

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10432 OF 2010

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Division Nanded,
Dist.Nanded

-- PETITIONER

VERSUS

Chayabai w/o Vitthal Shinde,
Age-Major, Occu-NIL,
(R/o Hadgaon, Tal.Hadgaon,
District Nanded)
At present residing at
C/o Shyamrao Tulshiram Higole,
Railway Canteen, Basmatnagar,
Tal.Basmat Nagar, Dist.Hingoli

-- RESPONDENT

WITH
WRIT PETITION NO.3658 OF 2011

Chayabai w/o Vitthal Shinde,
Age-Major, Occu-Service,
R/o Bhoker, Tal.Bhoker,
Dist.Nanded

-- PETITIONER

VERSUS

1. The Divisional Traffic Superintendent,
(default),
Competent Authority, Maharashtra State
Road Transport Corporation,
Nanded Division, Nanded,

2. The Divisional Controller,
Maharashtra State Road Transport
Corporation,
Nanded Division, Nanded

-- RESPONDENTS

Mr.B.S.Deshmukh, Advocate for the petitioner/employer.
Mrs.M.R.Jamdhade, Advocate for the respondent/employee.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/07/2016

ORAL JUDGMENT :

1. Both these matters have been admitted by this Court.
2. The first petition is filed by the employer/M.S.R.T.C. The employee respondent in the first petition has preferred the second petition for challenging the same judgment of the Industrial Court, by which the employee was granted 25% back wages alongwith the direction for reinstatement with continuity of service.
3. I have considered the submissions put forth by the learned Advocates for the respective sides extensively.
4. There is no dispute that the employee, who is now deceased, having passed away on 13/06/2015, was dismissed from service on 17/02/1997. The cause of dismissal was that the deceased, who was a driver with the ST Corporation, was driving the bus on 17/06/1995, which met with an accident at Charthana village Dist. Aurangabad. The bus had skidded and had collided against a tree

resulting in the death of one passenger and injuries to 30 other passengers. Pursuant to the disciplinary proceedings, he was dismissed from service by order dated 31/01/1997 w.e.f. 17/02/1997. It is stated that the deceased had put in about 10 years of service prior to his death. Learned Advocate for the Corporation submits that the qualifying service for the retiral benefits, as like pension, is 10 years.

5. It is apparent from the judgment of the Labour Court that the findings of the Enquiry Officer were declared as perverse and in the same judgment, the complaint has been allowed. The law is well settled. If the enquiry and the findings are challenged, the first 2 issues with regard to the fairness of the enquiry and the perversity in the findings, have to be dealt with peremptorily before dealing with the other issues.

6. The Labour Court dealt with the issue of perversity in the findings of the Enquiry Officer and after concluding that the findings are perverse, it proceeded to deliver the impugned judgment thereby allowing the complaint. The Industrial Court failed to notice the said error and dismissed the revision filed by the Corporation.

7. In the above fact situation, an interference of this court in the impugned judgments could have led to remanding of the matter to the Labour Court. However, it cannot be ignored that the employee has already passed away and it would not be possible for the Corporation to conduct a *denovo* enquiry. At the same time, it cannot be ignored that the Corporation did not assert its right to conduct a *denovo* enquiry.

8. It is trite law that if a grave and serious misconduct is committed, the Court cannot express any sympathy towards the employee. For this reason, the order of grant of 25% back wages by the Industrial Court needs to be interfered with. Nevertheless, the deceased is said to have completed 10 years in service and since no offence, which could be termed as moral turpitude has been committed, the legal heir of the deceased would be entitled for gratuity and pension, if otherwise permissible in law.

9. As such, the petition filed by the Corporation is partly allowed. The impugned judgment of the Labour Court and the Industrial Court is set aside with a direction to the petitioner/employer to pay the gratuity as is payable to the deceased as on date of his dismissal, within 12 weeks from today. The Corporation shall consider the case

of the deceased for pensionary benefits, if so permissible, which then could be advanced to the widow of the employee. Rule is made partly absolute in the above terms.

10. Consequentially the petition filed by the employee is disposed of and Rule is discharged.

11. Pending civil application, does not survive and stands disposed of.

(RAVINDRA V. GHUGE, J.)