

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

WRIT PETITION NO. 8887 OF 2016

Maharashtra State Road Transport
Corporation,
Dhule Division, District Dhule.
Through the Divisional Controller.

...PETITIONER

-VERSUS-

Akbar Yasin Pinjari,
Age : 54 years, Occupation : Service,
R/o Anjansha Data Society,
East Hudco, Chalisgaon Road,
Dhule.

...RESPONDENT

...

Advocate for Petitioner : Shri R.N.Jain h/f Shri Bagul D.S.

Advocate for Respondent : Shri Shaikh Samir Ahmad Saifuddin.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th January, 2017

Oral Judgment :

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

2 While issuing notice on 30.08.2016, I had recorded the
submissions of the learned Advocate for the Petitioner as follows:-

- "1. *The petitioner / Corporation is aggrieved by the judgment and order dated 31.3.2016 passed by the Industrial Court, Dhule, by which Complaint (ULP) No.37 of 2014, filed by the respondent has been allowed.*
2. *The petitioner submits that the respondent / Driver was charged with having committed an accident, which resulted in the death of a passenger, who was travelling in an auto-rickshaw. After conducting a full-fledged departmental enquiry, the petitioner imposed the punishment of stoppage of one annual increment for two years only.*
3. *The respondent filed the Complaint (ULP). By Part-I judgment, the Industrial Court concluded that the enquiry was vitiated. In the de-novo enquiry, though the petitioner examined one witness, the Industrial Court has allowed the complaint and set aside the punishment.*
4. *Issue notice before admission to the respondent, returnable on 4.10.2016.*
5. *Till the next date of hearing in the matter, the impugned judgment dated 31.3.2016 shall stand stayed.*
6. *The petitioner shall supply a copy of the petition paper book on/or before 2.9.2016 for issuance of notice, failing which, the ad-interim protection shall stand vacated."*

3 I have heard the learned Advocates for the respective sides.

4 Shri Shaikh, learned Advocate for the Respondent, has strenuously defended the impugned judgment. He submits that the driver was driving the bus, neither in a rash manner, nor negligently. A mini door auto rickshaw itself came and dashed the bus and consequentially, one person died. The driver of the bus cannot be held guilty for the negligence

of the auto rickshaw driver. Therefore, unfair punishment of stoppage of one annual increment for two years, was imposed by the Petitioner Corporation.

5 He further submits that the bus conductor, who deposed before the Industrial Court, certified that the driver was not driving in a negligent manner. The Petitioner did not examine any other witness. Hence, the Industrial Court rightly concluded that no offence was proved against the Respondent.

6 It is trite law that the misconduct in an enquiry or in service jurisprudence can be proved on the preponderance of the principles of probabilities. In the instant case, there appears to be a collision between the auto rickshaw and the bus driven by the Respondent.

7 The Petitioner examined the bus conductor, who has stated that the auto rickshaw dashed the bus. He has stated in evidence that the bus driver was innocent. To say the least, such certification by the bus conductor should have been very seriously and closely scanned by the Industrial Court to find out as to whether, he was in a position to make such statement. The Industrial Court was expected to go through the documentary evidence recorded in the enquiry so as to conclude as to

whether, the Respondent could really be said to be innocent. All said and done, even if there was no direct evidence available, on the preponderance of the principles of probabilities, this case could have been viewed seriously.

8 There is no dispute that there was a collision between the bus driven by the Respondent and the auto rickshaw. There is no dispute that there was one death in the accident. The past service record of the Respondent/ Driver is blemished containing 14 misconducts. These facts are enough to be taken into account on the preponderance of the principles of probabilities that the Respondent/ Driver cannot be said to be innocent. With 14 misconducts in his past service record and with the undisputed position that there was an accident killing one person, the Industrial Court could not have allowed the complaint on the basis that the conductor has given a clean certificate to the driver.

9 Considering the above, this Writ Petition is allowed. The impugned judgment of the Industrial Court dated 31.03.2016 is quashed and set aside. Since I have dealt with the final judgment, I have not considered the legality and validity of the part-1 judgment of the Industrial Court by which the enquiry was vitiated. The punishment of stoppage of one increment for two years with cumulative effect imposed

on the Respondent by order dated 07.12.2010, is sustained.

10 Before parting with this matter, I must record my surprise and dissatisfaction with regard to the conduct of the Petitioner/ MSRTC who, despite the blemished past service record of the Respondent/ Driver and the present accident at issue, has chosen to impose a minor punishment notwithstanding the fact that the accident to which the Respondent was a party has killed one human being.

11 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)