

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**LETTERS PATENT APPEAL NO. 64 OF 2003
IN
WRIT PETITION NO. 2455 OF 2001**

The Divisional Controller, M.S.R.T.C.
Ahmednagar

.. Appellant

Versus

Dinkar Sampat Aher

.. Respondent

Shri M. K. Goyanka, Advocate for the Appellant.

Shri T. K. Prabhakaran, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
SMT. VIBHA KANKANWADI, JJ.**

DATE : 03RD NOVEMBER, 2017.

FINAL ORDER :

. The present appeal is filed against the order of the learned single Judge dismissing the writ petition and confirming the judgment and award of the Labour Court in the reference.

2. Mr. Goyanka, the learned counsel for the appellant submits that, only on the ground that passenger is not examined the Labour Court and the learned Single Judge of this Court have negatived the case of the present appellant. Examination of passenger is not necessary to prove the case. The learned counsel relies on the judgment of the Apex Court in a case of

North West Karnataka Road Transport Corporation Vs. H. H. Pujar reported in *AIR 2008 SC 3060*. According to the learned counsel misappropriation on the part of the respondent has been proved by independent evidence of the witness. The same was sufficient.

3. Mr. Prabhakaran, the learned counsel for the respondent submits that, the respondent was reinstated in service by the appellant after the order of the learned Single Judge. The respondent on attaining age of superannuation has also retired from service. The disciplinary proceeding stood vitiated. The appellant ought to have proved the case by leading independent evidence before the Labour Court. It miserably failed to prove the said charge against the respondent.

4. The Labour Court as well as the learned Single Judge of this Court have scanned the evidence on record and have concurrently arrived at conclusion that charge could not be proved against the respondent. This Court in letters patent appeal would not embark upon re-appreciation of evidence in totality, unless it is shown that the judgments impugned suffer from perversity.

5. Even otherwise, the appellant has reinstated the respondent in service and it is stated that, even backwages are paid to the respondent, so also retiral benefits except the

gratuity.

6. Considering the fact that, the respondent has been reinstated and subsequently retired from service and also considering that the learned Single Judge and the Labour Court have concurrently after appreciation of evidence arrived at conclusion that the appellant could not prove the charges independently before the Labour Court and that the enquiry was vitiated, no interference is called for. The letters patent appeal is dismissed. No costs.

[SMT. VIBHA KANKANWADI,J.] [S. V. GANGAPURWALA, J.]

bsb/Nov. 17