

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12903 OF 2016

Namdeo Ishwara Patil .. Petitioner

Vs.

Maharashtra State Road
Transport Corporation & Anr. .. Respondents

Mr.Manoj Patil for the petitioner.

Mr.G.K.S. Hegde with Mr.C.M.Lokesh for the respondent no.1

Ms.Vaishali Nimbalkar AGP for the State.

CORAM : A.K. MENON, J.

DATED : 2ND MAY, 2018.

P.C. :

1. By this writ petition, the petitioner challenges the order dated 8th April, 2013 passed by the Labour Court in Complaint (ULP) No.13 of 2013 and the order dated 27th October, 2017 passed by the Industrial Court, Kolhapur in Revision Application (ULP) No.68 of 2013.

2. The facts in brief are as follows: The petitioner was employed by the corporation since 2011 as a driver. On 18th December, 2012 while driving Bus No.MH-14-BT-2673 from Kagal to Solapur, the bus made an unofficial stop at Hotel Nilam Dhaba, where the petitioner reportedly consumed alcohol as a result of which the passengers complained against

him. He was then taken to the police station and thereafter he was taken to the Medical Officer who took the blood sample of the petitioner. The petitioner was then charge-sheeted pursuant to the report filed by the Medical Officer of Sangola. The petitioner contested the charge-sheet and contended that he had consumed Bayer's tonic which was alcohol based medicine. It is contended that no criminal case has been registered against the petitioner. The department enquiry started and concluded. The petitioner contended that no opportunity was given to him and material evidence was not taken into consideration by the Enquiry Officer, therefore, the petitioner filed a complaint alleging violation under Section 28(1) read with item 1 clauses a, b, d, f and g of Schedule IV of the MRTU & PULP Act. This application came to be rejected. The petitioner is aggrieved by the said rejection.

3. In the course of hearing of this petition learned AGP has produced Alcohol Examination Certificate issued by the Deputy Director Regional Forensic Science Laboratory to the Medical Officer, Rural Hospital, Sangola in which it is recorded that the blood sample of the petitioner contained alcohol to extent of 0.060 (sixty mqs.) per cent.

4. Mr.Patil, learned counsel for the petitioner contended that the impugned order of the Industrial Court rejecting Revisional Application

was unsustainable. He submitted that there is no evidence of alcohol being consumed and yet the petitioner had been charge-sheeted for no fault of his own. He submitted that the petitioner has produced a bill of Bayer's tonic which contained alcohol and which was consumed by the petitioner. He therefore contended that the order of the Tribunal rejecting evidence is liable to be set aside. Inviting my attention to the order passed by the Labour Court Mr.Patil submitted that show cause notice for dismissal dated 7th February, 2013 was also unsustainable and therefore the respondent had engaged in unfair labour practice.

5. It is pertinent to note that blood sample of the petitioner contained alcohol as evident from Alcohol Examination Certificate dated 24th January, 2013. The petitioner has also admitted to having consumed alcohol based medicine. I have perused the impugned orders of the Labour Court dated 8th April, 2013 and the order of the Industrial Court dated 27th October, 2016 and from the admitted facts, I find no reason to interfere with the impugned orders. However, it appears that the petitioner has still not filed reply to the show cause notice and it is open to the petitioner to file reply to the show cause notice that he now proposes to file. Learned counsel for the petitioner has therefore sought time to file a reply. Accordingly, I pass the following order :

- (a) The impugned orders of the Labour Court dated 8th April, 2013 and the Industrial Court dated 27th October, 2016 stand confirmed. However, the petitioner will have liberty to file a reply to the show cause notice within a period of two weeks from today.
- (b) Interim protection granted to continue till disposal of the show cause notice.
- (c) Writ petition is disposed of in aforesaid terms.

(A.K. MENON,J.)