

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 1367 OF 2000.

Maharashtra State Road Transport
Corporation, having its office at
Vahatuk Bhavan, Dr.A.Nair Marg,
Bellasis Road, Bombay Central
Bombay-400 008.

.. Petitioner

Vs.

Shri Ashok Mallapa Gulgoud
Vikramnagar, Navdurga Galli
Kolhapur.

.. Respondent

Mr.G.S.Hegde, for the Petitioner.
Mr.M.S.Topkar, for the Respondent.

***CORAM: N.M.Jamdar J.
Friday 21 August, 2015***

Oral Judgment :

By this petition, the Petitioner-Corporation challenges the Award passed by the presiding Officer Labour Court, Kolhapur dated 17 August 1999 directing the Petitioner to give reinstatement to the Respondent with continuity of service but without back wages with effect from 19 January 1991.

2. The Respondent was working as a driver with the Petitioner-Corporation. The Petitioner instituted disciplinary proceedings against the Respondent on the ground that while on duty on 22 December 1989 he left the bus which he was driving unattended at a bus-stand and not at a depot, and the bus was stolen which was thereafter recovered at Dharwad and remained in police custody from 23 December 1989 to 29 December 1989. Pursuant to the charge-sheet the services of the Respondent were terminated with effect from 19 January 1991. The Respondent filed a departmental Appeal and the First Appellate Authority directed the Petitioner to reappoint the Respondent in service. Accordingly, the Respondent was reappointed in service and continues to be in service. The Respondent thereafter sought a reference, which was made by the Commissioner of Labour on 30 December 1993, which was taken up as Reference (IDA) No.88 of 1993 by learned Labour Court, Kolhapur.

3. The learned Labour Court Judge, after considering the rival contentions concluded that though some negligence on the part of the Respondent was proved, it was not so serious to warrant dismissal from services and accordingly directed that Respondent be reinstated with continuity of service however, with no back wages with effect from 19 January 1991. The Respondent has not challenged this order.

4. Thereafter the present petition was filed by the Petitioner.

This petition was admitted. The Respondent was already in service. The position that Respondent was in service was continued. Therefore, as on date, the Respondent continues in service and the parties have restricted the enquiry in the petition only to the direction regarding granting of continuity of service.

5. I have heard Mr.Hegde learned counsel for the Petitioner and Mr.Topkar the learned counsel for the Respondent. According to Mr.Hegde, the deprivation of back wages was not a penalty at all because during that period the Respondent admittedly had not worked and therefore continuity of service should be taken away as a punishment otherwise there is no punishment at all. He submitted that the Respondent was negligent because the bus under his charge was stolen because he had not parked it in a proper place. He also submitted that this fact was admitted by the Respondent. Mr.Topkar, on the other hand submitted that the charge of consuming alcohol was not proved and the learned Presiding officer has rightly held that the seriousness of misconduct is substantially reduced. He submitted that the back wages have already been deprived and therefore, the order of continuity of service should not be interfered with.

6. The learned Presiding officer has considered the evidence on record and the gravity of the charges and the degree of negligence of the Respondent. The learned Presiding officer has evaluated the seriousness of negligence and has found it to be not so serious to

deprive continuity of service. The Presiding officer, as a deterrent, has deprived the back wages, however as it has been rightly pointed out by Mr.Hegde, that deprivation of back wages is hardly a punishment as the Respondent had admittedly not worked during that period. Therefore, in spite of holding that the Respondent was negligent, no punishment is imposed on the Respondent. Mr.Hegde is right in contending that some deterrent is necessary to inculcate a sense of discipline. That there was negligence on the part of the Respondent cannot be overlooked. A driver is required to take care of the vehicle under his charge.

7. However considering the facts and circumstances and that charge of consuming alcohol is not proved, and that the bus was parked at the bus stand and not any secluded place, deprivation of continuity of service would be a harsh punishment. The balance can be achieved by imposing a lesser penalty to ensure that discipline is maintained in the administration of the Petitioner-Corporation. I am of the opinion that stoppage of two increments would be just and proper punishment to be imposed. The stoppage of two increments would operate from the date of order of reappointment. With this modification rest of the impugned order can be maintained. In my opinion this course of action will meet the ends of justice.

8. Accordingly, the Writ petition is partly allowed. The impugned Judgment and Award dated 17 August 1999 shall stand

modified as under -

- i. The direction to reinstate the Respondent along with continuity of service, is confirmed.
- ii. The Petitioner-Corporation will be entitled to pass an order to stop two increments of the Respondent from the date of order of reappointment of the Respondent i.e. 4 June 1991.
- iii. The interim relief granted in this petition is vacated and the Petitioner will take appropriate steps in respect of the impugned order modified as above within a period of four months from today.

9. **Rule made absolute** in above terms. No order as to costs.

(N.M.Jamdar J.)