

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR.**

**Writ Petition No.7681 of 2018**  
**(The Divisional Controller MSRTC, Buldhana Division, Buldhana .vs. Smt.**  
**Chitralekha wd/o Chandrakant Jinkute Buldhana )**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions                      Court's or Judge's orders.  
and Registrar's orders

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Mr. V.G. Wankhede, Advocate for Petitioner.

**CORAM : Manish Pitale, J.**  
**DATED : March 20, 2019.**

By this writ petition, the petitioner MSRTC, has challenged concurrent orders passed by the Labour Court and the Industrial Court in favour of the husband of the respondent. The respondent is widow of the workman.

2.           The husband of the respondent had filed complaint before the Labour Court challenging order dated 19.07.2005 passed by the petitioner- Corporation terminating his services. The charge on which enquiry was instituted and service of the husband of the respondent was terminated was absenteeism from duty. It was the claim of the petitioner- Corporation that the husband of the respondent had remained absent from duty continuously for the period between 01.09.2004 and 21.02.2005 and since he was unauthorizedly absent, his service deserved to be terminated.

3.           The Labour Court took into consideration the

pleadings and the evidence on record and found that the husband of the respondent suffered injuries to his ribs and spine in an accident that occurred when he was on duty. The Labour Court also found that the muster roll produced on record, which was a document of the petitioner- Corporation itself, demonstrated that the husband of the respondent was shown to be on leave from 01.09.2004 to 10.02.2005 and that it appeared that thereafter he was absent upto 19.02.2005. The Labour Court on appreciation of the evidence on record found that the husband of the respondent could be said to be on unauthorised leave only for a period of about 10 days. On this basis, the Labour Court gave a finding that the enquiry report holding against the husband of the respondent was perverse. The relevant portion of the order of the Labour Court reads as follows:-

*“19. In this case the enquiry papers are produced by the respondent. The muster roll is at Exh.16(iv). The muster roll of the month September 2004 to 19.2.2005 shows that complainant was on leave from 1.9.2004 to 10.2.2005 and thereafter he was absent till 19.2.2005, it means that the complainant was remained absent without leave or unauthorized absent for 10 days. According to me the documents of the corporation itself speaking that the unauthorized absence of complainant is only for 10 days. The said absence is not remarkable, reason given by complainant is in respect of pains in his ribs and backbone apart from it, complainant has also produced the death certificate of his mother. The said certificate is at Exh.21. It shows that Shantabai Gopalrao Jinkute died on 19.11.2004 it means that during the leave period his mother died, according*

*to me the complainant was not unauthorizedly absent as stated by the opponent in the reply. The muster roll clearly shows that the applicant was sometimes on leave and sometimes present from 1.9.2004 to 10.2.2005 and thereafter, 10 days he was unauthorizedly absent. The unauthorized absence of complainant is not remarkable for which the punishment of dismissal proposed by the enquiry office. The enquiry officer given finding that during the enquiry the delinquent Jinkute has not produced any documentary evidence in respect of absence. Similarly, the reason given by delinquent is also not proper. The said reason given for by way of defence that of on duty accident. The enquiry officer initially stated in his finding that during the period 3.9.2004 to 19.2.2005 taken the leave of 103 days without permission according to me the muster roll itself speaking that the complainant was on leave and his unauthorized absency was for 10 days. Therefore, according to me the findings of enquiry officer are incorrect and perverse. He has not taken into consideration the muster roll why it was marked from 1.9.2004 to 10.2.2005 even though the enquiry officer has given an opportunity to the complainant during the course of enquiry and conducted the enquiry as per the principles of natural justice but the findings are perverse. Therefore, I answer to issue no.3 in affirmative."*

4. On a challenge raised by the petitioner-Corporation before the Industrial Court, it was found that the material on record was correctly appreciated by the Labour Court and the findings could not be said to be erroneous. The Industrial Court while upholding the

findings of the Labour Court held as follows:-

*“16. The Ld. Labour Court, Buldana thereafter proceeded to scan the inquiry papers produced on record by the Corporation. The muster-roll is at Exhibit 16(iv). The muster roll for the month September 2004 to 19.02.2005 shows that the Complainant was on leave from 01.09.2004 to 10.02.2005 and thereafter he was absent till 19.02.2005. As such, the Ld. Judge came to the conclusion that the muster-roll shows that the Complainant had remained absent without leave or was unauthorizedly absent for 10 days. The Ld. Judge considered the reasons put forth by the Complainant as regards the meeting with an accident and further pains occurring there from. The Ld. Judge also considered the fact that the mother of the Complainant expired on 19.11.2004 and that the certificate to that effect is at Exhibit 21. The Ld. Judge observed that the muster-roll clearly reflected that the Complainant was sometimes on leave and sometimes present during the period from 01.09.2004 to 10.02.2005 and thereafter for further 10 days he was unauthorizedly absent. As per the Ld. Judge, the said absence of 10 days is not remarkable. The Ld. Judge has thereafter proceeded to consider the findings given by the Inquiry Officer that during the period from 03.09.2004 to 19.02.2005, the Complainant had taken leave of 103 days without permission. The Ld. Judge on this aspect observed that the muster roll speaks for itself to the effect that the Complainant was on leave and he was unauthorizedly absent only for 10 days. Further the Inquiry Officer has also not taken into consideration the fact that the remark “L” was marked on the muster-roll during the period from*

*01.09.2004 to 10.02.2005. On the basis of these observations, the Ld. Judge has come to the finding that the finding drawn by the Inquiry Officer are perverse.*

*17. I have given my anxious consideration to the observations and findings given by the Ld. Judge on the issue of perversity of findings. The Ld. Judge has appreciated the oral evidence tendered by the Complainant and the grounds put forth by the Complainant for he required to proceed on leave. The fact that the Complainant had met with an accident for which he had sustained injuries is no at all disputed. Further more, the Ld. Judge has also taken into consideration the entries made in the muster-roll produced by the Respondent Corporation along with the inquiry papers. The muster-roll reflects the remark "L" being put. The Ld. Judge after taking into account all these facts opined that the Complainant was unauthorizedly absent only for 10 days i.e. from 11.02.2005 to 19.02.2005. In my view, the inquiry has failed to consider the available documentary evidence before him. The Ld. Judge has very properly and rightly appreciated the oral and documentary evidence available before him. The conclusion drawn by the Ld. Judge that the findings of the inquiry officer are perverse, in my view, are just and proper and as such in the limited supervisory revisional jurisdiction, the same does not deserve any interference at the hands of this Court. Hence I upheld the findings drawn by the Ld. Judge, Labour Court, Buldana on the issue of perversity of findings."*

5. The aforesaid concurrent findings of facts

rendered by the two Courts below show that the husband of the respondent was on duty when an accident occurred, due to which he suffered severe injuries and that he was on leave for most of the alleged period of absence except for a period of 10 days. The two Courts below have correctly found that such absence in the backdrop of submissions made on behalf of the respondent that her husband was still in pain due to injuries suffered by him, cannot be said to be perverse and, therefore, this Court exercising writ jurisdiction does not find it appropriate to entertain this writ petition on behalf of the petitioner- Corporation.

6. In view of the above, writ petition is found to be without any merit and it is dismissed.

**JUDGE**

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