

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7631 OF 2019

Ratnakar s/o Eknath Surale,
Age-64 years, Occu-Nil,
R/o Gayatri Krupa, Opp.Tridal
Apartment, Narali Baug,
Aurangabad

– PETITIONER

VERSUS

1. Maharashtra State Road Transport Corporation, Aurangabad Division,
Through its : Divisional Controller,
2. Mechanical Engineer (Operation),
Divisional Workshop, MSRTC,
Aurangabad Division,
Aurangabad

– RESPONDENTS

Mr.U.V.Khonde, Advocate for the petitioner.
Mr.B.S.Deshmukh, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/10/2019=22/10/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the part I judgment of the Labour Court dated 20/01/2014, delivered in complaint (ULP) No. 43/2011, concluding that the enquiry is fair and proper and the findings of the enquiry officer are not perverse. He is also aggrieved by the judgment of the Industrial Court dated 28/11/2018, by which, revision ULP No. 1/2015 filed by the petitioner was dismissed.

3. He joined the MSRTC on 01/03/1978 as Artisan 'A' Mechanic. He passed the departmental examination in 1981-82 and became a Head Mechanic. He was transferred to the Gangapur Depot in 1993.

4. An accident involving the State Transport bus MH-20-D-3690 had occurred on 02/05/2002. After the accident the bus caught fire and the entire bus got burnt killing 33 passengers. The learned Advocate for the petitioner submits that he is the head mechanic of a workshop who has been held guilty of negligence and has been awarded the punishment of dismissal from service without affecting his retiral benefits, after a domestic enquiry.

5. He submits that a special enquiry committee was instituted to enquire into the said accident involving the bus No. MH20-D-3690.

The superior of the petitioner known as 'Yantra-Abhiyanta' (Mechanical Engineer), Aurangabad was held responsible and it was observed that he deserves to be prosecuted. Surprisingly, he was appointed as the enquiry officer to enquire into the charge sheet dated 08/06/2002 issued to the petitioner.

6. It is, therefore, contended that a person, who has been held to be guilty as regards the maintenance of the bus, was appointed as the enquiry officer for enquiring into the accident allegedly caused by the negligence of the petitioner.

7. The learned Advocate appearing on behalf of the respondent/Corporation strenuously submits as under :-

[a] The past record of the petitioner is highly blemished.

[b] The petitioner is guilty of gross negligence.

[c] The incident has occurred wherein the propeller shaft was defective which led to the bus catching fire and 33 persons were burnt to death.

[d] The respondent/Corporation appointed a Special Enquiry Committee to conduct an enquiry as regards the said incident dated 02/05/2002.

[e] Though the Mechanical Engineer is held to be

responsible for having not conducted a proper repairing of the mechanical part, being head of the said Department, he has not been charge sheeted and the Corporation has not held him guilty in any manner.

[f] Since the Mechanical Engineer was not held guilty with regard to the said accident, he was rightly appointed as the Enquiry Officer to conduct an enquiry as against the petitioner.

[g] There is no prejudice caused to the petitioner by the appointment of the said Mechanical Engineer as the Enquiry Officer.

[h] The Labour Court as well as the Industrial Court have rightly concluded that the enquiry is fair and proper and the findings of the Enquiry Officer are not perverse.

8. I have gone through the petition paper book with the assistance of the learned Advocates in the light of their strenuous submissions.

9. In my view, an enquiry could be set aside, if it is found that the Enquiry Officer was in some way connected with the incident and the charge that has been levelled upon the charge sheeted

employee. Such factors will have to be tested on the touchstone of prejudice since it should not so happen that the Enquiry Officer, who in some way is involved in the same incident and his findings would cause prejudice to the charge sheeted employee.

10. There is no dispute that a Special Enquiry Committee was appointed by the respondent/Corporation to enquire into the incident that occurred on 02/05/2002 when the passenger bus MH-20-D-3690 en-route Kannad to Shirdi, caught fire at Khadka Phata and that resulted in the death of 33 passengers. An extensive report has been prepared by Mr.Chandrakant Chavan, Deputy General Manager, Aurangabad Region. He has observed in his findings at clause '6' on internal page No.7 of his report as regards who could be held responsible for the said accident. He perused the defect slips and the workshop diary for a period of over one month preceding the date of the accident. He noticed that the center joint No.2 had an eye-hole and one part attached to the said eye hole had broken. This resulted in the central bearing cross rod being pulled and joint No.1 attached to the gearbox was broken. As these parts got broken off from their joints of bus which was travelling in speed, one of the said parts violently hit the diesel tank and the silencer pipe. The diesel tank burst and the fuel got spilt on the exposed hot silencer

pipe which resulted in a fire and the entire flooring of the bus and the tires caught fire and killed 33 passengers.

11. On internal page No.9, in the first paragraph, it was specially observed that the said joint was suffering from frequent defects and that should have been sent for a thorough examination by the Divisional Workshop Officers and the employees concerned with the repairing of the said part in the said Department. The Mechanical Engineer (Yantra Abhiyanta) was Incharge of the said division and it could not be believed that he was not aware of the said frequent damages to the same part. He was expected to cause a thorough examination. He did not even refer the part to any specific examination and that indicates the negligence and callous attitude on his part.

12. It is undisputed that the same Mechanical Engineer was appointed as the Enquiry Officer with reference to the charge sheet issued to the petitioner, so as to examine as to which of the workers working under him in the said Department would be held responsible. It is, therefore, obvious that the Enquiry Officer himself was under a cloud and was indicted by the Enquiry Commission clearly concluding that he was negligent and was in a

definite way responsible. The same Mechanical Engineer prepared the charge sheets against the charge sheeted employees, conducted the enquiries and held the charge sheeted employees guilty. The petitioner is one such employee. The entire blame has been put on the charge sheeted employee. It is apparent that the said Enquiry Officer had conveniently put the entire blame on the workers so as to steer clear of the said incident and save his skin.

13. The enquiry report submitted by the same Enquiry Officer indicates that this petitioner had taken a specific objection that the circumstances involved in the said matter would render the Enquiry Officer inappropriate to conduct the enquiry. It was specifically mentioned that the officers in the said Department will have to be held jointly responsible. The said Enquiry Officer has rejected the objection of the petitioner in his report.

14. In view of the peculiar facts as recorded above, I find that the Enquiry Officer, who was the same Mechanical Engineer indicted for the same accident, could not have conducted the said enquiry and the Corporation should have avoided appointing him as an Enquiry Officer. Any independent person, unconnected with the said Department, but eligible to be appointed as the Enquiry Officer,

should have been entrusted with the said task. On the touchstone of prejudice, I find that the Mechanical Engineer has held that all the allegations levelled against the charge sheeted employee are proved and has put the entire blame on him. He naturally desired to create a picture that he is unconnected with the said incident. These factors were lost sight of by the Labour as well as the Industrial Courts.

15. I am not required to make any comment about the conduct of the Corporation as to whether they should have initiated any action against the said Mechanical Engineer, since this is an aspect which has to be left to the Management and this Court cannot deal with the issue in its supervisory jurisdiction.

16. The learned Advocate for the Corporation submits that the petitioner is almost 69 years of age and has attained superannuation at the age of 60. Even if a *denovo* enquiry has to be conducted, no purpose would be served as the petitioner has been granted his retiral benefits, except pensionary benefits, continuity and gratuity.

17. The learned Advocate for the petitioner submits that he may

be granted notional continuity in service and he would waive all the back wages so that this matter could be granted a 'quietus'. I am afraid, I cannot accept the said request for the reason that the incident at issue has led to the death of 33 passengers and any benefits granted to the petitioner under fortuitous circumstances would send a message to the other co-employees that the petitioner has been rewarded.

18. In view of the above, this petition is partly allowed. The Part I judgment of the Labour Court dated 20/01/2014, delivered in Complaint (ULP) No.43/2011, is quashed and set aside. Consequentially, the judgment of the Industrial Court dated 28/11/2018 delivered in Revision (ULP) No.1/2015 is also quashed and set aside and the revision proceeding is disposed off. The enquiry conducted by the Corporation against the petitioner is declared to be vitiated and therefore set aside.

19. The respondent/Management is directed to produce the original enquiry record and proceedings before the Labour Court on or before 30/11/2019. Needless to state, the oral evidence recorded in the said enquiry would be discarded. The Corporation would be at liberty to prove the charges, as set out in the charge sheet, before

the Labour Court on the basis of the documentary record. After the Corporation concludes its evidence, the petitioner would be at liberty to lead evidence.

20. The recording of evidence by the parties shall be concluded on or before 30/04/2020 and thereafter, the Labour Court shall decide Complaint (ULP) No.43/2011, as expeditiously as possible and preferably on or before 31/08/2020. Needless to state, while dealing with the *de-novo* enquiry, the Labour Court shall also consider the past service record of the petitioner and the proportionality of the punishment while deciding the complaint.

21. Rule is made partly absolute in the above terms.

Date : 22/10/2019

22. After this judgment was dictated in the open Court on 18/10/2019, in the first session, the learned Advocate for the respondent/Corporation mentioned this matter after lunch recess, in the absence of the learned Advocate for the petitioner, that a factually incorrect submission has been made by the petitioner that the Enquiry Officer was the same Mechanical Engineer. This matter was thereafter posted on the last working day before vacation

on 22/10/2019 (it being holidays from 19/10/2019 to 21/10/2019), so as to enable the learned Advocate for the petitioner to respond. On 22/10/2019, it became apparent from the record that the same Mechanical Engineer had been the Enquiry Officer. After recording this fact by a separate order dated 22/10/2019, I have signed this judgment.

(Ravindra V.Ghuge, J.)