

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8334 OF 2015

Annasaheb Laxman Atole,
Age-56 years, Occu-Nil,
R/o Takali Kazi, Taluka Nagar,
Dist. Ahmednagar

-- PETITIONER

VERSUS

Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Sarjepura, Kotla, Ahmednagar
Through its Divisional Controller

-- RESPONDENT

Mr.P.V.Barde, Advocate for the petitioner.
Mr.B.S.Deshmukh, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/10/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the Part II award dated 19/12/2013 by which Ref.(IDA) No.54/2007 has been answered in the negative.
3. Mr.Barde, learned Advocate for the petitioner has strenuously

canvassed the following aspects.

- [a] The petitioner joined employment as a driver in 1981.
- [b] On 22/09/1991, when the bus was near the Chinchodi village bus stop on the Ahmednagar Jamkhed route, a 65 year old, blind and deaf person collided with the left corner of the bus and fell down on the road . Subsequently he passed away.
- [c] After conducting a departmental enquiry against the petitioner, he was terminated on 06/12/2001.
- [d] Barring the above incident, there is no other major accident involving the petitioner in 20 years of service.
- [e] Minor incidents have occurred.
- [f] He is out of employment for about 15 years and has attained the age of superannuation on 29/05/2016.
- [g] He has been acquitted of the charge of having committed an offence punishable u/s 279 and Section 304-A of the IPC by the judgment of the learned J.M.F.C. dated 27/04/1995.
- [h] He can be considered to be in continuous employment with or without back wages and gratuity could be awarded to him considering that a shockingly disproportionate punishment has been awarded to him.

4. Mr.Deshmukh, learned Advocate for the respondent/ Corporation has supported the impugned Part II Award. He submits that the Part I Award dated 24/01/2013, upholding the departmental enquiry as well as the findings of the Enquiry Officer, has not been challenged by the petitioner in this petition. The accident at issue has resulted in the death of a person, which is by itself a grave and

serious misconduct. His past record is blemished. He has been punished 16 times out of which 9 misconducts pertain to unauthorized absenteeism and 6 misconducts are with regard to minor accidents, excluding the present misconduct.

5. I have considered the submissions of the learned Advocates and I have gone through the Part-II award.

6. The enquiry has been sustained by the Part-I award dated 24/01/2013. The evidence on record indicates that the petitioner had applied brakes of the bus when he saw the deceased person coming out of the crowd in front of the bus. The brake marks left by the tyres of the bus on the road indicate 18 feet long black marks. It would, therefore, indicate that the bus was not being driven at a slow speed. Though it may be difficult to assess as to the speed of the bus, but the brake marks appearing on the road being 18 feet long, would surely indicate that the bus was not being driven at a slow speed despite the petitioner passing through a village.

7. The past service record of the petitioner indicates 6 minor instances of damage to the bus. On 3 occasions, his basic salary was reduced by one stage for 6 months each. On other 3 occasions

he was fined with Rs.50/- and Rs.100/- (2 occasions).

8. The Hon'ble Apex Court in the matter of Damoh Panna Sagar Rural Regional Bank and another Vs. Munna Lal Jain, 2005(104) FLR 291 has concluded that unless the punishment appears to be shockingly disproportionate, no interference should be caused in the quantum of punishment merely because it appears to be disproportionate. Only when the judicial conscience is shocked by the quantum of punishment considering the gravity and seriousness of the misconducts proved, that the Court should interfere with the punishment. In the instant case, not only is the incident at issue grave and serious, the past service record of the petitioner would be an aggravating factor.

9. In the light of the above, I do not find that the impugned award could be termed as being perverse or erroneous. The petition, being devoid of merit, is therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)