

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10614 OF 2010

1. The Divisional Controller,
MSRTC, Latur.

2. Divisional Traffic Controller,
MSRTC, Latur.

..Petitioners

Versus

Dashrath Jalbaji Kamble
Age 60 years, Occ. Retired,
R/o Gavali Nagar, Malwati Road,
Latur.

..Respondent

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Advocate for Respondent : Shri Urgunde Suhas P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 03, 2017

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ORAL JUDGMENT :-

1. None for the petitioner. I have heard the learned Advocate for the respondent, who has strenuously supported the impugned judgment of the Industrial Court dated 12.7.2010, by which, the respondent has been granted reinstatement with continuity and full backwages.

2. Despite the strenuous submissions of the learned Advocate for the respondent, the following aspects emerging from the record cannot be ignored:-

(a) The respondent was working as a Bus Conductor with the petitioner / Corporation.

(b) On 17.1.2004, when the bus was checked by the flying squad, it was noticed that five passengers had paid money towards the fare to the respondent / Conductor, but he had not issued tickets. Statement of two passengers was recorded.

(c) Eventually, the respondent was dismissed from service on 20.7.2014 after a departmental enquiry.

(d) He approached the Labour Court by preferring Complaint (ULP) No.248 of 2004.

(e) Considering the law as is laid down by the Honourable Apex Court in the matter of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803], Workmen of Firestone Rubber and Tyre Company Vs. the Management and others [(1973) 1 SCC 813], Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh - [1972 (1) SCC 595 = AIR 1972 SC 1031], and Bharat Forge Company Ltd., Vs. A.B. Zodge and another [AIR 1996 SC 1556], which is followed for the last more than 40

years, the Labour Court did not frame the following two issues:-

(i) Whether the complainant proves that the enquiry was conducted in violation of the principles of natural justice?

(ii) Whether the complainant proves that the findings of the enquiry officer are perverse?

(f) In the final judgment dated 26.7.2005, the Labour Court concluded that the charges are not fully proved against the respondent and by showing sympathy, deprived the respondent of one year's backwages and granted him reinstatement with continuity.

(g) The respondent workman approached the Industrial Court for full wages and by the impugned judgment, the Industrial Court set aside the judgment of the Labour Court and granted full backwages to the respondent.

3. It is apparent that the Labour Court has fallen in a patent error in practically declaring the findings of the Enquiry Officer as perverse. Without setting aside the enquiry by framing the abovesaid two issues, the Labour Court could not have allowed the complaint. However, the Labour Court deprived the respondent of backwages for

the period from 20.7.2004 till 26.7.2005.

4. Be that as it may be, the Industrial Court without noticing the error committed by the Labour Court, allowed the Revision Petition filed by the respondent and granted him full backwages, concluding that no charge is proved against the respondent. I can have no hesitation in concluding that the judgment of the Industrial Court is perverse and unsustainable. However, it cannot be ignored that the petitioner / Corporation has not challenged the judgment of the Labour Court dated 26.7.2005. Consequentially, if the impugned judgment of the Industrial Court is set aside, the respondent would be relegated back to the judgment of the Labour Court.

5. In the light of the above, this petition is allowed. The judgment of the Industrial Court dated 12.7.2010 is quashed and set aside and Revision (ULP) No. 8 of 2010 filed by the respondent stands dismissed.

6. Rule is made absolute in the above terms.

7. Learned Advocate for the respondent submits that an issue as regards the retiral benefits / pensionary benefits / gratuity would crop up. Since I have allowed this petition and set aside the judgment of the Industrial Court, I am not required to make any

observations about the retiral benefits of the respondent as these aspects would be governed by the Rules and Regulations of the petitioner / Corporation as may be applicable.

(RAVINDRA V. GHUGE, J.)

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