

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4882 OF 2005**

Maharashtra State Road Transport)
Corporation having its office)
at Vahatuk Bhavan Dr. A. Nair Marg,)
Bellasis Road, Bombay Central,)
Bombay 400 008) ..Petitioner

Vs.

Bhaskar Duklya Patil)
At Vashwl Post Dighodi)
Tak. Uran Dist Raigad) ..Respondent

**Mr. G. S. Hegde i/b M/s. G. S. Hegde & Associates for the Petitioner
Mrs. Seema Chopda for the Respondent**

**CORAM : R. M. SAVANT, J.
DATE : 26th AUGUST, 2016**

ORAL JUDGMENT

1 The Writ Jurisdiction of this Court is invoked against the order dated 21-8-2004 passed by the Learned Member of the Industrial Court, Thane by which order the Revision Application filed by the Petitioner came to be dismissed and resultantly the order dated 9-2-2001 passed by the Learned Judge of the 4th Labour Court, Thane, allowing the Complaint ULP No.69 of 1995, came to be confirmed.

2 The facts giving rise to the above Petition can in brief be stated thus:

The Petitioner herein is a Road Transport Corporation established under the Road Transport Corporation Act. The Petitioner plies its buses on various routes in the State of Maharashtra. The Respondent herein was working as a conductor. On 21-11-1991 the bus wherein the Respondent was the conductor, was checked at Jambhul Pada and it was found that there was a discrepancy in respect of the payment of fare in respect of 7 ½ passengers. The Respondent was therefore issued a charge sheet under clause 7a, 7c, 7d, 10, 11, 12b and 22 of Schedule A of the Discipline and Appeals Procedure of the Petitioner Corporation. The sum and substance of the charge sheet was that the Respondent had committed a misconduct relating to the collection of fare whilst he was on duty on 21-11-1991. In the inquiry the charges were held to be proved against the Respondent and the punishment of dismissal was proposed against the Respondent. This resulted in the Respondent filing Complaint ULP No.69 of 1995 alleging unfair labour practice against the Petitioner. The Petitioner filed its Written Statement and pointed out the seriousness of the charges which were held to be proved against the Respondent. It seems that in the complaint the parties filed pursis at Exhibit 10 informing the court that they do not want to lead any evidence on the preliminary issue as well as on merits of the case. The Labour Court therefore decided to proceed with the complaint on the basis of the pleadings and the inquiry proceedings.

3 In so far as the preliminary issue is concerned, the Labour Court held that the inquiry was fair and proper. In so far as the findings of the enquiry officer are concerned, the Labour Court held that on the basis of the material on record the charges can be said to be proved in the inquiry. However, in so far as the proportionality of the punishment is concerned, the Labour Court was of the view that the punishment was disproportionate to the charges proved against the Respondent and accordingly held that the Petitioner has engaged in unfair labour practice by issuing the said show cause notice dated 28-2-1995 and it was directed to cease and desist from the said unfair labour practice. The Labour Court also set aside the show cause notice dated 28-2-1995 and directed the Petitioner to continue the Respondent who was the complainant in their employment. The exparte ad-interim order dated 3-3-1995 was also confirmed.

4 The Petitioner aggrieved by the said order dated 9-2-2001 filed Revision ULP No.10 of 2002 under Section 44 of the MRTU & PULP Act 1971. The Industrial Court did not deem it appropriate to interfere with the findings of the Labour Court as regards the proportionality of the proposed punishment in view of the fact that the past record of the Respondent was taken into consideration by the Petitioner without giving any opportunity to the Respondent in that behalf. The Industrial Court accordingly by the impugned

judgment and order dated 21-8-2004 has dismissed the said Revision Application.

5 It appears that during the pendency of the above Petition, the Respondent has superannuated in October 2013. The Learned Counsel appearing on behalf of the Respondent states that the Respondent has been given all his benefits except gratuity which has been withheld on account of the fact that the instant proceedings are pending. Having regard to the length of service put in by the Respondent the gratuity should be in the region of about Rs.1 to 1.15 lacs approximately.

6 Now coming to the challenge raised on behalf of the Petitioner in the above Writ Petition, it is required to be noted that the Labour Court had answered the preliminary issues in favour of the Petitioner namely that the enquiry was fair and proper and that the findings recorded by the enquiry officer were not perverse. However, once having done so, the Labour Court as can be seen has on the issue of proportionality of the proposed punishment has observed that the punishment proposed was not in proportion to the charges proved against the Respondent. The said finding of the Labour Court has been confirmed by the Industrial Court in Revision by dismissing the Revision Application filed by the Petitioner. The Petitioner is a Road Transport Corporation which as stated hereinabove plies its buses on various routes in

Maharashtra for the convenience of the traveling public. In the instant case, the cause for issuing the charge sheet to the Respondent was the fact that there was a discrepancy in the issuance of tickets in respect of 7½ passengers. In the enquiry it has been proved that 4½ passengers were travelling without tickets. Though the amount involved might be meagre but having regard to the fact that the Petitioner is a Road Transport Corporation, the charge leveled against the Respondent was serious as the matter involves public revenue. This Court as well as the Apex Court have upheld the punishments imposed on the conductors of the Road Transport Corporation though the amounts are meagre if the charge is held proved on the principal that the same amounts to dishonesty in respect of public funds. In the instant case, since the Respondent has retired and has been paid all his benefits except gratuity and since the proceedings were at the stage where the show cause notice was issued to the Respondent, it would be just and proper to substitute the punishment proposed by the said show cause notice by the punishment of stoppage of one increment for a period of 5 years from the year in which the show cause notice which was on 28-2-1995. The Petitioner would therefore be entitled to recover the said amount from the gratuity payable to the Respondent which gratuity has been so far withheld. The Learned Counsel appearing on behalf of the Respondent Mrs. Chopda on instructions of the Respondent who is personally present in Court has no objection to the said course of action being followed. The Petitioner accordingly to make calculation and after deducting the amount

in terms of the directions as contained hereinabove and pay the balance of the gratuity to the Respondent expeditiously.

7 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]