

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 414 OF 2005

The Divisional Controller,  
Maharashtra State Road  
Transport Corporation,  
Division – Osmanabad,  
District – Osmanabad. ...Petitioner.

Versus

Sangram Tulshiram Raje,  
Age – 62 years, R/o. Latur,  
Taluka – Latur, District. Latur. ...Respondent.

Advocate for Petitioner : Mr. A.B. Dhongade.  
Advocate for Respondent : Mr. V.P. Golewar  
h/f. Mr. S.D. Ghayal.

WITH  
WRIT PETITION NO. 5077 OF 2005

The Divisional Controller,  
Maharashtra State Road  
Transport Corporation,  
Division – Osmanabad,  
District – Osmanabad. ...Petitioner.

Versus

Ilahi Abbas Patel,  
Age – 40 years, Occu – Service,  
R/o. Near Janata Vidhyalaya, Yedshi,  
Post – Yedshi, Taluka and  
District – Osmanabad. ...Respondent.

Advocate for Petitioner : Mr. A.B. Dhongade.  
Advocate for Respondent : Mr. A.R. Vyawahare.

CORAM : RAVINDRA V. GHUGE, J.  
Dated : 08<sup>th</sup> June, 2018

## ORAL JUDGMENT :

1. In the first petition, the petitioner/MSRTC Corporation is aggrieved by the judgment of the Labour Court dated 30/09/1995, by which, Complaint (ULP) No. 105/1985, filed by Respondent herein was allowed. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 24/08/2004, by which Revision (ULP) No. 18/2004, has been rejected.

2. Prayer clauses (C) and (D) put forth by the petitioner in the First Petition read as under :

*“(C) The impugned Judgment and Order passed by the learned Labour Court, Latur in complaint [ULP] No. 105/1985, dated 30/09/1995 and Common Judgment and Order passed by the learned Industrial Court, Latur dated 24/08/2004 in Revision [ULP] No. 18/04 & 19/04 [Old Nos. 78/95 & 12/97], kindly be quashed and set aside.*

*(D) Pending hearing and final disposal of this writ-petition the execution and implementation of impugned Judgment and Order passed by the learned Labour Court, Latur in Complaint [ULP] No. 105/1985, dated 30/09/1995 and Common Judgment and Order passed by the learned Industrial Court, Latur dated 24/08/2004 in Revision [ULP] No. 18/04 & 19/04 [Old Nos. 78/95*

*& 12/97], kindly be STAYED."*

3. In the second Petition, the Petitioner/Corporation is aggrieved by the judgment of the Labour Court dated 21/09/1997, by which, Complaint (ULP) No. 258/1986, has been allowed. The petitioner is also aggrieved by the order of the Industrial Court dated 02/04/2005, by which, Miscellaneous (ULP) No. 37/2003, was rejected and Revision (ULP) No. 30/1997 was not restored to file after it was dismissed in default.

4. For the sake of clarity, prayer clauses (C) and (D) put forth in the second Petition read as under :

“(C) The impugned Judgment and Order passed by the learned Labour Court, Solapur in Complaint (ULP) No. 258/1986, dated 21/03/1997 and the Judgment and Order passed by the Industrial Court, Latur in Misc. (ULP) No. (37/2003) 11/2004, dated 02/04/2005 (Exhibit-A and B) kindly be quashed and set aside and revision be remanded for afresh hearing by directing to the learned Industrial Court, to restore the Revision [ULP] No. 30/1997 on its own original stage and after giving an opportunity of being heard to the petitioner-Corporation and after submission of oral as well as written evidence, the above revision be decided on its own merit.

(D) Pending hearing and final disposal of this writ-petition the execution and implementation of the Judgment and Order passed by the learned Labour Court, Solapur in Complaint (ULP) No. 258/1986, dated 21/03/1986 and the Judgment and Order passed by the Industrial Court, Latur in Revision (ULP) No. 30/1997, dated 17/07/2003, kindly be "STAYED".

5. Since the learned advocates for the respective sides submits that both these petitions are intricately connected with each other, that both are taken up for final hearing together. The respondent/original complainant in the first Petition would be referred to by his name Sangram and the respondent in the second Petition would be referred to as Ilahi.

6. When both these petition were admitted by this Court on 02nd May, 2005, this Court has delivered a reasoned order and has concluded that the impugned judgments deserve to be stayed. Consequentially, the judgment of the Labour Court and the respective orders of the Industrial Court have been stayed.

7. I have considered the strenuous submissions of

the learned advocates for the respective sides. It is informed that both the respondents, Sangram and Ilahi, have recently attained the age of superannuation with the Corporation during the pendency of this litigation. Both were employed as Drivers with the Corporation.

8. The facts of these two cases are quite peculiar. Sangram was directed by the Corporation to fetch an empty bus on 14/12/1983, from Indapur to Latur. Ilahi for unknown reasons was accompanying Sangram in the said Bus. It is the case of these respondents that Sangram started feeling unwell due to chest pain and he handed over the Bus to Ilahi. While Ilahi was driving the Bus, an accident occurred and a Cyclist is said to have been killed. Both were subjected to disciplinary proceedings and finally were dismissed from service, by way of punishment.

9. Sangram, as well as Ilahi, have approached the Labour Court by filing Complaint (ULP) Nos. 105/1985 and 258/1986 under the MRTU and PULP Act, 1971. Both challenged the domestic enquiry and the findings of the enquiry officer. The Labour Court, delivered its judgment on 30/09/1995 and 21/09/1995 by concluding

that the MSRTC has failed to prove that the driver of the Bus was driving recklessly and in a negligent manner. It has also concluded that sympathy needs to be shown towards these drivers. In Ilahi's case, the Labour Court has concluded in paragraph No. 14, that as the Cyclist fell down on the road on account of losing his balance, he got killed under the Bus and, therefore, the MSRTC should have proved that the accident occurred on account of rash and negligent driving. Labour Court has, therefore, concluded that the charge cannot be proved against Ilahi and he can only be punished for having driven the Bus without authorization. Both have been granted reinstatement in service with continuity and 30% and 40% back wages, respectively.

10. Considering the law laid down by the Hon'ble Apex Court in **Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803]** and series of judgment delivered thereafter, this Court has delivered a judgment in the matter of **Santoba Bapurao Kadam Versus The Divisional Traffic Superintendent and another - Writ Petition No. 3597/2004, dated 08<sup>th</sup> May, 2018.** The law is also crystallized and which has

been once again reiterated in the matter of **Maharashtra State Roadways Transport Corporation Versus Syed Saheblal Syed Nijam [2014 III CLR 547 = 2014 (4) Mah.L.J.687]** and **Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. And another Versus Vasant Ambadas Deshpande [2014(3) Mh.L.J. 339 = 2014(1) CLR 878]**, that unless the following two issues are cast by the Labour Court, it cannot conclude that the charges are not proved against the delinquent :

(a) Whether the complainant proves that the enquiry is vitiated for non observance of the principles of the natural justice ?

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

11. If the above two issues are framed, the Labour Court can deliver the part - 1 judgment and conclude whether the enquiry is sustained or not. If the enquiry is vitiated for any reason including on account of perversity in the findings of the enquiry officer (**Bharat Forge Company Ltd. Versus A.B. Zodge and another [AIR 1996 SC 1556 = 1996 II CLR 345]**), the de-novo enquiry has to be conducted before the Labour

Court by the MSRTC. Without following these procedures and without framing the said issues, the Labour Court has granted relief to these respondents.

12. In the light of the above, the judgments of the Labour Court deserve to be quashed and set aside and both the complaints deserve to be remitted to the appropriate Labour Court for framing of the above two issues and for re-hearing.

13. However, the learned advocates for the respondents submit that both of them have attained the age of superannuation after having being reinstated in service by the Corporation since this Court has vacated the interim relief only in the case of Ilahi, by order dated 20/04/2007. This Court confirmed interim relief in favour of the petitioner by order dated 04/09/2007, in the case of Sangram.

14. It is, therefore, submitted by the learned advocates as follows :

- (a) The litigation be brought to an end in these proceedings.

(b) Both the respondents have already been deprived of 70% and 60 % back wages and they would not claim the said amounts.

(c) The – back wages granted to Sangram may be adjusted against his retiral dues and the 40% back wages withdrawn from this Court by Ilahi would be adjusted against his retiral dues.

15. I find that both the respondents have put forth a fair proposal keeping in view that Sangram is of about 78 years of age today and Ilahi is about 68 years of age. By the statement recorded as above, both are agreeable for adjusting their 30% and 40 % back wages respectively, with their retiral benefits, which practically means that they have given up their back wages that were granted by the Labour Court so as to seek an end to the litigation, rather than face a re-trial at the age of about 78 and 68 years, respectively.

16. In view of the above, both these petitions are partly allowed. The impugned judgments of the Labour Court are modified by denial of back wages keeping in view that both the respondent were reinstated in service. Since, Ilahi has already withdrawn the back

wages with the leave of this Court, vide order dated 18/01/2008, the said amount of Rs. 1,37,050/- would be adjusted against his retiral benefits. After calculations of the retiral benefits of Ilahi and by adjusting the amount paid to him, the remaining amount shall be paid by the MSRTC to Ilahi expeditiously and preferably within the period of 12 weeks. Since, the 30% back wages have not been paid to Sangram and he has already been paid his retiral benefits, the Corporation will not have to pay him any amount.

17. In the light of the above, Rule is made partly absolute in the above terms.

( RAVINDRA V. GHUGE, J. )

S.P.C.