

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 516 OF 2014

The Divisional Controller,
Maharashtra State Road
Transport Corporation
Division Ahmednagar,
Dist. Ahmednagar.

..Petitioner

Versus

Mohansing Babusing Pardeshi,
Age 45 years, Occ. Service,
R/o Station Road, Ahmednagar
Tq. and Dist. Ahmednagar.

..Respondent

...
Advocate for Petitioner : Shri Deshmukh B.S.
Advocate for Respondent : Shri Gholap Ajit M.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 24, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. I have heard learned Advocates for the respective sides for quite sometime and have gone through the petition paper book with their assistance.

5. The respondent herein is a Driver working with the petitioner / Corporation since 6.12.1989. On 25.2.1998, the Bus which was driven by the respondent met with an accident. The Bus collided with a Jeep coming from the opposite direction. Two persons died on the spot and six persons were injured. The Bus suffered extensive damage.

6. A charge sheet was issued to the respondent on 16.9.1998 and after conducting a departmental enquiry, the petitioner / Corporation proposed the punishment of dismissal from service by notice dated 18.11.1999 accompanied with the copy of the Enquiry Officer's report.

7. The respondent preferred Complaint (ULP) No. 95 of 1999, before the Labour Court at Ahmednagar. By judgment and order dated 27.11.2008, the Complaint was allowed and the following directions were issued by the Labour Court.

“ 1. The complaint is hereby allowed.

2. It is declared that the show-cause notice dated 18.11.1999 amounts to unfair labour practice, hence it is illegal.

3. As the complainant is already in service as per order passed on U-2 therefore, no question of back wages arise.

4. However, the respondent corporation is at liberty to impose any other lesser punishment than the dismissal.

5. *Parties to bear their own cost.”*

8. Shri Gholap, learned Advocate submits that the respondent was continued in employment by the ad-interim protection granted by the Labour Court and as such, he was in employment on the date of the judgment of the Labour Court.

9. It is not disputed that neither the petitioner nor the respondent have challenged the judgment of the Labour Court dated 27.11.2008 and the petitioner issued a fresh order of punishment dated 27.5.2009 in the light of the directions of the Labour Court and imposed a punishment of stoppage of three increments.

10. The respondent received the freshly issued order of punishment and thereafter, preferred a Complaint (ULP) No. 41 of 2009 before the Industrial Court at Ahmednagar in June 2009 challenging the order of punishment of stoppage of three increments, dated 27.5.2009. By judgment and order dated 8.8.2013, the Complaint was allowed and the punishment of permanent stoppage of three increments was set aside from August 2013. It is this judgment that has been questioned by the petitioner before this Court.

11. Shri Deshmukh, learned Advocate for the petitioner vehemently contends that the Industrial Court could not have interfered with the judgment of the Labour Court, since neither of the parties had challenged

the judgment. He points out that the domestic enquiry and the findings of the Enquiry Officer have neither been assailed by the respondent, nor have they been set aside by the Industrial Court. The Complaint has been allowed purely on the ground of proportionality of the punishment. He, therefore, submits that the Industrial Court could not have caused any interference in the order of punishment issued by the petitioner after accepting the judgment of the Labour Court.

12. Shri Gholap has strenuously canvassed that the Industrial Court has rightly interfered with the order of punishment. A severe punishment has been imposed on the respondent which is not commensurate to the gravity and seriousness of the misconduct. The Labour Court has held in favour of the respondent and granted liberty to the petitioner to impose a minor punishment. The impugned judgment is, therefore, sustainable and the petition deserves to be dismissed

13. Notwithstanding the fact that neither the petitioner nor the respondent has challenged the judgment of the Labour Court dated 27.11.2008, on its perusal, I find that, without framing preliminary issues as regards the fairness of the findings of the Enquiry Officer and the fairness of the enquiry, the Labour Court has concluded that the findings are perverse. This issue is not required to be reopened since neither of the parties have assailed the said judgment.

14. However, it was in this backdrop that the Labour Court permitted the

petitioner / Corporation to impose a `lesser punishment than dismissal'. It is apparent that the Industrial Court has mis-understood the term, "*Lesser punishment than dismissal*", since it has come to a conclusion in the impugned judgment that the petitioner was permitted to impose a `minor punishment'. The Industrial Court has, therefore, lost sight of the fact that the petitioner was permitted to impose any punishment lesser than dismissal and the said judgment of the Labour Court has not been challenged by the respondent.

15. It cannot be lost sight of the fact that the respondent has a blemished past service record. On three occasions, he has been punished. The blemished past service record of the respondent is an aggravating factor. It also needs to be noticed that two persons have died and six have been injured due to the collision between the Bus driven by the respondent and a Jeep travelling in the opposite direction. As such, in my view, the impugned judgment of the Industrial Court is without application of mind and is an outcome of mis-placed sympathy shown towards the respondent. The same is, therefore, perverse and unsustainable. The punishment imposed cannot be said to be disproportionate, much less shockingly disproportionate.

16. This Writ Petition is, therefore, allowed. The impugned judgment and order of the Industrial Court dated 8.8.2013 delivered in Complaint (ULP) No.41 of 2009 is quashed and set aside. The said Complaint stands dismissed and the punishment imposed by the petitioner vide order dated

27.5.2009 is sustained.

17. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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