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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2495/2016

Ambadas Raghunath Wagh,
Age 31 Years, Occu. Service,
R/o At Post Nandur Nimbadaitt,
Taluka Pathardi, District Ahmednagar.
...Petitioner...

Versus

- 1 Maharashtra State Road Transport Corporation, Ahmednagar Division, Sarjepura, Kotla, Ahmednagar. Through its Divisional Controller.
- 2 The Competent Authority & The Divisional Traffic Inspector, Maharashtra State Road Transport Corporation, Ahmednagar Division, Sarjepura, Kotla, Ahmednagar.
...Respondents...

.....
Shri P.V. Barde, Advocate for petitioner.
Shri B.S. Deshmukh, Advocate for respondent nos.1 & 2.
.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 15.03.2016

ORAL JUDGMENT :

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1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioner is aggrieved by the order of the Labour Court dated 12.1.2016 by which application (Exhibit U-2) seeking interim relief u/s 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, has been rejected and the *status quo* granted on 8.12.2015 was vacated. The petitioner is also aggrieved by the judgment and order dated 23.2.2016 delivered by the Industrial Court by which Revision (ULP) No.5/2016 filed by the petitioner has been dismissed.

3] Shri Barde, learned Advocate for the petitioner, submits that on 10.3.2014, it was alleged by the respondent – Corporation that the petitioner is under the influence of liquor. He was charge-sheeted on 12.4.2014 and suspended on 13.3.2014. The suspension was revoked on 14.5.2014. He, therefore, submits that notwithstanding the charges leveled upon him, the petitioner was reinstated in service as a Driver and

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since then he has continued to perform his duties till this date. He has been allotted overnight journeys and in the last about two years, there has not been a single instance of drinking while on duty or driving under the influence of liquor. He further submits that in these last two years from the date of the charge-sheet, he has not committed a single accident.

4] He further submits that he received a second show cause notice dated 2.12.2015 alongwith the copy of the Enquiry Officer's report. The Enquiry Officer, beyond his scope of powers and jurisdiction, has proposed the punishment of dismissal from service considering the fact that the petitioner was appointed as a Driver in 2013. Shri Barde, therefore, submits that the Enquiry Officer could not have recommended the punishment as it is indicative of a bias against the petitioner.

5] He submits that the fairness of the enquiry and the findings of the Enquiry Officer are to be looked into by the Labour Court. Though the petitioner has joined as a Driver in 2013 and the incident of having consumed

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liquor has occurred on 10.3.2014, the fact remains that he has not committed any accident till today. In these circumstances, if he is dismissed by way of punishment, it would cause an irreparable harm and serious prejudice to the petitioner.

6] He further submits that the Labour Court as well as the Industrial Court have lost sight of the fact that the medical report was on record before both the lower Courts and which indicates that though his breath was smelling of liquor, the Medical Officer concluded that he was normal, his speech was normal, he was physically conducting himself in a normal manner and he was not under the influence of liquor. With this medical report on record, the proposed punishment of dismissal from service may, *prima facie*, sound to be shockingly disproportionate.

7] Shri Deshmukh, learned Advocate appearing on behalf of the respondent – Corporation, has not disputed the medical report, which is on record. He also does not dispute that since joining the duties as a Driver from

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2013 onwards, the petitioner has not caused any accident. His past record is clean.

8] Shri Deshmukh does not dispute that though the petitioner was suspended on 13.3.2014, same was revoked on 14.5.2014 and ever since then he has been deployed on various journeys inclusive of overnight journeys and long distance journeys.

9] In order to assess the conduct of the petitioner as on date, I had called upon Shri Deshmukh to take instructions as to whether the petitioner was any time apprehended in an intoxicated condition or was noted to be on duty after consuming liquor. Shri Deshmukh has placed on record Exhibit X, which is a communication from the Depot Manager dated 3.3.2016, which indicates that after the incident of 10.3.2014, the petitioner has never been apprehended either under the influence of liquor or upon consuming liquor. Exhibit X further indicates that in the last two years, the Corporation was not required to issue any disciplinary notice to the petitioner on this count.

10] Shri Deshmukh, however, submits that the management should be permitted to proceed to conclude the disciplinary proceedings and that could be done only after the management passes a final order of punishment either of a minor nature or of a major nature. He, therefore, submits that no interference is called for and this petition be dismissed.

11] Shri Barde has tendered an affidavit of the petitioner dated 12.3.2016, which is taken on record and marked as Exhibit Y for identification. Vide the said affidavit, he submits that the petitioner is willing to work on any other post during the pendency of the proceedings. He is willing to relinquish his duties as a Driver and work with the respondent – Corporation till the complaint pending before the Labour Court is decided.

12] I have considered the submissions of the learned Advocates, as recorded above, and the fact situation.

13] I have no doubt as to the risk involved with the

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service of a drunkard driver. It is trite law that a drunkard driver ought not to be kept in employment and for that reason, any drunkard employee cannot be tolerated and deserves the punishment of dismissal.

14] In the present case, the medical report, which is on record, indicates that the breath of the petitioner smelt of liquor. However, his physical appearance, behaviour and conduct was normal and the Medical Officer has ruled that he was not under the influence of liquor.

15] I am only considering this aspect while dealing with the prayer of the petitioner for interim protection. I make it clear that this *prima facie* assessment of the medical report is not a conclusion on the said issue by this Court and the Labour Court shall not be influenced by these observations while deciding Complaint (ULP) No.35/2015 on its merits.

16] I have thus considered the medical report coupled with the fact that the respondents themselves, for the reasons best known to them, have revoked the suspension of the petitioner on 14.5.2014 and since then he has been allotted duties, which include long distance

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and overnight journeys. In this backdrop of the petitioner having worked flawlessly for almost two years, ends of justice would be met by continuing him in employment till the complaint is decided by the Labour Court within a time frame.

17] I have come to the above conclusion since I am conscious of the fact that if the petitioner consumes liquor even once and causes an accident, it would risk the lives of the common men / citizens. Though the respondent – Corporation *prima-facie* appears to be careless in revoking the suspension and deploying the petitioner on duty as a Driver in the last two years, such carelessness can neither be countenanced, nor permitted.

18] It is in this backdrop that I am accepting the affidavit of the petitioner (Exhibit Y) and issuing directions to the respondent, in order to balance the equities, to allot the petitioner any duty otherwise than as a Driver or a Cleaner on the Bus. His duties shall be restricted to the Depot at which he is posted and he

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shall not be allotted a duty to be discharged by boarding a Bus in any capacity whatsoever.

19] The Labour Court as well as the Industrial Court have protected the services of the petitioner and he is in employment even today.

20] In the light of the above, this petition is partly allowed. The impugned orders of the Labour Court and the Industrial Court are modified as under:-

a] The petitioner shall be deployed on duty by the respondent - Corporation on any post or nature of duty other than as a Driver or a Cleaner and shall not be posted on any Bus in any form whatsoever.

b] His work shall be restricted to the Depot at which he is presently posted at.

c] The Labour Court shall frame appropriate issues with regard to the fairness of the enquiry and the findings of the Enquiry Officer in the light of the law laid down in *Maharashtra State Cooperative Cotton Growers Marketing Federation*

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Ltd. v. Vasant Ambadas Deshpande (2014 I CLR 878)
and *MSRTC, Beed v. Syed Saheblal (2014 III CLR 547)*.

d] The litigating sides before the Labour Court, in the peculiar circumstances as above, shall refrain from seeking adjournments on trivial or unreasonable grounds.

e] The Labour Court shall endeavour to decide Complaint (ULP) No.35/2015 as expeditiously as possible and preferably on or before the 30th day of December, 2016.

21] Rule is made partly absolute in the above terms.
There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)