

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Letter Patent Appeal No. 274 of 2012 in W.P.No. 1286 of 1999.

Shri Wasudeo s/o Narayanrao Pise vs. Maharashtra State Road Transport Corporation, Buldhana and another.

Notes, Office Memoranda of

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

Mr. B.M.Khan, Adv. for the appellant.

Mr. V.G.Wankhede, Adv. for R-1.

Mrs. Kalyani Deshpande, AGP for R-2

CORAM: B.R.GAVAI &

MRS. MRIDULA R. BHATKAR,JJ

DATE : 24.2.2015

The appeal challenges the Order passed by the learned Single Judge dated 29th June, 2009 whereby allowing the petition filed by the respondent employer and thereby setting aside the orders passed by the learned Labour Court and learned Industrial Court and dismissing the complaint of the appellant.

2. The appellant was working as conductor since 1980-81. The charge on the appellant was that when the

services of the appellant were deployed in a Bus on 27.7.1992 on Amravati Indore route, the said Bus was checked by the checking officer of the respondent Corporation. On the basis of the report of the checking squad, charge sheet came to be issued to the appellant and in a domestic enquiry charges were proved and complainant came to be dismissed vide order dated 5.12.1992 with effect from 15.12.1992.

3. Being aggrieved thereby the complainant filed a complaint bearing Complaint (ULP) No. 2 of 1993 before the learned Labour Court, Akola. The learned Labour Court, Akola vide Judgment and order dated 12th September, 1995 found that there was no corroboration to the statements of the witnesses. Apart from that, the learned Labour Court also found that the complainant has examined defence witnesses. The learned Labour Court also found that the statement that the Bus was checked at Khandwa Phata, was also not supported by documents and also evidence available on record. The learned Labour Court also found that the competent authority has not considered the amount of pathkar which was required to be paid by the complainant. It has further been found that the reporter has fairly admitted during

the cross examination that the complainant was in possession of the amount of Rs. 17.20 towards Pathkar which was to be deposited at Indore and Khandwa. It has also further been found that while checking the cash, this fact was not considered and, therefore, the learned Labour Court has not believed the version of the witnesses on behalf of the employer. The learned Labour Court, therefore, specifically came to a finding of fact that the competent authority has failed to prove that the complainant has misappropriated the amount or that there was any intention to misappropriate the amount. It has been further found that on the other hand it can be said that some of the passengers were travelling without tickets though they paid the fare amount and the complainant was in process of issuing tickets to those passengers. The learned Labour Court found that at the most it can be said that what was proved, was negligence. The learned trial Judge, therefore, specifically found that the case of misconduct was not proved. The learned trial Judge also further took into consideration the unblemished service record of the complainant. The learned trial Judge, therefore, on appreciation of the evidence held that the dismissal of the complainant was not sustainable in law. The learned trial

Judge, therefore, directed reinstatement of the complainant to his original post with continuity of service. However, the claim of the back wages was denied.

4. The respondent Corporation went before the learned Industrial Court by way of revision numbered as Revision (ULP) No. 274 of 1995. The learned Industrial Court vide Judgment and order dated 5.2.1999 has partly allowed the revision. Though the learned Industrial Court, while re-appreciating the evidence concurred with the finding of fact and appreciation of the evidence as was done by the learned Labour Court, found that the punishment needs to be imposed on the complainant for his negligence by withholding his two increments permanently.

5. The learned Single Judge, by the impugned Judgment and order has reversed the finding of fact recorded by the learned Labour Court and affirmed by the learned Industrial Court. By now it is settled principle of law that once the appreciation of the evidence is done by the learned Labour Court, it will not be even permissible for the learned Industrial Court or this court exercising jurisdiction under Article 226 to

re-appreciate the evidence unless it is found that the evidence has been appreciated in perverse and impossible manner. We find that, without coming to the conclusion that the appreciation of the evidence, as was done by the learned Labour Court and affirmed by the learned Revisional Court that it was done in perverse and impossible manner, the learned Single Judge has re-appreciated the evidence. We are of the considered view that this exercise, for the first time, would not be permissible in the writ jurisdiction. The learned Single Judge could have interfered only if found that the appreciation of the evidence as done by the learned Labour Court and as well affirmed by the learned Industrial Court, was done in perverse and impossible manner.

6. In that view of the matter, we are inclined to allow the appeal. The impugned Judgment and order passed by the learned Single Judge is quashed and set aside. The order passed by the learned Industrial Court is maintained.

JUDGE

JUDGE

patle

