

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 577 OF 2000

Divisional Controller,
Maharashtra State Road
Transport corporation,
Aurangabad.

..Petitioner

Versus

Sayyed Babu Sayyed Bannu
Age 42 years, Occ. Service
R/o Karim Nagar, Kannad,
District Aurangabad.

..Respondent

...
Advocate for Petitioner : Smt. R.D.Reddy
Advocate for Respondent : Shri P.L.Shahane
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: May 12, 2017
...

ORAL JUDGMENT:-

1. I have heard learned Advocates for the respective sides at length.
2. Considering the order that I intend to pass, I am not required to advert to their entire submissions.
3. The respondent was alleged to have committed an accident in his capacity as a Bus Driver with the MSRTC on 12.3.1981. The accident led to the death of a cyclist. The Court of Criminal

jurisdiction acquitted the respondent of the charge of causing the death of a cyclist in S.T.C.T. 5441 of 1986 by judgment dated 2.6.1986. He was honourably acquitted.

4. The petitioner found the respondent guilty of the misconducts under its Discipline and Appeal Rules, after conducting a departmental enquiry. He was dismissed from service by way of punishment on 12.9.1990.

5. The respondent preferred Complaint (ULP) No.326 of 1990, which was allowed partly by the judgment of the Labour Court dated 28.9.1995 granting him reinstatement in service without continuity and full backwages.

6. Both the sides preferred Revision (ULP NO.89 of 1995 and 3 of 1996. By the impugned judgment dated 30.3.1998, the Industrial Court allowed the Revision filed by the respondent and granted continuity and full backwages along with reinstatement. The Revision Petition of the petitioner MSRTC was dismissed.

7. This Court while admitting this petition on 25.6.2001, stayed the direction of payment of full backwages to the extent of 80% and directed the MSRTC to deposit 20% of the backwages.

8. In an independent proceeding earlier, the respondent Driver was dismissed from service on 23.3.1990. He was found guilty of having forged a school leaving certificate and having acquired his employment with the MSRTC on the basis of the forged document. He was dismissed on 23.3.1990.

9. He preferred Complaint (ULP) No.149 of 1990 for challenging his dismissal dated 23.3.1990. He was granted interim relief on 3.4.1990 and he, therefore, continued in employment till his subsequent dismissal dated 12.9.1990. He is said to have been reinstated in service pursuant to the said interim relief dated 3.4.1990.

10. By judgment dated 15.2.2001, Complaint (ULP) No.149 of 1990 was dismissed and the dismissal of the respondent dated 23.3.1990 was sustained. Learned counsel for the petitioner submits that the respondent then filed Revision (ULP) No.27 of 2001 before the Industrial Court and by judgment dated 19.7.2004, his Revision Petition was dismissed. He has not challenged the said judgments of the Labour and Industrial Courts before this Court or any other superior Court.

11. It is, therefore, apparent that even if the impugned two judgments are sustained, it would not further the cause of the

respondent as he has been dismissed from service in an independent proceeding. The said dismissal dated 23.3.1990 has been sustained. Considering the above, this petition can be disposed off as it has become infructuous, keeping in view that the dismissal of the respondent dated 23.3.1990 has attained finality.

12. Issue is as regards wages for the period from 24.3.1990 till his reinstatement pursuant to the interim order dated 3.4.1990 and upto his subsequent dismissal dated 12.9.1990. It is informed that the respondent may have worked for a few days in between 23.3.1990 and 12.9.1990.

13. Considering the above, this petition is disposed off as being infructuous since the impugned judgments cannot be implemented in the light of the dismissal of the respondent dated 23.3.1990 having been sustained by the Labour and Industrial Court, which has attained finality. Hence, for the duration in between 23.3.1990 and the date of reinstatement of the respondent before his subsequent dismissal dated 12.9.1990 (the respondent must have earned his salary pursuant to his reinstatement), he will be entitled for 50% backwages so as to reduce the rigors of litigation suffered by the respondent.

14. Rule is, therefore, discharged and the petitioner / MSRTC is

at liberty to calculate the above mentioned short period of unemployment so as to compute 50% backwages and make the said payment to the respondent within a period of four months from today.

(RAVINDRA V. GHUGE, J.)

...

akl/d