

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3996 OF 2012**

Maharashtra State Road
Transport Corp.

Petitioner

Vs

Shri Vinayak Rohidas Sarvade

.. Respondent

Mr. G.S.Hegde, Advocate for Petitioner.

Mr. Suhas S. Inamdar, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 10/03/2015

PC:

1. Heard Mr. G.S. Hegde, learned counsel for the petitioner and Mr. Suhas S. Inamdar, learned counsel for the respondent at length.

2. . By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgment and Award dated 3.1.2012 passed by the learned Member, Industrial Court, Solapur (for short, "Tribunal") in Complaint (ULP) No.7 of 2010. By that order, the Tribunal partly allowed the complaint and held that the petitioner herein has committed unfair labour practices under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,1971 (for short, "Act") and directed the petitioner to cease and desist from doing unfair labour practices. The Tribunal also set aside the order withholding increments and directed the petitioner to restore increments.

3. In support of this petition, Mr Hegde reiterated the submissions that were advanced before the Tribunal. He submitted that the respondent is working as a Driver with the petitioner. At the relevant time, he was driving bus in a rash and negligent manner. Because of rash and negligent driving of the respondent, one pedestrian was given dash and after some days the said pedestrian expired. After holding regular departmental inquiry, annual increment of the respondent was withheld for two years with cumulative effect. He, therefore, submitted that the Tribunal committed serious error in passing the impugned order.

4. On the other hand. Mr. Inamdar supported the impugned order. He submitted that after considering the material on record, the Tribunal recorded a finding of fact that the respondent was not driving the bus in a rash and negligent manner. He was driving the bus in a moderate speed and the accident did not take place because of the negligence of the respondent. The pedestrian was under influence of liquor and the said fact was not considered by the Inquiry Officer. He, therefore, submitted that no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. In paragraph 12, the Tribunal considered reply dated 28.11.2000 given by the respondent to the

chargesheet. In paragraph 3 of that reply, the respondent asserted that the pedestrian was under the influence of liquor. The Tribunal noted that this was not a defence as and by way of after thought. In paragraph 9, the Tribunal considered that the area where the accident took place was a crowded place. Having regard to the location where the accident took place as also situation that was obtaining at the relevant time, the Tribunal recorded a finding of fact that the respondent was driving bus in a moderate speed. The said finding is based on appreciation of evidence on record. In other words, it cannot be said that the findings recorded by the Tribunal are perverse being based upon no evidence or that they are contrary to evidence on record. In view thereof, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. The Petition fails and the same is dismissed.

(R.G.KETKAR, J.)