

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7175 OF 2004

The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Division Dhule, Dist.Dhule

-- PETITIONER

VERSUS

Shivajirao s/o Jyotiram Mane,
Age-43 years, Occu-Service,
R/o Bhagatsingh-Nagar, Shirpur,
Tal.Shirpur, Dist.Dhule

-- RESPONDENT

Mr.U.B.Shriram h/f Mr.D.S.Bagul, Advocate for the petitioner.
Mr.V.Y.Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/02/2018

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and order dated 05/08/2004 delivered by the Industrial Court in Complaint (ULP) No. 222/2004 (Old No.179/2001) passed by the Industrial Court. It is wrongly mentioned in the prayer clauses that the Industrial Court has decided the Revision ULP.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. The undisputed factors are that the respondent/driver, who was on duty from Indore to Pune on the Maharashtra State Road Transport Corporation Bus, met with an accident on 28/05/1999. The bus suffered some damage, but there was no loss of life. The respondent was charged with reporting on duty upon consumption of liquor. His blood sample was sent to the Chemical Analyzer, Aurangabad and it was noticed that there was no liquor found in his blood sample. The respondent was awarded with the punishment of dismissal from service. He assailed the said dismissal by filing a department first appeal. The MSRTC rejected the department appeal on 31/07/2000 and sustained the dismissal dated 22/01/2000. The respondent preferred a second appeal and by sustaining the order of dismissal, the respondent was granted re-employment as a fresh employee. He accepted the fresh employment under protest.

4. The respondent preferred his Complaint (ULP) No.179/2001 for challenging the sustenance of the order of dismissal and his re-employment as a fresh employee.

5. This Court has, in the matter of Anil Vaijnath Arbad Vs. The Divisional Traffic Superintendent, Parbhani and others [2016(5) ALL MR 502 = 2016(3) Bom.CR 860 = 2016(1) LLJ 613 (Bom.) concluded

that such a complaint cannot be filed before the Industrial Court for the reason that the workman is challenging the sustenance of the dismissal order as well as the issuance of a fresh employment. The Industrial Court, does not have jurisdiction to entertain any prayer as against the order of dismissal keeping in view Section 4 to Section 7 of the MRTU and PULP Act, 1971. Even if the Industrial Court was to entertain the said complaint, it could have, at the most, set aside the order passed by the Second Appellate Authority and could have restored the matter to the stage prior to the decision of the Second appellate Authority.

6. In the instant matter, the Industrial Court has set aside the order of the Second appellate Authority and has also set aside the order of dismissal and reinstated the respondent in service with continuity and full back wages, which was beyond its jurisdiction. The Industrial Court has, therefore, exercised jurisdiction not vested in it by Law.

7. However, the subsequent events that have occurred in this matter, cannot be ignored. This Court, by order dated 07/12/2004, admitted the petition filed by the MSRTC and declined interim relief. By order dated 09/03/2007 passed in CA No.1837/2007, the respondent was granted provisional retiral benefits including

provident fund accumulations as well as gratuity and this was made subject to the result of the writ petition. It is informed that the respondent attained the age of superannuation on 30/06/2005.

8. It is further informed that the MSRTC has paid the retiral benefits to the respondent in compliance with the directions of this Court dated 09/03/2007. As such, though technically the direction of the Industrial Court granting reinstatement with continuity and full back wages deserves to be set aside, the respondent would be compelled to approach the Labour Court for challenging his dismissal which naturally stands sustained after the decision of the Second Appellate Authority is quashed and set aside. It, however, appears that the respondent is now of 71 years. After more than a decade post retirement, it would be impracticable to direct the respondent to approach the Labour Court for challenging the order of dismissal.

9. Considering the above and keeping in view the directions of this Court dated 09/03/2017 coupled with the above factors, I find that this petition is rendered of an academic interest. The same is, therefore, disposed of. Rule is discharged.

(RAVINDRA V. GHUGE, J.)