

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5081 OF 2005
WITH
CIVIL APPLICATION NO. 13012 OF 2015
AND
CIVIL APPLICATION NO. 12094 OF 2005

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Division Osmanabad,
District Osmanabad.

..Petitioner

Versus

Bhanudas Baburao Wadane,
Age 53 years, Occ. Service,
R/o Palumbra, Tq. Tulajpur,
District Osmanabad.

..Respondent

...
Advocate for Applicant : Shri Tiwari M.B. h/f Shri Khandare N.B.
Advocate for Respondents : Shri Dhongade A.B.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 16, 2015
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ORAL JUDGMENT :-

1. The applicant employee is the respondent in the Writ Petition, who prays for listing the Writ Petition for final hearing. Both the learned Advocates for the respective sides have graciously stated that the petition itself could be heard and decided forthwith.

2. In this backdrop, the Civil Application No. 13012 of 2015 is allowed and the petition is taken up for final hearing.

3. This petition was admitted by this Court on 3.8.2005 and the payment of backwages was stayed by way of interim relief.

4. Shri Dhongade learned Advocate appearing on behalf of the petitioner / corporation seriously criticizes the judgment of the Labour Court dated 28.9.2004 and the judgment of the Industrial Court dated 5.3.2005.

5. Shri Dhongade submits that while on duty from Tuljapur to Pandharpur on 12.2.1994 the bus was inspected and it was noticed that the ball joint of the accelerator was defective. The Vehicle Inspector, upon inspection of the vehicle, directed the respondent to drive the bus to the repair section for carrying out necessary repairs. As he tried to start the bus, the ball joint broke.

6. The respondent was served with a charge sheet dated 30.6.1995 and an enquiry was conducted. After the conclusion of the enquiry in which the Enquiry Officer held him guilty of deliberately breaking the ball joint of the accelerator, the respondent was dismissed from service with effect from 3.7.1995.

7. The respondent filed Complaint (ULP) No. 59 of 1995 (New Number 28 of 2004), for challenging his dismissal. By the Part I Judgment, though the enquiry was held to be properly conducted, the findings of the Enquiry Officer were held to be perverse. The petitioner conducted a *de-novo*

enquiry before the Labour Court, which allowed the Complaint on 28.9.2004. The petitioner was directed to reinstate the respondent with continuity of service and 50% backwages.

8. The petitioner challenged the final judgment of the Labour Court dated 28.9.2004 and did not challenge the Part I judgment in Revision (ULP) No. 288 of 2004. By judgment dated 5.3.2005, the Revision was dismissed.

9. Shri Dhongade has strenuously submitted that the ball joint of the accelerator pedal was deliberately broken by the respondent. Evidence was led through a Technician, by name, Shri Sangale, who stated before the Labour Court that the ball joint is not broken by the pressure of the legs. He, therefore, submits that the management had proved before the Labour Court that the respondent must have intentionally broken the ball joint of the accelerator.

10. He, therefore, submits that the conclusion of the Labour Court as well as the Industrial Court that there was no evidence to prove that the ball joint was broken by the Driver, is an erroneous conclusion. The past record of the respondent is not unblemished and hence he deserved the punishment of dismissal.

11. Learned Advocate for the respondent Driver has supported the impugned judgment.

12. I have considered the rival contentions of the parties as have been recorded herein above.

13. It cannot be over looked that the accelerator pedal is a metal unit, which is used for regulating the speed of the bus. It has not come in evidence that the accelerator pedal was recently changed or a new unit was fixed. It cannot be ruled out that such metal parts used in vehicles suffer daily wear and tear depending upon the use of the vehicle and the road conditions in this country.

14. Neither has the petitioner established that the respondent had a reason to deliberately break the accelerator pedal, nor was it proved before the Labour Court that he was responsible for breaking the pedal deliberately. In fact, it has come in evidence that the respondent, upon noticing the weak condition of the accelerator, had pointed out the defect. While driving the vehicle, the accelerator pedal broke in the premises of the depot. It cannot be ignored that had the respondent driven the vehicle on his journey and the pedal would have got broken while in journey, it could have caused to an accident endangering the passengers as well the people on the roads.

15. In the light of the above, I do not find that the findings on facts arrived at by the Labour Court and sustained by the Industrial Court deserve any interference.

16. Shri Dhongade has prayed for modifying the judgment of the Labour Court directing the payment of 50% of the backwages. He points out that the respondent has attained the age of superannuation on 31.8.2001. The judgment of the Labour Court is dated 28.9.2004, which is more than three years after his superannuation

17. It is obvious that the issue of reinstatement no longer survives in the light of the above facts. On a petty issue, the petitioner / Corporation has ordered the dismissal of the respondent, which is a shockingly disproportionate punishment even if it is assumed that the accelerator pedal was deliberately broken by the respondent. In the instant case, the charge has not been proved before the Labour Court. The Part I judgment vitiating the enquiry due to perversity in the findings of the Enquiry Officer, has not been challenged by the petitioner / corporation.

18. The Apex Court in a recent judgment in the matter of Nicholas Piramal India Ltd. Vs. Harising [2015 II CLR 468], has concluded that a wrongful termination of an employee causes undue hardship and the litigant is made to suffer the rigours of litigation for which award of 50% backwages is justified.

19. In the light of the above, no interference is called for in the direction of payment of 50% backwages.

20. This petition is devoid of merits and is, therefore, dismissed. Rule is

discharged.

21. All pending Civil Applications do not survive and are accordingly disposed off.

(RAVINDRA V. GHUGE, J.)

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