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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTER PATENT APPEAL NO.29 OF 2017

Babulal Ananda Dhotre ...Appellant
vs.
The Transport Manager,
Pune Municipal Transport,
Pune ...Respondent

Mr.Ravindra S. Pachundkar for the Appellant
None for the respondent

CORAM : A.S.OKA, &
M.S.SONAK, JJ.
DATE : SEPTEMBER 18, 2018

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P.C.:

1 By this appeal, the appellant has taken an exception to the Judgment and Order dated 1st April 2008 passed by the learned Single Judge in Writ Petition filed by the respondent-Pune Municipal Transport.

2 The appellant was admittedly working as a Driver with the respondent-Transport Undertaking. The appellant was entrusted with the duty of driving public transport buses of the respondent. On 3rd November 1986, the appellant was working in morning shift and was plying a bus on Route No.61 from city bus station at Pune to the Pune Railway Station. The bus reached Pune Railway Station. While taking the

bus towards the relevant bus stop, the appellant was plying the bus in a reverse gear. The bus gave a dash to a woman who was a pedestrian. She succumbed to the injuries sustained by her due to the dash given by the bus.

3 The appellant was charge sheeted and disciplinary proceedings were initiated for misconduct falling under clauses (g) and (y) of Standing Order No.25. Misconduct referred in the clause (g) is of habitual neglect of work or gross habitual negligence. The misconduct under clause (y) is of disobedience of any lawful order of Superior Officers.

4 At the conclusion of the Disciplinary Enquiry, the Disciplinary authority imposed penalty of stoppage of five increments with permanent effect on the appellant.

5 The appellant approached the Industrial Court by filing a complaint. The appellant alleged unfair labour practices under the items No.9 and 10 of Schedule IV of the Maharashtra Trade Union and Prevention of Unfair Labour Practice Act, 1971 (for short 'the said Act'). The learned Member of the Industrial Court by Award dated 30th September 1996 interfered with the order of the Disciplinary Authority by holding that unfair labour practices on the part of the respondent have been established. The Industrial Court held that the charges contained

in the charge sheet were not proved by adducing sufficient evidence.

6 Being aggrieved by the Award of the Industrial Court, a Writ petition was filed by the respondent-Transport Undertaking. The learned Single Judge by the impugned order has interfered with the Award of the Industrial Court by setting aside the same.

7 The learned counsel for the appellant has taken us through the impugned order as well as other material on record. He invited our attention to the preliminary accident report submitted by the Enquiry Officer. He stated that while the appellant was taking the bus towards the bus stop in reverse gear, the bus Conductor was guiding the appellant. He pointed out that in the said report, it was stated that it was the duty of the Conductor to take all possible precautions and warn the Driver. He pointed out that it was held by the Enquiry Officer that it was an accident which occurred due to fault on the part of the Conductor. He submitted that the Conductor was the only person who was responsible for the accident was let off on suspension for one month or so. He submitted that the appellant's wife is a Cancer patient and the the appellant suffers from various ailments. He, therefore, submitted interference is required to be made with the order impugned.

7 We have considered the submissions. We have

perused the impugned order as well as the evidence before the Disciplinary Authority. The contention of the appellant seems to be that it was the Conductor who was responsible for inviting attention of the appellant to the fact that there was a pedestrian behind the bus while it was being taken to the bus stop in reverse gear. We have perused the notes of evidence. In the evidence, the appellant accepted that even the Conductor was charge sheeted and an enquiry was held on the basis of the charge sheet. He stated that the Conductor was suspended for a month or two. In the cross examination, the appellant admitted that there are two mirrors; one on the left hand side and other on the right hand side. He submitted that both the mirrors are for the use of the Driver while taking the bus in the reverse gear. He clarified that there was no mirror on the left hand side of the bus. Hence, it was all the more necessary for him to be extra cautious.

8 As rightly observed by the learned Single Judge, the obligation of taking all precautions to avoid any accident and duty to take care was of the appellant who was at the Driver's seat of the bus. The Conductor was there to assist him. The woman who received dash from the bus of the appellant succumbed to injuries sustained by her. The learned Single Judge has taken a note of the fact that on previous 13 occasions, punishments have been imposed on the appellant for committing misconduct. The

learned Single Judge rightly held that it was appellant's responsibility to take due care and to take proper steps for the safety of the persons in the vicinity of the bus. Going by the case of the appellant, at highest, it can be said that there was also a dereliction on the duty on the part of the Conductor of the bus. A Charge sheet was served on the Conductor.

9 We concur with the view taken by the learned Single Judge that considering the manner in which the dash was given to the old woman, principles of *res ipsa loquitur* must apply. The punishment impugned was of stoppage of five increments. The learned Single Judge has recorded that considering the conduct of the appellant, and considering the fact that on 13 previous occasions, punishments were imposed on the appellant, the penalty inflicted in the given case was not at all disproportionate considering the serious conduct of the appellant. Therefore, the learned Single Judge proceeded to set aside the Judgment and Award passed by the Industrial Court. The findings recorded by the learned Single Judge are supported by the material on record and hence, no interference is called for in this Letter Patent Appeal. Accordingly, the Appeal is dismissed.