

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

WRIT PETITION NO. 11016 OF 2015

- 1 The Divisional Controller,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.
- 2 Divisional Traffic Superintendent (Crime),
Competent Authority,
Maharashtra State Road Transport
Corporation, Jalgaon Division,
Jalgaon.

...PETITIONERS

-VERSUS-

Gulab Babulal Patil,
Age : 50 years, Occupation : Service,
R/o Plot No.25, Vanainagar,
Old Dharangaon Road,
Erandol, Taluka Erandol,
District Jalgaon.

...RESPONDENT

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Advocate for Petitioners : Shri Manoj Shinde h/f Shri Goyanka M.K.
Advocate for Respondent : Shri Patil Vijay Y..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th January, 2017

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 While issuing notice to the Respondent, I had passed the following order on 09.12.2015 :-

- "1. *The petitioner/Corporation is aggrieved by the impugned judgment of the Labour Court dated 17/01/2013 by which Complaint (ULP) No.32/2011 filed by the respondent has been allowed. The petitioner is also aggrieved by the judgment of the Industrial Court dated 23/01/2015 by which its Revision Petition No.42/2013 has been dismissed.*
2. *The petitioners submit that the law laid down by this Court in the following 2 judgments has not been followed by the Labour Court :-*
 1. *Maharashtra State Cooperative Cotton Grovers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, [2014 1 CLR 878 = 2014(3) Mh.L.J. 339].*
 2. *MSRTC Beed Vs.Syed Saheblal Syed Nijam, 2014 (3) CLR 547 = 2014 (4) Mh.L.J.687.*
3. *The petitioner further submits that the aspect of not examining the passengers by the Corporation in the enquiry, has led to the impugned judgments.*
4. *I find that the Apex Court has concluded in the matter of KSRTC Vs. B.S.Hullikatti, (2001)2 Supreme Court Cases 574 and in the case of Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane, (2005) 3 SCC 254 that the passengers, who have been issued with used tickets or have travelled ticketless, need not be examined in the enquiry and the enquiry cannot be said to be vitiated for not examining the passengers.*
5. *Issue notice before admission to the respondent, returnable on 15/01/2016.*
6. *The issue of the petitioner as well as the respondent having filed a joint purshis before the Labour Court at Exhibit UC-1 consenting for all issues to be tried together, against the law laid*

down by the Apex Court and relied upon by this Court in the case of Maharashtra State Cooperative Cotton Grovers Marketing Federation Ltd., (supra) and MSRTC, Beed (supra) is kept open since in similar case, this Court has imposed costs of Rs.25,000/- on the petitioner who had sought a remand of the proceedings.”

3 I have heard the learned Advocates for the respective sides. Shri Patil, learned Advocate for the Respondent, has strenuously opposed this petition and has made a valiant attempt to justify the impugned judgments.

4 The judgments of the Labour Court as well as that of the Industrial Court deserve to be set aside for the reason that firstly, both the litigating sides have wrongly filed the joint purshis Exhibit UC-1 consenting before the Labour Court that all the issues be tried together. Secondly, non examination of the passengers before the Enquiry Officer cannot affect the enquiry and the findings of the Enquiry Officer, is the law laid down by the Honourable Supreme Court in *KSRTC vs. B.S.Hullikatti*, **(2001) 2 SCC 574** and *Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane*, **(2005) 3 SCC 254**. It is settled law that the first two issues with regard to the fairness of the enquiry and the findings of the Enquiry Officer, are to be decided peremptorily in the light of the view taken by this Court in the matters of the *Maharashtra State Cooperative*

Cotton Growers Marketing Federation Limited vs. Vasant Ambadas Deshpande, 2014 (I) CLR 878 : 2014 (3) Mh.L.J. 339 and *the MSRTC, Beed vs. Syed Saheblal Syed Nijam*, 2014 (3) CLR 547 : 2014 (4) Mh.L.J. 687.

5 The learned Advocate for the Respondent submits that the Respondent is still in employment since the Labour Court has restrained the Petitioner/ MSRTC from taking any final decision pursuant to the second show cause notice.

6 Prima facie, it is apparent that the view taken by the Labour Court is against the mandate of the Honourable Supreme Court in paragraphs 53 and 54 of its judgment delivered in *Hindustan Lever v/s Ashok Vishnu Kate*, 1995(6) SCC 326.

7 Considering the above, this Writ Petition is partly allowed. The impugned judgment of the Labour Court dated 17.01.2013 is quashed and set aside. Complaint (ULP) No.32/2011 is remitted to the Labour Court, Jalgaon for deciding Issue Nos.1 and 2 afresh keeping in view the law laid down by this Court in the Maharashtra State Cooperative Cotton Growers Marketing Federation Limited (supra) and the MSRTC, Beed

(supra) and the judgments delivered by the Honourable Supreme Court in B.S.Hullikatti (supra) and A.T.Mane (supra). Consequentially, the judgment of the Industrial Court dated 23.01.2015 is quashed and set aside and Revision (ULP) No.42/2013 stands disposed of.

8 The litigating sides shall appear before the Labour Court on 10.02.2017. Formal notices need not be issued by the Labour Court. Since no additional oral evidence is required to be adduced in relation to Issue Nos.1 and 2, both the litigating sides shall address the Labour Court on the first two issues strictly restricting themselves to the record and proceedings of the domestic enquiry and for which purpose, the Petitioner/ MSRTC shall produce the record and proceedings of the domestic enquiry in original form on or before 18.02.2017.

9 Since the matter is still at the stage of deciding the second show cause notice, the Labour Court shall ensure that Complaint (ULP) No.32/2011 is decided on or before 29.09.2017 keeping in view the note of caution of the Honourable Supreme Court in paragraphs 53 and 54 of Hindustan Lever judgment (supra).

10 Insofar as the imposition of costs on the Petitioner for having not ably assisted the Labour Court as well as the Industrial Court with

regard to deciding the first two issues peremptorily, the Petitioner/ MSRTC shall deposit an amount of Rs.5000/- (Rupees Five Thousand) with the Advocates Association of Bombay High Court, Bench at Aurangabad within a period of FOUR WEEKS from today.

11 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)