

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12784/2017

Maharashtra State Road Transport Corporation,
having its office at Maharashtra Vahatuk Bhavan,
Dr. A.N. Marg, Mumbai 400 008.

..Petitioner.

..V/s..

Shanajade Gafur Sayyad,
age 38 Yrs., Occu. Service,
R/o At 40/83 Pink Villha,
Behind Bhogeshwari Temple,
Tq. Barshi, Dist. Solapur.

.. Respondent.

Shri G.S. Hegde, Advocate for the petitioner.

Shri Ketan A. Dhavle, Advocate (Appointed) for the respondent.

CORAM : N.W. SAMBRE, J.

DATED : 16.8.2019

1] Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2] This petition is by State Road Transport Corporation questioning the judgment dated 25th April, 2005 delivered by the learned Industrial Court, Solapur in Revision (ULP)No.93/2006 vide impugned judgment dated 20th March, 2010.

3] The facts necessary for deciding the present writ petition are as under:

Respondent claiming to be a workman, alleged to have been employed as a Conductor with petitioner w.e.f. 1986 and while discharging his duty at Barshi Depot, he was assigned adjusting the duties of the others. When one Mr. Jagdale applied for grant of leave, who was accompanying with one Mr. Subhash Patil, a Conductor and Deputy Secretary of one of the Union.

4] It is claimed that respondent behaved arrogantly with said two persons i.e. Jagdale and Patil and manhandled them.

5] Against the present respondent an offence punishable under Section 323 and 504 of the Indian Penal Code came to be registered at the behest of Subhash Patil.

6] As such a detailed charge-sheet alongwith documents was served on the petitioner on 22nd October, 1999 pursuant to Item Nos.10,22 and 26 of the Discipline and Appeal Procedure.

7] Since in the enquiry the respondent was found guilty a show cause notice of dismissal came to be issued on 18th March, 2020 vide final order dated 20th April, 2000 and respondent came to be dismissed w.e.f. 25th April,

2000.

8] A departmental appeal was also initiated in which dismissal was ordered and the same has resulted into the initiating of proceedings in question. The learned Labour Court while dealing with the prayer for setting aside order of dismissal moved by the present respondent, directed the petitioners to desist from unfair labour practice against the respondent and cancelled the order of dismissal dated 20th April, 2000. Further directions were issued to reinstate the respondent with continuity of service with 50% of back-wages. The Industrial Court while dealing with the revision preferred by the petitioners, maintained the order. As such, this petition.

9] The submissions of Shri Hegde are, both the Courts below have committed an error in exceeding their judicial limit thereby setting aside the order of dismissal particularly when the Enquiry Committee has found that the respondent / employee has misbehaved and has brought disrepute to the goodwill of the Corporation as there was an offence registered against the respondent. Shri Hegde would invite attention of this Court to the Discipline and Appeal Procedure so as to claim that the orders impugned are liable to be quashed and set aside. According to Shri Hegde, the Courts below have committed an error in recording finding that the respondent is entitled to 50% of the back-wages.

10] While opposing the aforesaid submissions, Shri K.A. Dhavle, the learned Counsel for the respondent / employee would urge that both the Courts below have concurrently held that the petitioner Corporation has engaged in unfair labour practice. According to him, there is no error of jurisdiction which warrants interference in exercise of extraordinary jurisdiction.

11] Considered rival submissions.

12] The Labour Court vide order impugned has declared that the petitioner has engaged in unfair labour practice and ordered cancellation of dismissal of order dated 20th April, 2000 with reinstatement with 50% of the back-wages which was confirmed by the Industrial Court vide impugned order dated 20th March, 2010.

13] It is brought on record by the respondent through the evidence of his witness that the complainant Subhash Patil was not allocated any duty on said date but he indulged into quarrel with respondent, who was assigned the function of allocation of duties to the other Conductors. He has also established through evidence of Smt. Anita R. Lukade, who was examined at Exh.21, an employee of the petitioner corporation, that the respondent lodged

a complaint against said Subhash Patil, a unionist, and the said complaint was forwarded by said employee of the petitioner corporation to the Divisional Controller after obtaining remarks. The outward number at Exh.U-22 has established that said complaint was received and forwarded to the Divisional Controller, however, no action was initiated on the said complaint.

14] Apart from above, copy of the alleged complaint lodged by Subhash Patil was not produced on record and as such, it is not established that the respondent has committed an act as was claimed in the charge-sheet. Apart from the above, the charge levelled against the respondent was a misconduct under Clause 10, 22 and 26 of the Discipline and Appeal Procedure, however, there is no punishment of dismissal provided.

15] Both the Courts below i.e. Labour Court and Industrial Court have appreciated the evidence and have reached to a finding that the order of dismissal cannot be justified in the given set of the facts, circumstances and the evidence. That being so, no interference is called for in the order impugned.

16] As far as the claim for back-wages is concerned, it appears that both the Courts below have ordered payment of back-wages to the extent of 50% without recording any finding whether the respondent at the relevant time was employed elsewhere as the burden was shifted on the respondent.

17] In the backdrop of the aforesaid fact that the respondent has not discharged said burden, in my opinion, the back-wages, if not already paid by the petitioner, are reduced to 40% from 50%, however, needless to state that if back-wages are already paid as ordered by the Courts below, there shall be no recovery against the respondent of the same.

18] With the above observations, writ petition stands partly **allowed**.

JUDGE

Tambaskar.