

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

WRIT PETITION NO.4947 OF 1997

Maharashtra State Road Transport
Corporation.
Through its Divisional Controller,
Jalna.

...PETITIONER

-VERSUS-

Sadullah Khan Aziz Khan,
Age : Major, Occupation : Service,
R/o Old Jalna, Jalna.

...RESPONDENT

...

Shri D.S.Bagul, Advocate for the Petitioner.

...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 02nd February, 2017

Oral Judgment :

1 The Petitioner/ MSRTC is aggrieved by the judgment of the Industrial Court dated 17.01.1997 by which Complaint (ULP) No.63/1995 has been allowed and the order of punishment of lowering the basic salary by three stages, was quashed and set aside concluding that none of the charges were proved against the Respondent.

2 None appears for the Respondent despite the matter being shown on the final hearing board, which is taken up on every Thursday. I

have heard the learned Advocate for the Petitioner, who has criticized the impugned judgment.

3 After considering the pleadings of the parties and the record available, I find that the Respondent/ Employee had challenged the enquiry and the findings of the Enquiry Officer in Complaint (ULP) No.63/1995 before the Industrial Court. He had challenged the order of punishment of lowering his basic pay by three stages. The grievance of the Respondent was that the accident that occurred when he was reversing the Bus and was owing to a wrong signal given by the Bus Conductor. The Respondent followed the signal given by the Bus Conductor and accordingly, started reversing the bus which caused an accident. A small boy came under the rear wheels of the Bus and he died instantly.

4 In Criminal Case No.459/1990, the learned JMFC, by judgment dated 25.07.1994, acquitted the Respondent/ Driver and convicted the Bus Conductor with simple imprisonment till rising of the Court and pay the fine of Rs.5000/-.

5 The Respondent, therefore, took a stand before the Industrial Court that since he was acquitted by the Criminal Court, the employer could not have conducted an enquiry and could not have punished him.

His acquittal ipso-facto must lead to his exoneration in the enquiry.

6 The Honourable Supreme Court, in the following judgments, has concluded that the acquittal from criminal proceedings will not ipso facto lead to the exoneration of the delinquent in the domestic enquiry:-

- (a) *Nelson Motis vs. Union of India*, **AIR 1992 SC 1981 : (1992) 4 SCC 711.**
- (b) *State of Karnataka vs. T. Venkataramanappa*, **(1996) 6 SCC 455.**
- (c) *State of A.P. vs. K. Allabakash*, **(2000) 10 SCC 177.**
- (d) *Ajit Kumar Nag vs. Indian Oil Corporation Ltd.*, **(2005) 7 SCC 764. (three Judge Bench).**
- (e) *Divisional Controller, Karnataka State Road Transport Corporation vs. M.G.Vittal Rao*, **(2012) 1 SCC 442.**

7 The probative value of evidence in the criminal proceedings is of a high degree and since the offence has to be proved beyond any doubt, the acquittal in criminal proceedings cannot be pitted against or placed in juxtaposition with the delinquent being held guilty in a domestic enquiry. The charges levelled upon the delinquent in the domestic enquiry can be proved on the preponderance on the principles of probabilities.

8 I find from the impugned judgment that the Industrial Court has ventured into an investigating as to whether, the charges in the criminal trial and domestic enquiry could be compared. There is no dispute that the offence registered against the Respondent was under Section 304(A) of the Indian Penal Code, whereas the charge levelled upon him in the domestic enquiry was with regard to rash and negligent driving under clauses 10 and 12 of the Discipline and Appeal Rules of the Petitioner/ MSRTC.

9 Considering this situation and the fact that the Honourable Supreme Court has concluded that the criminal proceedings and the disciplinary proceedings are conceptually distinct and different, the Industrial Court could not have entertained the complaint lightly and could not have concluded that lowering of the basic salary by three stages was illegal. The fact that a child got crushed under the rear wheels of the Bus, in my view, would be sufficient to consider the case of the Respondent for disciplinary action.

10 The Honourable Supreme Court in the matter of *Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain*, **2005 (104) FLR 291**, has held that unless the punishment inflicted does not appear to be

shockingly disproportionate, there cannot be an interference in the quantum of punishment only because it may appear to be disproportionate. The Respondent was not awarded the punishment of dismissal from service. Lowering the basic salary by three stages, cannot be said to be even a disproportionate punishment, much less shockingly disproportionate.

11 There is one more angle to this case. The Industrial Court has vitiated the enquiry and has concluded that the findings of the Enquiry Officer are perverse as no charge can be said to be proved against the Respondent. It was concluded that none of the charges being proved against the Respondent, would lead to the exoneration of the Respondent. This in effect has led to the findings of the Enquiry Officer being set aside for being perverse.

12 Considering the law standing for the last about 50 years, originating from the judgment of the Honourable Supreme Court in the matter of *Motipur Sugar Factory Pvt.Ltd. Vs. The Motipur Sugar Factory*, **AIR 1965 SC 1803** and which is considered in the judgment of this Court in the matter of *MSRTC, Beed v/s Syed Saheblal Syed Nijam*, **2014 (III) CLR 547 : 2014(4) Mh.L.J. 687**, the Industrial Court could not have set aside the enquiry without framing proper issues with regard to the

fairness of the enquiry and the findings of the Enquiry Officer.

13 Considering the above, this Writ Petition is partly allowed. The impugned judgment of the Industrial Court dated 17.01.1997 is quashed and set aside. Complaint (ULP) No.63/1995 is remitted to the Industrial Court for framing of the following two issues:-

- (a) Whether, the Complainant proves that the domestic enquiry was conducted in violation of the principles of natural justice?
- (b) Whether, the Complainant proves that the findings of the Enquiry Officer are perverse?

14 The Industrial Court shall accordingly, issue notices to the litigating sides and shall first decide the above two issues in the light of the law laid down in the case of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd. v/s Vasant Ambadas Deshpande*, **2014(1) CLR 878 : 2014(3) Mh.L.J. 339**. After appearance, the Petitioner/ MSRTC shall produce the original record and proceedings before the Industrial Court for a decision on the first two issues.

15 Rule is made partly absolute in the above terms.