

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4267 OF 1997

Shaikh Nisar Pir Mohammad,
(Deceased) through his legal LR's,

- 1-a. Ayesha w/o Nisar Shaikh,
Age-45 years, Occu-Household,
- 1-b. Tanveer s/o Nisar Shaikh,
Age-25 years, Occu-Daily Wager,
- 1-c. Irfan s/o Nisar Shaikh,
Age-21 years, Occu-Daily wager,

All r/o Rahuri Factory,
Tq.Rahuri, Dist.Ahmednagar

– PETITIONERS

VERSUS

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Ahmednagar

– RESPONDENT

Mr.S.V.Warad, Advocate for the petitioner.
Mr.Manoj Shinde h/f Mr.M.K.Goyanka, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 12/01/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the award dated 30/01/1996, by which, Reference (IDA) No.69/1989 has been rejected by the Labour Court. This Court has admitted this petition on 08/02/2001.

2. The petitioner joined the respondent / Corporation as a Driver

in the year 1979. On 24/05/1985, he was driving the Bus from Shrirampur to Bombay. While taking a turn towards the S.T. Stand, Loni, another S.T. Bus dashed the petitioner's bus from behind. The petitioner could not control his bus and dashed a cyclist who died as a consequence of the said accident.

3. After being dismissed from service w.e.f. 31/12/1986, the petitioner approached the Labour Court in Reference proceedings. By the Part I award, dated 21/03/1994, the enquiry conducted against the petitioner was held to be vitiated. The respondent / Corporation conducted a *de novo* enquiry before the Labour Court and by the impugned Part II award, the Labour Court rejected the reference after concluding that the petitioner is guilty of the misconduct and the punishment of dismissal imposed upon him is commensurate to the gravity of his misconduct.

4. The contention of Mr. Warad, learned Advocate for the deceased petitioner (LR's have been brought on record) is that the deceased was acquitted by the Court of Criminal Jurisdiction as regards rash and negligent driving. No eye witness has been examined before the Labour Court and not a single passenger has been examined by way of evidence.

5. Considering the crystallized position of law, these contentions of the petitioner deserves to be rejected. An acquittal in criminal proceedings cannot *ipso-facto* lead to exoneration in a departmental enquiry. There is no dispute that one human being has lost his life by the collision between the petitioner's bus and the cycle.

6. The bus-conductor has been examined before the Labour Court and he has specifically led evidence stating that when the bus dashed the petitioner's bus from behind, the petitioner took the bus on the left side and dashed the cyclist. The cyclist was killed because of the said collision.

7. In so far as non-examination of an eye witness is concerned, the bus conductor was travelling in the same bus that was driven by the petitioner. There is no contention before the Labour Court that the deceased petitioner was not having cordial relations with the bus conductor or that the latter had animosity towards the former. So also, the Hon'ble Apex Court in the matter of KSRTC Vs. B.S.Hullikatti, (2001)2 Supreme Court Cases 574 and Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane, (2005) 3 SCC 254 has laid down the law that non-examination of the passengers would not affect the result of the enquiry.

8. In service jurisprudence, based on the pre-ponderance on the principles of probabilities, a decision has to be arrived at. Considering the evidence led before the Labour Court, it concluded that the charge levelled upon the petitioner is proved. Taking into account the death of a person, in my view, the Labour Court has rightly concluded that the punishment cannot be termed as being shockingly disproportionate to the seriousness of the misconduct.

9. In the result, this petition, being devoid of merit, is dismissed. Rule is discharged.

10. Mr.Warad submits on instructions from the son of the deceased Mr.Irfan that he is willing to serve the respondent / Corporation and a direction be issued to induct him in employment of the MSRTC. Considering the fact that a case of dismissal from service is never a subject matter of compassionate appointment, this Court cannot issue such directions and more so considering the fact that the element of public employment is involved.

(RAVINDRA V. GHUGE, J.)