

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. : 10337 OF 2019

The Divisional Controller,
The M.S.R.T.C. Osmanabad
Division, Osmanabad.

... PETITIONER

VERSUS

Sirajuddin Abdul Mogul,
At post Tamalwadi,
Tal – Tuljapur,
Dist. Osmanabad.

... RESPONDENT

...
Advocate for the Petitioner :- Shri M. D. Shinde h/f.
Shri A. D. Wange
Advocate for the respondent :- Shri P. V. Barde
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st AUGUST, 2019.

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ORAL JUDGMENT :

1. Rule.
2. Rule is made returnable forthwith and heard finally by the consent of the parties.
3. The petitioner MSRTC is aggrieved by the interlocutory order dated 19/03/2019 passed by the Industrial Court, Latur, by which, application Exhibit U-2 in Complaint (ULP) No.

36/2019, has been allowed and the transfer of the respondent dated 02/07/2018, has been stayed till the general transfers in March/April 2020.

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

5. Shri Barde learned Advocate has opposed the petition and submits that the petition deserves to be dismissed. He contends that the petitioner Corporation has issued a General Establishment Order No. 02/2018 dated 06/03/2018 and the letter dated 02/07/2018, by which, the respondent has been relieved from his posting as a bus conductor at Osmanabad and has been transferred to the Jalna depot. The General Transfer Rules applicable to the employees of the MSRTC, require that a particular procedure has to be followed while issuing transfer orders. Those employees, who are short listed for transfer in routine course, are entered in a list which is prepared in the month of December. Such employees have to indicate three options and such options have to be considered in the month of March/April for issuing the transfer orders.

Clause 8 (e) (2) of the Rules empowers the Corporation to transfer an employee without following the above stated procedure, only for special reasons.

6. He, therefore, relies upon the law laid down by this Court in the matter of *Bajaj Auto Limited Vs. Shri Shrikant Vinayak Yogi, 2006(3) Mh.L.J. 557* and the order passed by this Court on *18/06/2019 in Writ Petition Nos. 7306 and 7309 of 2019, MSRTC and another Vs. Mayur Madhukar Wanave and Hanmant Sakhahari Bonder.*

7. The record reveals that after the transfer order was issued on 02/07/2018, the respondent was relieved on 25/08/2018. He approached the Industrial Court on 02/03/2019 and by an exparte ad interim order passed on the same day, the transfer order was stayed after eight months. By the impugned order dated 19/03/2019, the Industrial Court has allowed the interim application on the ground that the transfer order cannot be issued by way of a punishment and the employee would find it difficult to participate in the enquiry proceedings if he is shifted away from the place where

the enquiry is in progress.

8. In the order dated 18/06/2019 in the case of *Mayur Wanave (supra)*, passed by this Court, I had considered the issue of the pending enquiry and in order to enable the complainant employees to participate in the disciplinary proceedings, I have not interfered with the order passed by the Industrial Court staying the transfers.

9. Having considered the record, I find that the following reasons are sufficient to take a different view in this matter :-

(a) The respondent employee is in employment with the petitioner Corporation as a bus conductor from 2011 and in between 2011 to 2016, which is a period of 5 years only, the respondent has committed 8 misconducts out of which 7 are grave.

(b) Barring one misconduct of unauthorized absence, all the 7 misconducts are with relation to misappropriation of money in his capacity as a bus conductor.

(c) In 2012, he was subjected to disciplinary proceedings for having misappropriated Rs. 21,717/- and in 2015, he had

misappropriated Rs. 9,942/-.

(d) For 2 misconducts committed in 2012 and 2016, he has been awarded with the punishment of dismissal from service pursuant to the departmental enquiry.

(e) In both these matters, he has challenged the second show cause notice and is under protective orders from the Labour Court.

(f) After the Labour Court granted him the protection in 2012, he has committed 5 misconducts till 2016.

10. It cannot be ignored that Clause 8 (e) (2) of the Rules empowers the MSRTC to by pass the normal procedure of general transfers, in cases involving employees who are charged with grave misconducts, and move out such employees in order to avoid commission of further misconducts.

11. Considering the past record of the respondent and keeping in view that the respondent, who is only 32 years of age today and would have 26 more years in employment, permitting him to work as a bus conductor keeping in view

that 8 serious misconducts are committed in 5 years, would probably sound alarm bells for the Corporation, (*See Bajaj Auto Ltd., Aurangabad Vs. Kalidas Devram Patil, Aurangabad, 1999 II CLR 1108*).

12. The above factors should have been taken into account by the Industrial Court rather than blindly following an order passed in the peculiar facts of a particular case and interfere with a transfer order after 8 months of the employee having been relieved.

13. It is in the above peculiar facts and circumstances of this case, that I am causing an interference in the order passed by the Industrial Court, Latur by recognizing the power of the MSRTC to issue transfer orders to such errant employees under Clause 8 (e) (2) of the Rules.

14. The learned Advocate for the respondent makes a request on instructions that as he has been transferred to Jalna and his Labour Court cases are pending at Latur, the petitioner may be generous in accommodating the respondent in Latur or

at any depot around Latur.

15. In view of the above, this petition is allowed. The impugned order dated 19/03/2019 is quashed and set aside. Application Exhibit U-2 stands rejected. The petitioner would consider the request made by the respondent as is recorded above and relocate him somewhere at Latur or around Latur.

16. Considering that the respondent herein appears to be an employee habitually indulging in misappropriation, that I permit the petitioner to allot him any other work befitting his category of employment and by protecting his last drawn salary, so as to keep him away from the duties of a bus conductor or any such duties which would have any connection with handling of cash or money, till the pending ULP Complaints are decided.

17. Complaint (ULP) Nos. 53/2016 and 1/2018 pending before the Labour Court at Latur and Revision (ULP) No. 32/2019 before the Industrial Court, Latur shall stand expedited and the learned Labour Court shall endeavour to

decide the said two cases as expeditiously as possible and in any case on or before 30/04/2020 and 31/08/2020, respectively.

18. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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