

Sequeira

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

WRIT PETITION NO. 11061 of 2013

Maharashtra State Road Transport
Corporation

.. Petitioner

Vs.

Shri Rajendra Nivrutti Jadhav
- since deceased through legal heirs,
Sangeeta Rajendra Jadhav & anr.

.. Respondents

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

Mr.Samir M.Suryawanshi, for Respondents.

***CORAM: N.M.Jamdar, J.
Monday 16 November, 2015***

P.C. :

The Petitioner Corporation challenges the order passed by the Labour Court Satara dated 11 March 2013 granting reinstatement to the Respondent to his original post of driver and with 25 per cent back wages.

2. During the pendency of the petition, the Respondent expired on 4 November 2013 and his cause is survived by his heirs. The question of reinstatement therefore, does not arise and the petition is restricted to grant of back wages and pensionary benefits.

3. The learned counsel for the Petitioner submitted that the

Respondent was found in a drunken state and he had parked the bus he was driving at the gate of the depot and therefore, he was rightly proceeded with and dismissed from services. He submitted that the Labour Court had not considered the evidence of the material witness Mr. Shaikh and has discarded the same on non germane considerations. The learned counsel submitted that the above therefore, the award being perverse needs to be set aside.

4. By a finding on the preliminary issue, the Labour Court held that the findings of the inquiry officer were perverse. The burden therefore, was on the Petitioner to prove the misconduct of the Respondent. The Labour Court rightly held that dismissal from the services on the ground of being drunk on duty would be a serious charge and in normal circumstances a medical examination ought to have been held. Admittedly, in the present case there was no medical examination held. The explanation given by the Petitioner was that the Respondent ran away from the spot. The Labour Court has noted that if it was the case that the Respondent was under the influence of alcohol, it was not possible for him to easily run away from the spot so also Mr. Shaikh could have easily accosted him. The Labour Court also noted that Mr. Shaikh, the only witness examined, did not report this fact to any police station. The Labour Court held that the Petitioner Corporation has a medical kit for testing the alcohol and no cogent reason was given why the test was not carried out and the explanation that Respondent ran away is not satisfactory. This finding by the Labour

Court cannot be termed as perverse or as an impossible one. The Petitioner had examined other witnesses in the inquiry but did not examine them before the Labour Court. Once the theory that the Respondent ran away from the spot is not established there is nothing against the Respondent to dismiss him from services on the ground that he was under influence of alcohol. In the circumstances, it is not possible to interfere with the impugned order. The Writ petition accordingly, cannot be entertained and is rejected.

(N.M.Jamdar, J.)