

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9704 OF 2014

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Jalgaon Division, Jalgaon.

..Petitioner

Versus

Nitin Gulab Palatse,
Age 38 years, Occ. Service,
R/o at Post 2, Geetaiwadi,
Autonagar, North to
Cotton Jenning,
Behind Hotel Pritam Park,
Jalgaon.

..Respondent

...
Advocate for Petitioner : Shri Goyanka M.K.
Advocate for Respondent : Shri Manale Satish S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 10, 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. The petitioner / Corporation is seriously aggrieved by the impugned judgment and order dated 17.4.2013 delivered by the Labour Court in

Complaint (ULP) No. 26 of 2007, as well as the judgment of the Industrial Court dated 18.2.2014, thereby dismissing the Revision (ULP) No. 47 of 2013 filed by the petitioner.

5. The petitioner has challenged the above stated two judgments. It is noteworthy that the Labour Court initially, in the Part I judgment dated 30.8.2011, below Exhibit O-9, had dealt with the two preliminary issues and concluded that the enquiry was conducted in a fair and proper manner and the findings of the Enquiry Officer are not perverse. The complaint was dismissed. The respondent preferred Revision (ULP) No.22 of 2011. The Industrial Court held that the enquiry was vitiated as the findings are perverse and remanded the Complaint to the Labour Court for conducting a *de novo* enquiry. This judgment of the Industrial Court dated 14.2.2013 has not been challenged in this petition. As such, the case now proceeds on the basis of the *de novo* enquiry.

6. The petitioner submits that the Divisional Traffic Superintendent, namely, Magan Motiram Bhambre was examined before the Labour Court. He has deposed in the enquiry that he considered the entire enquiry papers and the clean past record of nine months prior to the charge sheet and has awarded the punishment of dismissal from service. It is not in dispute that the Reporter was not examined before the Labour Court.

7. Shri Goyanka strenuously criticizes the impugned judgment on two counts. Firstly, that when Shri Bhambre was examined, the Labour Court

could not have come to a conclusion that the charges are not proved. Secondly, no backwages could have been awarded to the respondent since he did not bring any evidence on record as regards how did he sustain his family without employment, whether he attempted to obtain a job elsewhere and whether he failed to secure an alternate employment. Therefore, no backwages should have been granted.

8. Shri Goyanka further submits that the errors committed by the Labour Court were not assessed by the Industrial Court and which has dismissed the Revision Petition as a matter of course by the impugned judgment dated 18.12.2013.

9. Shri Manale, learned Advocate for the respondent / employee has defended the impugned orders. He submits that none of the passengers whose statements were recorded by the Reporter were examined in the enquiry. The Reporter himself was not examined. The Labour Court has deprived the respondent of 70% backwages, but has rightly awarded 30% since his dismissal is held to be illegal. He, therefore, submits that neither the Labour Court nor the Industrial Court have committed any error and this petition, therefore, deserves to be dismissed.

10. I have considered the submissions of the learned Advocates. In a domestic or departmental enquiry, the passengers who have made a statement to the Reporter and have signed on their statements, are not required to be examined. Their statements, their signatures and the report

prepared by the Reporter can be proved in a domestic enquiry by the MSRTC through the Reporter himself. Even hearsay evidence is acceptable in service jurisprudence.

11. The Reporter is required to be examined since he has noted the statements of the passengers when the bus is checked in the presence of the Bus Conductor who is charged with misappropriation. As such, I am not in agreement with the submission of Shri Manale that each passenger is required to be examined in every enquiry in which charges of such nature are involved. However, he is right in contending that even the Reporter was not examined in this case.

12. It is, therefore, apparent that the enquiry conducted by the petitioner has been set aside and the said judgment of the Industrial Court has not been challenged either before this Court earlier or even in this petition. The Reporter was examined in the enquiry. Same is of no consequence since the enquiry has been set aside and therefore, the oral evidence needs to be discarded. The said Reporter was not examined before the Labour Court.

13. In my view, there was no purpose in examining only the disciplinary authority, who has supported his decision of awarding punishment and has not been a witness to the mis-deeds allegedly committed by the respondent. The Labour Court, therefore, rightly concluded that the charges are not proved against the respondent. In this backdrop, there is

no issue of proportionality of punishment as no charge is proved against the respondent in the Labour Court.

14. Considering the rival submissions of the litigating sides as regards backwages, the Labour Court itself has considered in paragraph No.18 of the impugned judgment that the respondent employee failed to bring on record any evidence as regards the manner in which he maintained his family and whether he has attempted to seek an alternate employment. In fact the Labour Court has concluded that, *“He is suppressing the fact that he is earning something or he is having source of income. Therefore, in the absence of evidence, it can be inferred that, complainant might have doing job somewhere else and earning something to maintain livelihood of his family.”* Despite these conclusions 30% backwages have been granted. In my view, the Labour Court has erred in granting the said backwages.

15. The petitioner was directed to reinstate the respondent in service within two months from the date of judgment dated 17.4.2013. Certified copy was issued on 7.5.2013. It could, therefore, be said that the respondent was entitled to reinstatement w.e.f. 7.7.2013 which is the date of knowledge of the judgment by the petitioner. The Revision Petition preferred by the petitioner has been dismissed on 18.2.2014. This petition is preferred on 26.6.2014.

16. In the light of the above, the respondent deserves to be granted his last drawn monthly salary w.e.f. 7.7.2013 onwards.

17. In the light of the above, this petition is partly allowed. The impugned judgments of the Labour Court dated 17.4.2013 and the Industrial Court dated 18.2.2014 are modified only to the extent of depriving the respondent of 30% backwages as were granted by the Labour Court. He shall be entitled for wages as if he has been reinstated on 7.7.2013 and onwards.

18. The Writ Petition is, therefore, partly allowed and Rule is partly made absolute in the above terms, with no order as to costs.

(RAVINDRA V. GHUGE, J.)

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akl/d