

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

WRIT PETITION No.120 OF 2015

Maharashtra State Road Transport Corporation, Amravati, through its Divisional
Controller.

..vs..

Mohammad Yusuf Abdul Sattar

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Mr. V.H. Kedar, advocate for petitioner.
Mr. N.R. Saboo, advocate for respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : 28th JUNE, 2016.

Heard.

Challenge in the present writ petition is to the order passed by the Industrial Court in a revision application filed by the petitioner challenging the order passed by the Labour Court directing reinstatement of the respondent with continuity of service and payment of 50% back wages.

2. It is the case of the petitioner that the respondent was employed as a driver with the Corporation. During the course of employment, on 2.9.1999 the bus driven by the respondent turned turtle. According to the petitioner, the respondent was driving the said bus under influence of liquor. On that basis, an inquiry was held against the respondent. This inquiry further resulted in the order of

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dismissal being passed against the respondent on 24.11.2003. Being aggrieved, the respondent filed complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 before the Labour Court. The Labour Court held that the inquiry was not held in fair and proper manner. This order was challenged by the petitioner before the Industrial Court but the revision came to be dismissed. Thereafter the Labour Court considered the complaint and as per order dated 13.3.2014 held that the petitioner had engaged in an unfair labour practice by dismissing the respondent. It therefore directed reinstatement of the respondent with continuity in service and 50% back wages. This order was maintained by the Industrial Court.

3. Shri Kedar, the learned counsel for the petitioner, submitted that the fact that the accident took place was sufficient to indicate that the respondent had driven the vehicle under influence of liquor. He submitted that the medical report that was placed on record was sufficient to prove the charge in question. Though attempts were made to summon the Medical officer for leading evidence, said witness did not turn up for which the petitioner could not be blamed. He submitted that both the Courts erred in holding that the inquiry conducted against the respondent was not fair and proper, specifically when

full opportunity was given to the respondent. He further submitted that the evidence as required in a criminal trial was not necessary and the contents of the medical certificate were sufficient to indicate the guilt of the respondent.

4. Shri N.R. Saboo, the learned counsel for the respondent, supported the impugned order. He submitted that the petitioner did not lead proper evidence in the inquiry proceedings. The report of the blood test of the respondent was not placed on record though the same was demanded from the petitioner. He submitted that the witness examined by the petitioner had in fact supported the case of the respondent. Despite full opportunity to the petitioner to bring on record the relevant evidence before the inquiry officer, the charges in question were not proved. He, therefore, submitted that both the Courts below held in favour of the respondent. He placed reliance on the decision in W.P. No.2704 of 1993 (The Divisional Controller, M.S.R.T.C., Division Office Amravati Vs. Vithal s/o Baghuji Shrirao). He submitted that the blood report of the employee who was alleged to be under influence of liquor was required to be placed on record.

5. I have given due consideration to the respective submissions. The Labour Court while deciding the preliminary issue found that the respondent had

demanding report of his blood test which according to the petitioner had been taken. This report was not placed on record. It is further admitted that the respondent was taken to the Primary Health Center and the doctor concerned has not been examined. The conductor who was examined by the petitioner did not support the case of the Corporation. Despite sufficient opportunity being given to the petitioner to prove the charge, it was held that the inquiry was not conducted in a proper manner. This order was confirmed by the Industrial Court in the earlier round of litigation.

7. The material on record indicates that the proceedings had been remanded back so as to permit the petitioner to lead further evidence. The only witness examined was the conductor of the concerned vehicle. He did not support the case of the petitioner. As held by learned Single Judge in *Vithal Baghuji Shrirao (supra)*, merely on the basis of the medical certificate without the examination of the blood of the concerned person, the charge of drunkenness cannot be proved. In the present case, the same has not been done. It is in that background the Labour Court as well as the Industrial Court have held that the inquiry held that the charge of driving under influence of liquor has not been duly proved. On that basis the order of reinstatement with continuity in service and 50% back wages came to be passed.

8. In view of aforesaid, I do not find that any case has been made out to interfere in writ jurisdiction. The petition is, therefore, dismissed with no order as to costs.

JUDGE

Hirekhan

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