

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4226 OF 1995

Vasant Ganpatrao Deshpande,
Age 35 years, Occ. Service as a
Driver in S.T.Department,
Bhokar, Tq. Bhokar, Dist. Nanded. ..Petitioner

Versus

1. The Divisional Controller,
Maharashtra State Road
Transport, Nanded.

2. The Industrial Court, Jalna. ..Respondent

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Advocate for Petitioners : Shri A.B.Kharosekar
Advocate for Respondents : None present.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 25, 2016
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ORAL JUDGMENT:-

1. None appeared for the respondents.
2. I have heard the learned Advocate for the petitioner considering the fact that this petition is 21 years' old and is on the final hearing board.
3. The petitioner is aggrieved by the decision of the respondent / Corporation, by which, he was dismissed from service on 30.5.1988 for having committed an accident of the Bus, which he was driving

and which resulted in injuries to 42 passengers.

4. Shri Kharosekar, learned Advocate for the petitioner has strenuously criticized the judgment of the Labour Court dated 8.2.1995, by which, his challenge to the dismissal through Complaint (ULP) No.11 of 1988, was rejected. He has also criticized the judgment of the Industrial Court dated 28.8.1995, by which, his Revision (ULP) No.15 of 1995 was dismissed.

5. He points out that by the judgment dated 29.10.1990, delivered by the learned Judicial Magistrate (F.C.), in criminal proceedings, the petitioner was acquitted of the offence punishable under Sections 279 and 338 of the Indian Penal Code, which is with regard to rash and negligent driving. He, therefore, submits that owing to the acquittal in the criminal proceeding, both the impugned judgments deserve to be quashed and set aside. He further submits that the petitioner has recently retired from service as he was in employment under the interim orders of this Court.

6. I have considered the submissions of the learned Advocate for the petitioner.

7. The petitioner was a Driver in the service of the respondent. An accident of the Bus driven by him took place on 31.5.1987 on the

Islapur-Apparao Peth route. The said accident caused injuries to about 42 persons. After conducting a domestic enquiry as per the Discipline and Appeal Rules, the petitioner was dismissed from service on 30.5.1988. It is noteworthy that the petitioner caused an accident in less than 12 months from the date of his joining duties.

8. It needs to be noted that by the interim order dated 7.9.1988, the Labour Court confirmed the ex-parte interim relief and directed the reinstatement of the petitioner. By judgment dated 25.11.1988, the Industrial Court dismissed the Revision (ULP) No.44 of 1988, filed by the corporation. As a consequence of such relief, the petitioner is in employment. It is stated by Shri Kharosekar that thereafter, he did not cause any accident.

9. Though by the impugned judgments of the Labour and Industrial Courts, the dismissal of the petitioner has been sustained, this Court, by its order dated 4.9.1995, admitted the petition and directed that if the petitioner is in service, status quo be continued. By virtue of the said order, the petitioner is said to have continued in service and has recently retired about two month's ago.

10. It is trite law that acquittal in criminal proceedings would not *ipso facto* lead to the exoneration of an employee in disciplinary proceedings. It is well settled that the criminal proceedings are

conceptually distinct and different than the disciplinary proceedings in service jurisprudence. Though the petitioner has been acquitted by the learned Magistrate from the charge of rash and negligent driving, he has been held guilty of having caused an accident, which resulted in damage to the Bus and injuries to 42 passengers.

11. It is not in dispute that the enquiry and the findings of the Enquiry Officer have not been interfered with by the Labour as well as the Industrial Courts.

12. Considering the above, the issue is as regards the proportionality of punishment, taking into account that the enquiry is not set aside and the findings of the enquiry officer have not been branded as perverse. The charges are, therefore, proved against the petitioner.

13. A Bus Driver, causing an accident, which has resulted in injuries to 42 passengers, in my view, cannot be said to be a misconduct of a minor or technical character so as to invoke item 1(g) of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The impugned judgments of the Labour Court and the Industrial Court upholding the quantum of punishment, do not appear to be perverse or erroneous. The punishment does not appear to be shockingly

disproportionate considering the gravity of the accident and the fact that the petitioner has not even put in 12 months in service. The challenge posed by the petitioner to the impugned judgment, therefore, is mis-conceived and rejected.

14. This petition is, therefore, dismissed and Rule is discharged.

15. However, it cannot be overlooked that by virtue of the interim orders as well as by the order of this Court dated 4.9.1995, the petitioner has continued in service and has recently retired on attaining the age of superannuation. As such, the dismissal of this petition shall not be a cause for depriving the petitioner of his retiral benefits since he is said to be in employment from 1987 upon reinstatement till his retirement in 2016. He shall, therefore, be entitled for retiral benefits in accordance with the rules of the Corporation.

(RAVINDRA V. GHUGE, J.)

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