

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.7910 OF 2014

Maharashtra State Road Transport Corporation,  
Dhule Division, District Dhule.  
Through the Divisional Controller

PETITIONER

VERSUS

Mukhtarkhan Ibrahimkhan Pathan,  
Age-Major, Occu-Service,  
R/o Gariv Nawaz Nagar,  
Near Abudakhar Mashid, Shahad,  
Dist.Nandurbar

RESPONDENT

Mr.D.S.Bagul, Advocate for the petitioner.  
Mr.S.P.Tiwari, Advocate for the respondent.

( CORAM : RAVINDRA V. GHUGE, J.)  
DATE : 14/10/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has challenged the judgment and order dated 29/11/2013 delivered by the Industrial Court, Dhule by which Complaint (ULP) No.38/2012 filed by the respondent/employee has been allowed and the order of punishment dated 06/02/2012 has been quashed and set aside.

3. Mr.Bagul, learned Advocate for the petitioner/Corporation submits that the impugned judgment is unsustainable on account of having not followed the law followed in the case of Maharashtra State Co-operative Cotton Grovers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, 2014(3) Mh.L.J. 339 = 2014(1) CLR 87 = 2014(1) CLR 878 and the ratio laid down in the case of Maharashtra State Road Transport Corporation, Beed and another Vs. Syed Saheblal Syed Nijam, 2014(4) Mh.L.J. 687 = 2014(3) CLR 547.

4. He submits that the respondent was subjected to a domestic enquiry for having committed an accident, owing to which the passengers travelling in the bus driven by the respondent/Driver were injured. Fortunately, there was no casualty. The petitioner imposed punishment upon the respondent/Driver by order dated 06/02/2012 thereby reducing the basic pay of the respondent by 3 stages permanently w.e.f. 01/02/2012.

5. He further submits that as observed by the Industrial Court in paragraph No.3 of the impugned judgment, the respondent had challenged the enquiry and had also challenged the findings of the Enquiry Officer. He had prayed that the enquiry be held as vitiated and the findings of the Enquiry Officer be set aside.

6. The ratio laid down by this Court in the above referred two judgments was not followed by the Industrial Court. Two issues as regards the fairness of the enquiry and the findings of the Enquiry Officer were not framed. The Industrial Court has concluded that the charges are not proved against the respondent and as such the complaint was allowed by the Industrial Court. He, therefore, submits that the impugned judgment deserves to be quashed and set aside.

7. Mr.Tiwari, learned Advocate has strenuously supported the impugned judgment. He submits that the accident that had occurred on 04/09/2007 on the Khetiya-Manmad route, was not on account of his negligence or reckless driving. In fact, the respondent monitored the bus in such a way that there were no casualties. The auto rickshaw, which was crowded with passengers, was on the wrong side. He saved the life of several passengers travelling in the auto rickshaw.

8. He further submits that he had challenged the fairness of the enquiry and the findings of the Enquiry Officer. The Industrial Court has rightly dealt with the matter, has gone into the evidence

recorded in the enquiry and has finally concluded that the charges are not proved against the respondent. He, therefore, prays that the petition be dismissed with costs.

9. I have considered the submissions of the learned Advocates. The only issue involved is as to whether, considering the challenge posed by the respondent in the complaint, the Industrial Court has cast 2 issues, which need to be as follows :-

- [a] Whether the complainant proves that the enquiry is vitiated on account of non-observance of the principles of natural justice ?
- [b] Whether the complainant proves that the findings of the Enquiry Officer are perverse and unsustainable ?

10. This Court has considered the settled position of Law in the judgment delivered in the case of Vasant Ambadas Deshpande and MSRTC, Beed Vs. Syed Saheblal Syed Nijam (supra). The manner of deciding the first two issues has been considered in the said judgments.

11. It is no longer res-integra that the said two issues are required to be framed by the Labour Court or Industrial Court, as the case may be. Having failed to do so, renders the impugned judgment

unsustainable as the Industrial Court has set aside the findings of the Enquiry Officer and has allowed the complaint in a single judgment, despite the fact that a decision on the first two issues is the part I judgment of the Court in matters of disciplinary proceedings.

12. In the light of the above, the impugned judgment dated 29/11/2013 is quashed and set aside. Complaint (ULP) No.38/2012 is remitted to the Industrial Court at Dhule. The litigating sides shall appear before the Industrial Court on 06/11/2015. Formal notices need not be issued.

13. The Industrial Court shall frame the two issues as stated above and shall decide the same purely on the basis of the enquiry proceedings as has been observed by this Court in the Vasant Ambadas Deshpande Judgment (supra). Pursuant to its decision on the said two issues, the Industrial Court shall thereafter decide the complaint on its own merits and in accordance with Law.

14. Since the complaint has been lodged in the year 2012, the Industrial Court shall endeavour to decide the said complaint as expeditiously as possible and preferably on or before 31/12/2016.

15. Petition is, therefore, allowed. Rule is made absolute in the above terms. No order as to costs.

( RAVINDRA V. GHUGE, J.)