death of the said person.
c. A regular departmental enquiry was conducted and the charge levelled upon the respondent was held to be proved.
d. By order dated 15/06/1992, the respondent was dismissed from service by way of punishment w.e.f. 17/06/1992.
e. The respondent preferred Complaint (ULP) No.236/1992 before the First Labour Court at Ahmednagar.
f. By Part-I order dated 12/11/1992, the enquiry conducted by the petitioner was held to be vitiated.
g. The petitioner preferred Revision (ULP) No.16/1993 before the Industrial Court at Ahmednagar.
h. By judgment dated 03/11/1993, the revision was allowed and the matter was remitted to the Labour Court for a fresh hearing.
i. By Part-I order dated 12/01/1994, the Labour Court upheld the enquiry and concluded that the same was conducted in a fair

and proper manner.

j. By judgment dated 25/04/1994, the Labour Court allowed the complaint by concluding that the charges are not proved against the respondent.

k. Reinstatement with continuity in service and full back wages were granted.

l. The petitioner preferred Revision (ULP) No.24/1994, which was dismissed by judgment and order dated 13/09/1994.

5. The learned Advocate for the petitioner has strenuously criticized the impugned judgments on the ground that the Labour Court has gone into the findings of the Enquiry Officer in the final judgment without considering the fact that the enquiry was upheld by Part-I order dated 12/01/1994, which was never challenged by the respondent.

6. The learned Advocate for the respondent has strenuously supported the impugned judgments. She has contended that the Labour Court has considered the evidence recorded in the enquiry and has concluded that his past service recorded is unblemished, the evidence to prove that the deceased person was a victim of the accident committed by the respondent was not sufficient. When the criminal case no.74/1988 was pending before the Competent Court at Kolhapur, the employer could not have concluded that the

pedestrian died because of the dash given by the bus driven by the respondent/Driver. She further submits that the Industrial Court has also considered the entire evidence afresh and has concluded that the evidence in the enquiry is insufficient to prove the charges. The respondent, therefore, deserves all the benefits of service.

7. It is apparent that both the Lower Courts have not followed the procedure laid down in law by the Apex Court, which has been relied upon by this Court in a recent judgment delivered in the case of MSRTC Beed Vs.Syed Saheblal Syed Nijam, 2014 (3) CLR 547 = 2014 (4) Mh.L.J.687.

8. It is trite law that once the enquiry is upheld and the findings of the Enquiry Officer are not branded as perverse, unless these findings are set aside, neither the Labour Court nor the Industrial Court can interfere with the said findings.

9. In the instant case, the Labour Court had initially set aside the enquiry by its order dated 12/11/1992. Revision (ULP) No.16/1993 preferred by the petitioner was allowed and the said findings of the Labour Court were set aside by the judgment of the Industrial Court dated 03/11/1993.

10. Pursuant to the above judgment, the Labour Court delivered its Part I order dated 12/01/1994 upholding the enquiry. It is undisputed that this decision has not been set aside by any Superior Court for the reason that the respondent has not challenged the said judgment. It, therefore, has to be put to rest that the charges levelled upon the respondent are held to be proved.

11. In the above backdrop, the issue that remains is only as regards the proportionality of the punishment. Surprisingly, the Labour Court went into the entire evidence recorded in the enquiry and concluded that the charges are not proved against the respondent and therefore, the order of reinstatement with continuity and full back wages.

12. In my view, this was a gross error committed by the Labour Court. The Industrial Court failed to see this error and itself went into the evidence threadbare and approved the findings of the Labour Court. Despite the revisional jurisdiction u/s 44 of the MRTU and PULP Act, 1977 being limited and in the light of the law as is crystallized, if the Industrial Court was to consider the perversity in the findings of the Enquiry Officer, it could have so done only if the Part-I order dated 12/01/1994 was subject matter of revision before

it. The impugned judgment of the Industrial court is, therefore, perverse.

13. In the above backdrop, I have considered the submissions of the learned Advocates on the proportionality of the punishment. One pedestrian has died due to the dash of the bus driven by the respondent. By no stretch of imagination, can this act be termed as being minor or of a technical character. The respondent had put in 7 years in service. He was punished on 9 occasions before the said incident, which is indicated from the default card. The Labour Court and the Industrial Court have proceeded on the premise that the past service of the respondent is clean and unblemished.

14. In this fact situation, both the impugned judgments are quashed and set aside. The order of punishment inflicted by the petitioner is upheld. However, as is stated by the learned Advocates, the respondent was reinstated in employment and has retired on 31/07/2008. Gratuity is however unpaid. No order of forfeiture of gratuity has been passed.

15. In the light of the above, this petition is allowed. The directions granting back wages by the Labour Court and Industrial

Court are set aside.

16. Since gratuity has not been paid to the respondent and which became payable after 1 month of his retirement, the petitioner is directed to pay the gratuity of the respondent/Driver for the period 02/08/1995 till his retirement on 31/07/2008 with an interest @ 3% p.a. within a period of 12 (twelve) weeks from today.

17. Rule is accordingly made absolute.

(RAVINDRA V. GHUGE, J.)