

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2142 OF 1997

Maharashtra State Road Transport
Corporation.
Through its Divisional Controller,
Jalgaon.

...PETITIONER

-versus-

Baburao Bhoju Baviskar,
Age : Major, Occupation : Ex-Driver,
R/o At Post Shirsade,
Taluka Amalner, District Jalgaon.

...RESPONDENT

...
Advocate for Petitioner : Shri M.K.Goyanka.
Advocate for Respondents : Shri Vijay Patil.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th August, 2016

Oral Judgment :

1 The Petitioner/ MSRTC is aggrieved by the judgment and order dated 04.11.1991 delivered by the Labour Court, Jalgaon by which Complaint (ULP) No.98/1987 filed by the Respondent/ Employee has been allowed and he has been granted reinstatement with continuity of service and back-wages from the date of his acquittal. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 21.06.1996

by which Revision (ULP) No.3/1996 has been rejected.

2 This Writ Petition was admitted on 26.06.1997 and by way of interim relief, the payment of back-wages as granted by the Labour Court was stayed.

3 It is informed that after reinstatement of the Respondent, his salary was restructured by taking into account all increments to which he would have been entitled to even for a period of unemployment from 08.06.1987 to 17.05.1993. The Respondent has now retired from service upon attaining the age of superannuation on 31.07.2016.

4 By order dated 29.06.2001, on Civil Application No.3578/2001, this Court noted that the Respondent was reinstated in service pursuant to the order of the Labour Court on 17.05.1993 and hence, the Petitioner was directed to fix his salary.

5 There is no dispute that the Respondent, who was working as a Driver with the Petitioner/ MSRTC, was involved in an accident of his bus on 07.04.1986 resulting in the death of a boy aged four years. After conducting a full fledged domestic enquiry, he was dismissed from service on 08.06.1987. The Petitioner had joined employment of the Respondent

in 1981. As such, he had put in only six years of service when he was dismissed.

6 In Complaint (ULP) No.98/1987, the Respondent challenged his dismissal. By the part-1 judgment dated 31.01.1991, the enquiry was upheld, but stood watered down owing to the conclusion of the Labour Court that the findings of the Enquiry Officer are perverse. It is undisputed that though the Petitioner was given an opportunity of conducting a de-novo enquiry for proving the charges, it did not choose to lead any evidence and did not prove the charges against the Respondent. As is trite law that in such circumstances, no charges are proved against the delinquent. The revision petition of the Petitioner/ MSRTC has also been rejected by the judgment dated 21.06.1996. I do not find any reason to interfere with the said judgment since the charges were never proved by the Petitioner/ MSRTC before the Labour Court.

7 Shri Goyanka, learned Advocate for the Petitioner/ MSRTC, has strenuously canvassed that the Petitioner is in financial losses and would not be able to sustain the burden of back-wages. He further submits that the principle of “no work- no pay” needs to be applied in this case so as to deprive the Respondent of the back-wages for the period 08.06.1987 to 16.05.1993. He further submits that after reinstating the Respondent on

17.05.1993, his pay structure was adjusted to include even the increments which he would have earned in between June, 1987 to May, 1993 and therefore, all benefits have been given to the Respondent.

8 Shri Patil, learned Advocate for the Respondent, has strenuously opposed the submissions of Shri Goyanka. He prays that back-wages should be paid to the Respondent. He may, at the most, waive the interest component.

9 Shri Goyanka further submits that after the reinstatement of the Respondent, he has not indulged in any accident and has superannuated. All his legal dues would be paid to him as are permissible by the service conditions and rules applicable.

10 Insofar as the back-wages are concerned, it cannot be disputed that the Petitioner/ MSRTC is in financial losses. It is also undisputed that the Respondent had driven the bus on 07.04.1986 which resulted in the death of a boy aged four years. The Petitioner/ MSRTC did not conduct a de-novo enquiry before the Labour Court to prove the charge and hence, under fortuitous circumstances, the Respondent is a beneficiary of this serious lapse on the part of the MSRTC.

11 The Honourable Supreme Court in the case of *Gauri Shankar vs. State of Rajasthan*, **2015 (2) CLR 497** has concluded that back-wages to the extent of 25% would be appropriate to reduce the rigours of litigation suffered by the employee.

12 In the instant case, had the MSRTC proved the charges against the Respondent before the Labour Court, things would have been different. By not proving the charges, the Respondent has to be exonerated. As such, considering the peculiarity of the fact situation as above, which is quite unusual, I am modifying the impugned judgment of the Industrial Court by granting only 25% back-wages to the Respondent/ Employee for the period from 08.06.1987 till 16.05.1993, which will be calculated on the basis of his last drawn wages in the month of May, 1987.

13 In the light of the above, this Writ Petition is partly allowed and the impugned judgments of the Labour Court dated 04.11.1991 and the Industrial Court dated 21.06.1996 are modified only to the extent of grant of back-wages, with a direction to the Petitioner/ MSRTC to pay 25% back-wages as noted above.

14 Rule is made partly absolute in the above terms.

15 At this stage, Shri Patil makes a request that the Petitioner/ MSRTC may consider the clearance of retiral benefits such as pension, gratuity, provident fund, family pass, leave encashment, etc.. Shri Goyanka submits that the Petitioner/ MSRTC shall consider this request strictly in accordance with the Rules and the Service Conditions applicable and those benefits which are legally payable to the Respondent/ Employee shall be, accordingly, paid to him.

kps

(RAVINDRA V. GHUGE, J.)