

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8458 OF 2018**

Maharashtra State Road

Transport Corporation

.. Petitioner.

Vs.

Kacharu Maruti Mhasale

.. Respondent.

Mr.Gopal Krishna Shivaram Hegde with Mr.C.M.Lokesh for the Petitioner.

Ms.Seema Sarnaik and Mr.Ameya Tamhane for the Respondent.

CORAM : A.K. MENON, J.

DATED : 29TH JANUARY, 2019

P.C. :

1. By this writ petition, the petitioner corporation challenges the judgment and order dated 5th May, 2016 passed by the Labour Court, Nashik in Complaint (ULP) No.8 of 2014 and the judgment and order dated 10th October, 2017 passed in Revision Application (ULP) No.66 of 2016. The revision application is filed as a result of final judgment and order dated 5th May, 2016 passed by the Labour Court in Complaint (ULP) No.8 of 2014.
2. The facts which were considered by the two Courts below are as follows : The respondent was employed as a conductor with the petitioner corporation. The petition is the State Road Transport

Corporation and plies buses for ferrying passengers throughout the State of Maharashtra. The respondent was said to be on duty on 22nd November, 2007 at Igatpuri bus Depot and on that date he was deputed to attend the bus journey from Igatpuri to Ambewadi. The bus is said to have suffered a puncture at about 7.30 pm and the driver of bus instead of stopping bus is said to have continued on the journey. The initial allegations against the respondent was that he did not take any initiative to stop the bus due to which loss was caused to the corporation by way of damage to tyres and the "disk" of bus. The corporation claimed that it suffered a loss of Rs.19,000/- due to negligence of the respondent. Later the incident was reported to the Igatpuri bus depot and when they approached the respondent, he was allegedly under the influence of alcohol. He was therefore taken to Rural Hospital, Ghoti where the doctor drew a sample of blood and sent it for analysis and meanwhile issued a certificate that the respondent was under influence of alcohol. The blood analysis report, however, was not forthcoming. This aspect is not in dispute.

3. The respondent was thereafter dismissed from the services. This order of dismissal was challenged by filing Complaint (ULP) No.8 of 2016 alleging unfair labour practice under Item 1 of Schedule IV of the MRTU & PULP Act, 1971, The petitioner sought reinstatement along with full backwages. At the trial, witnesses were examined and the

First Labour Court, Nashik found that the punishment awarded was shocking and disproportionate and accordingly ordered reinstatement of the respondent with full backwages.

4. In the revision that came to be filed by the corporation, it was contended that the respondent was under influence of alcohol while on duty and that was a serious misconduct. Furthermore, the respondent had not taken any initiative to stop the bus despite damage to tyre of bus and this is alleged failure of the respondent to carry out his duties. The Revisional Court considered the facts and submissions made before it and partly allowed the revision and directed reinstatement of the respondent to his original post with continuity of service and half back wages. In paragraph 11, the Court observed that having perused all documents relied upon by the petitioner corporation including a medico legal certificate, the document indicated that the respondent was produced before the Medical Officer, Rural Hospital, Ghoti for alcohol check-up on 23rd November, 2007 at about 7 pm. The doctor prima facie observed that the respondent appeared to be under influence of alcohol and took sample of blood for chemical analysis.
5. The Court observed that apart from medico legal certificate, no other document was brought on record to establish that the blood contained alcohol, if so, the percentage of alcohol. The Court considered

evidence and also found that alleged incident took place on 22nd November, 2007 between 7.30 pm and 8 pm i.e. a good 24 hours before the respondent was allegedly found to be under the influence of alcohol. The order also records that the officer of the petitioner corporation attended the spot only on 23rd November, 2007 at 3 pm and took the complainant to hospital on 23rd November, 2007 at 7 pm. The Court found that these aspects were not disputed and not challenged in the cross examination by the petitioner corporation. Although the doctor may have issued a certificate the chemical analysis report was not produced.

6. It was for the petitioner corporation to take appropriate precautions if they were to ensure that discipline is to be maintained. The certificate is only prima facie opinion of the doctor and cannot be held against the respondent without the confirmatory chemical analysis. More so because a blood sample was collected. It also considered the respondent's claim that he was under medication and the suspicion of having consumed alcohol may be due to medication that he was consuming, as advised. While this may be a popular defence, the Industrial Court found that the petitioner has failed to establish any perversity in the order passed by the First Labour Court and also observed that the first complaint against the respondent was one of negligence in having failed to stop the bus from proceeding

despite a punctured tyre and therefore, found that the order of dismissal was shockingly and disproportionate.

7. The Court came to the conclusion that the corporation had failed to establish their case that the respondent's dismissal was in accordance with law. However while doing so, the Court came to the conclusion that since the respondent was on duty at the relevant time loss may have been caused to the corporation and therefore it reduced the amount of backwages by half of what had been ordered.
8. I am unable to find any perversity or illegality in the orders. Both orders take into consideration the evidence produced before the authorities. The impugned order therefore cannot be faulted. The challenge therefore must fail and hence I pass the following order :
 - (i) The writ petition is dismissed.
 - (ii) The petitioner shall ensure compliance of the order within a period of eight weeks from today.

(A.K. MENON,J.)