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

WRIT PETITION NO.9027 OF 2012

Uttam Keru Bhatane,
Age : 64 years, Occ : Nil,
R/o Maka, Taluka Newasa,
District Ahmednagar.

...PETITIONER

-VERSUS-

Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Sarjepura, Kothala, Ahmednagar,
Taluka and District Ahmednagar.
Through Divisional Controller.

...RESPONDENT

...

Advocate for Petitioner : Shri Avhad Abhijeet P
Advocate for Respondent : Shri Deshmukh Bhausahab S.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th September, 2015

Oral Judgment:

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

2 The Petitioner is aggrieved by the judgment and order dated 09.01.2007 delivered by the Labour Court by which Complaint (ULP) No.101/1997 filed by him was partly allowed, he was granted retiral

benefits, but denied all back-wages. The Petitioner is also aggrieved by the judgment and order dated 18.06.2011 delivered by the Industrial Court in Revision (ULP) No.12/2007 by which the revision petition preferred by the Petitioner was dismissed.

3 I have heard the learned Advocates for the rival sides at length. The undisputed facts are as under:-

- (a) The Petitioner joined the Respondent/ Corporation as a driver in 1972.
- (b) He was felicitated for good driving on three occasions.
- (c) On 01.04.1993, he was driving the bus which collided with a bullock cart resulting in death of two persons besides damaging the Corporation bus.
- (d) A departmental enquiry was conducted against the Petitioner for rash and negligent driving and causing death of two persons.
- (e) The Charges levelled upon him under the Discipline and Appeal Rules were proved.
- (f) By order dated 25.03.1994, pursuant to the issuance of the second show cause notice, the Petitioner's services were brought to an end as he was dismissed by way of punishment.
- (g) He preferred the first appeal before the Appellate Authority

which was dismissed on 03.08.1994.

- (h) He preferred the second appeal before the second Appellate Authority, which was also dismissed on 07.05.1997.
- (i) He then preferred Complaint (ULP) No.101/1997 before the Labour Court for challenging his dismissal dated 25.03.1994.
- (j) By the part-1 judgment dated 12.10.2000, the Labour Court held that the enquiry was vitiated and the Respondent/ Corporation was permitted to prove the charges before the Labour Court.
- (k) By the impugned judgment and order dated 09.01.2007, the Labour Court partly allowed the complaint by concluding that the charges are proved against the Petitioner, but the punishment awarded is disproportionate. As such, he was granted continuity, retiral benefits and gratuity, but deprived of back-wages.
- (l) The Respondent/ Corporation has not challenged the judgment of the Labour Court dated 09.01.2007.
- (m) The Petitioner challenged the said judgment by preferring Revision (ULP) No.12/2007, which was dismissed by the impugned judgment dated 18.06.2011.

for the accident that occurred. The bullock-cart travelling from the opposite direction went out of control and dashed the Petitioner's bus. Though two deaths have occurred on account of the accident, the Petitioner cannot be held guilty.

5 The Petitioner submits that the charges cannot be said to have been proved against him. The Labour Court has erroneously concluded that the Petitioner was at fault. In such circumstances, the judgments of the Labour Court as well as the Industrial Court deserve to be quashed and set aside and the back-wages deserve to be granted to the Petitioner.

6 Shri Deshmukh, learned Advocate for the Respondent/ Corporation, submits that the Labour Court as well as the Industrial Court have arrived at concurrent findings. In such accident cases, the Enquiry Officer has to only see as to whether, the accident can be said to have occurred for no fault on the part of the Employee. The enquiry was set aside by the part-1 judgment of the Labour Court and the Respondent/ Corporation led fresh evidence before the Labour Court and has proved the charges against the Petitioner.

7 He further submits that it was proved before the Labour Court that the speed of the bus driven by the Petitioner was approximately 45

kilometers per hour. There were no brake marks at the site of the accident which indicates that the Petitioner did not take any efforts to control the bus. There was sufficient evidence before the Labour Court to conclude that the accident has occurred on account of rash and negligent driving of the Petitioner.

8 Shri Deshmukh, however, frankly submits that the Respondent/ Corporation has not challenged the order of the Labour Court granting retiral benefits. Nevertheless, during the pendency of the proceedings before the Labour Court, the Petitioner had attained the age of superannuation on 31.03.2004.

9 Shri Deshmukh further submits that considering the fact situation as above, the Petitioner was offered a letter on 11.08.2007 after the judgment of the Labour Court by which the Respondent/ Corporation made an attempt to pay him the gratuity amount through an account payee cheque. The Petitioner chose not to accept the said amount. He further adds that the Labour Court has set aside the dismissal awarded to the Petitioner and has accordingly, modified the punishment by refusing back-wages to the Petitioner. No interference in such conclusions is called for and more so, when the Industrial Court has considered the fact situation and has dismissed the revision petition filed by the Petitioner.

10 I have considered the submissions of the learned Advocates as recorded above.

11 It is not disputed that the accident led to the death of two persons. The dismissal awarded to the Petitioner is dated 25.03.1994. He attained the age of superannuation on 31.03.2004. Apparently, the Labour Court, even after the charges were proved against the Petitioner in a de-novo enquiry, has shown leniency towards the Petitioner and granted him retiral benefits. It is also undisputed that the Respondent/ Corporation has not posed a challenge to the judgment of the Labour Court.

12 Once the charges are proved against an employee before the Labour Court, unless the punishment of dismissal amounts to a shockingly disproportionate punishment, which would shock the judicial conscience of the court, no interference is called for. The Labour Court having concluded that the charges are proved, should not have shown leniency towards the Petitioner. However, the said issue is no longer open for scrutiny as the Respondent/ Corporation has accepted the decision of the Labour Court.

13 In the above recorded factual matrix, if the back-wages are

granted to the Petitioner, it would virtually amount to rewarding the Petitioner despite the charges having been proved against him before the Labour Court. It appears that the Labour Court has deprived the Petitioner of the back-wages so as to punish him to the extent that the Labour Court found it fit and proper to modify the punishment.

14 As such, this Writ Petition is devoid of merit and is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)