

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

**WRIT PETITION NO. 3051/2013**

Shri Bharat S/o Kashinath Rakshak,  
Aged about 50 years, Occ. Nil,  
R/o. C/o. Babarao Vinchurkar,  
Plot No. 269, Jawaharnagar, Manewada,  
Nagpur

.... **PETITIONER**

// **VERSUS** //

Maharashtra State Road Transport Corporation,  
Through its Divisional Controller,  
Office at : Station Road, Sitabuldi, Nagpur

.... **RESPONDENT**

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Shri S.A. Kalbande, Advocate for the petitioner  
Shri V.G. Wankhede, Advocate for the respondent

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**CORAM : Z.A.HAQ, J.**  
**DATED : 18/07/2019**

**CIVIL APPLICATION (W) NO. 1689/2019**

Considering the facts of the case, the prayer for early hearing of the petition is granted and as the advocates for the respective parties have shown willingness to argue the matter, the petition is taken up for hearing.

The civil application is **allowed** accordingly.

**WRIT PETITION NO. 3051/2013****ORAL JUDGMENT :**

1]            Heard.

2]            Undisputedly, the petitioner had been in employment with the respondent as confirmed employee, working on the post of Conductor since about 10 years prior to his dismissal from the service. The respondent – employer had served charge-sheet on the petitioner levelling four charges, one of it being that he had assaulted and abused the Depot Manager. The Enquiring Authority found that the charge of abusing the Depot Manager was not proved against the petitioner, however, the charge of aiding/abetting assault on the Depot Manager was proved.

The petitioner had filed complaint before the Labour Court under Section 28 read with Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. The Labour Court, after conducting the trial, recorded that the findings of the Enquiring Authority in respect of Charge Nos. 1, 3 and 4 were proper and correct but the findings of the Enquiring Authority in respect of Charge No. 2 were perverse. The Labour Court got swayed with the submission made on behalf of the petitioner that the other employees Shri Zade, Shri Bhujade, Shri Mehboob Ali, Shri Raut, Shri Mankar, Shri Yeole and Shri Sanjay Modak who were also charge-sheeted alongwith the petitioner in respect of the same

incident and against whom the charges were similar, were punished with minor punishment, and observing that the punishment imposed on the petitioner was disproportionate, interfered with the punishment imposed on the petitioner and directed the respondent to reinstate the petitioner with continuity of service and to pay 50% backwages from the date of dismissal till reinstatement of the petitioner in service.

Being aggrieved by the order passed by the Labour Court directing reinstatement with 50% backwages, the respondent had filed revision before the Industrial Court. The petitioner had also filed revision before the Industrial Court claiming full backwages. Both the revision applications are decided by the Industrial Court by the impugned order.

The Industrial Court has dismissed the revision application filed by the petitioner and has allowed the revision application filed by the respondent. The Industrial Court has set aside the order passed by the Labour Court, and the complaint filed by the petitioner is dismissed. Being aggrieved with the order passed by the Industrial Court, the petitioner has filed this petition.

3] After hearing the learned advocates for the respective parties and going through the documents placed on record of this petition, I find that the order passed by the Industrial Court is based on proper appreciation of the material on record and is in consonance with the legal position. The Labour Court, after recording that the findings of the Enquiring Authority on

Charge Nos. 1, 3 and 4 were just and proper and were not perverse, it was not open for the Labour Court to set aside the order of dismissal and direct the respondent to reinstate the petitioner and to pay 50% backwages. The petitioner had not raised any challenge to the conclusions recorded by the Labour Court that the findings recorded by the Enquiring Authority on Charge Nos. 1, 3 and 4 were just and proper and not perverse. Hence, the Industrial Court has rightly held that it was not open for the Labour Court to set aside the order of dismissal and direct the respondent to reinstate the petitioner with 50% backwages.

Even in this petition, the petitioner has not raised any challenge to the conclusions of the Labour Court that the findings recorded by the Enquiring Authority on Charge Nos. 1, 3 and 4 were just and proper and not perverse.

4] The thrust of the argument on behalf of the petitioner was on the point that the punishment imposed on the petitioner is disproportionate. The learned advocate for the petitioner submitted that the other employees who were charge-sheeted with similar charges for the same incident were punished with minor punishment i.e. withholding of three increments and in case of an employee (Shri Gunwant Nagpure) who was dismissed and had filed complaint before the Labour Court and whose complaint came to be allowed, the respondent has not challenged the order passed by the Labour Court directing reinstatement of Shri Gunwant Nagpure. It is argued that the

respondent – employer cannot discriminate and treat its employee differently. To support the submission, reliance is placed on the judgment given in the case of Coimbatore District Central Co-operative Bank vs. Coimbatore District Central Co-operative Bank Employees Assn. and another reported in (2007) 4 SCC at page 669 and the judgment given in the case of State of Uttar Pradesh and others vs. Raj Pal Singh reported in (2010) 5 SCC at page 783.

5] The learned advocate for the respondent submitted that the charges levelled against the petitioner were of serious nature and the Enquiring Authority found that the charges levelled against the petitioner were proved and even the Labour Court recorded that the findings of the Enquiring Authority in respect of Charge Nos. 1, 3 and 4 were just and proper and not perverse, and therefore the Labour Court had committed error by interfering with the punishment inflicted on the petitioner by the employer. To support the argument that the charges levelled against the petitioner were of serious nature, the learned advocate for the respondent has relied on the judgment given by this Court in the case of Vilas Vithalrao Takale vs. Jaya – Hind Industries Ltd. & Ors. reported in 2008 (4) ALL MR at page 301. To support the argument that the Labour Court should not have interfered with the order of dismissal after recording that the enquiry was fair and proper and the findings recorded by the Enquiring Authority were not perverse, the learned advocate for the respondent has relied on the

judgment given by this Court in the case of Holy Spirit Hospital and another vs. Benjamin Fernandes reported in 2013 (1) Bom. LC at page 151 (Bom).

6] Though there is some substance in the submission made by the petitioner on the point of proportionality of punishment, looking to the gravity of the charges against the petitioner and the fact that the Enquiring Authority as well as the Labour Court have recorded that the enquiry conducted against the petitioner was fair and proper, and the Labour Court having found that the findings recorded by the Enquiring Authority on Charge Nos. 1, 3 and 4 cannot be said to be perverse, in my view, the Labour Court had committed error by interfering with the order of dismissal and directing the respondent to reinstate the petitioner with 50% backwages. The Industrial Court has rightly set aside the order passed by the Labour Court.

In view of the above, I see no reason to interfere with the impugned order in the extraordinary writ jurisdiction.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

**JUDGE**