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

WRIT PETITION NO. 1241 OF 2007

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

2 Divisional Traffic Officer,
Maharashtra State Road Transport
Corporation, Parbhani Division,
Parbhani, District Parbhani.

...PETITIONERS

-VERSUS-

Kalyan s/o Babu Giri,
Age Major, Occ : Nil,
R/o Janegaon, Post.Kumbhefal,
Taluka Kaij, District Beed.

...RESPONDENT

....

Advocate for Petitioners : Mr.A.N.Gaddime h/f Mr.A.D.Wange.
Advocate for Respondent : Mr.Mukund Ambekar.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 07th August, 2015**

Oral Judgment:

1 This petition has been admitted by the order of this Court dated 27.06.2008. By the order dated 01.03.2007, the payment of back-wages was stayed. The said interim relief continues even till this date.

2 I have heard the learned Advocates for the respective sides for

quite sometime. It is stated that subsequently the Respondent has retired from service in 2013. The provident fund accumulations for an amount of Rs.6,46,193/- have been paid to the Respondent/ Employee through Cheque No.616423 on 02.05.2013. The gratuity is yet to be paid.

3 The Respondent had questioned his termination vide punishment dated 09.07.1991, by filing Complaint (ULP) No.40/1991. The Labour Court, after considering the enquiry proceedings and the findings of the Enquiry Officer, concluded that the enquiry is properly conducted and the findings of the Enquiry Officer are not perverse. By this Part-I order dated 17.01.1995, the first two issues have been answered.

4 By the judgment dated 17.03.2005, the Labour Court considered the fact that a boy of about 10 years has died on account of dash of the bus driven by the Respondent/ Employee who was the driver with the Petitioner/ Corporation. The punishment was, therefore, held to be commensurate to the gravity and seriousness of the misconduct and the complaint was dismissed.

5 The Respondent/ Employee preferred Revision (ULP) No.21/2005 before the Industrial Court at Jalna. By the judgment and order dated 02.09.2006, the revision was allowed and the judgment of the

Labour Court dated 17.03.2005 was quashed and set aside. The Industrial Court granted reinstatement with continuity and full back-wages to the Respondent/ Employee.

6 The learned Advocate for the Respondent/ Employee has strenuously supported the impugned judgment. He submits that the Industrial Court has considered the entire evidence on record threadbare, has gone into every piece of evidence, has considered every document and oral statements recorded in the enquiry and has considered the judgment of the Labour Court threadbare. Therefore, the conclusions drawn by the Industrial Court are sustainable and deserve no interference.

7 I have considered the submissions of both the sides and gone through the petition paper book. The foremost error committed by the Industrial Court is that the judgment of the Labour Court on the preliminary issues dated 17.01.1995 has neither been dealt with nor has it been quashed and set aside. It is trite law that once the enquiry is upheld and the findings of the Enquiry Officer are held to be fair and proper, unless these findings are upset by the superior court, neither the Labour Court nor any other Court can interfere with the conclusions drawn by the Enquiry Officer.

8 The Labour Court in the instant case by its judgment dated 17.01.1995 has concluded that the enquiry was fair and the findings were proper. The said judgment was not challenged before the Industrial Court as is seen from the conclusions of the Industrial Court that the Respondent/ Employee had only challenged the final judgment dated 17.03.2005. The part-I judgment dated 17.01.1995 is the final judgment on the first two issues and there is no question of the said judgment merging in the later judgment of the Labour Court which was only on the issue of proportionality of the punishment. In this backdrop, the Industrial Court was not called upon to deal with the judgment dated 17.01.1995.

9 Despite the above, the Industrial Court has exercised the jurisdiction not vested in it by law. It has reopened the entire enquiry proceedings and without any conclusion on the Part-I judgment dated 17.01.1995, has held that no charge is proved against the Respondent/ Employee. It has concluded that though the death of a boy has occurred on account of the accident of the Bus driven by the Respondent, the Respondent cannot be blamed. In my view, the Industrial Court has decided the revision petition as if it was an appeal and the Court was an Appellate Authority. The revisional jurisdiction of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971 is limited.

10 This Court has stayed the payment of back-wages by its order dated 01.03.2007. The impugned judgment of the Industrial Court is unsustainable for the reasons stated above. However, the Respondent has been reinstated and has superannuated in 2013. He has received his provident fund accumulations for an amount of Rs.6,46,193/-. Therefore, the impugned judgment deserves to be modified only to the extent of depriving the Respondent/ Employee of the back-wages in the peculiar facts of this case.

11 As such, this petition is partly allowed. The impugned judgment and order of the Industrial Court dated 02.09.2006 is modified by depriving the Respondent/ Employee of the back-wages. The gratuity, if any and if still unpaid, may be disbursed to the Respondent within a period of TWELVE weeks from today. In the event, the Petitioner/ Corporation fails to comply with this order, the amount of gratuity shall carry simple interest of 3% per annum w.e.f. 01.06.2013 till actual realization.

12 Rule is, accordingly, made partly absolute.

(RAVINDRA V. GHUGE, J.)