

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

WRIT PETITION NO.4508/2019

Maharashtra State Road Transport Corporation, Yavatmal Division, Arni Road,
Yavatmal and another

..Vs..

Shekhar S/o Bhanudas Gharde

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

Court's or Judge's orders

Shri A.S. Mehadia, Advocate for the petitioners.

CORAM : Z.A. HAQ, J.

DATED : 8.7.2019.

Heard.

The respondent - employee was dismissed from service by order dated 19th September, 2001. This action was taken by the petitioner - Corporation (employer) after disciplinary enquiry was conducted and it was found that the charges levelled against the respondent - employee were proved. The respondent - employee had approached the Conciliation Officer, however, the conciliation was not successful and, therefore, matter was referred to the Labour Court for adjudication. Before the Labour Court, the respondent - employee had filed his statement of claim. The petitioner - employer opposed the claim of the respondent - employee by filing its written statement / reply. The Labour Court had framed preliminary issues on the point of legality and fairness of the departmental enquiry conducted against the respondent - employee and whether the findings recorded by the Enquiry Officer

were perverse. By order dated 24th October 2017, the Labour Court answered preliminary issues in favour of the respondent - employee holding that the departmental enquiry held against the respondent - employee was not fair and proper and the findings recorded by the Enquiry Officer were perverse. The petitioner - employer was granted liberty to prove the misconduct of the respondent - employee before the Labour Court. The petitioner - employer failed to avail opportunity and to adduce evidence to prove the misconduct of respondent - employee. Labour Court proceeded with the matter and passed an award on 9th January, 2018, quashed the termination order and directed the petitioner - employer to reinstate the respondent - employee with full back-wages to be paid within two months. The Labour Court further directed that if the petitioner - employer failed to pay the back-wages to the respondent - employee within two months, the petitioner - employer would be liable to pay interest at the rate of 12% per annum. For reasons not explained, the award passed by Labour Court was not challenged by the petitioner - employer.

The respondent - employee filed complaint before Industrial Court under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act of 1971") complaining that the employer had not implemented the award passed in Reference IDA No.3/2012. This complaint is decided by the Industrial

Court *ex parte* as the petitioner - employer failed to attend the proceedings. Now, the petitioner - employer has challenged the preliminary order passed by the Labour Court in Reference IDA No.3/2012 on 24th October, 2017 as also the award dated 9th January, 2018 and the order passed in ULP No.38/2018.

There is no explanation why the award dated 9th January, 2018 was not challenged earlier. There is no explanation why the petitioner - employer has not participated in the proceedings of complaint ULP No.38/2018.

Though, *prima facie*, I find that the award of full back-wages and directions given by the Labour Court to pay interest @ 12% per annum are a bit harsh, the gross negligence on the part of the petitioner - employer is coming in the way of petitioner - employer for seeking any relief in the extra-ordinary jurisdiction. In this petition there is no explanation to justify the gross negligence. It is the matter of common knowledge that in some cases, the officer in-charge for attending the proceedings on behalf of public bodies like petitioner - corporation are in collusion with the employees and this appears to be one of such case. I would have shown indulgence in the matter had petitioner - corporation shown some seriousness in the matter and if action was taken against the erring officer. But the petitioner - corporation has not taken any action against the erring officer.

Hence, I am not inclined to entertain this

petition overlooking the legal position that the petitioner - corporation waived its right to challenge the award passed in IDA No.3/2012 when it was served with the notice of Complaint ULP No.38/2018 and vakalatnama on its behalf was filed by Advocate before the Industrial Court. Hence, the writ petition is **dismissed**. No costs.

Learned Advocate for the petitioner – employer shall send copy of this order to the Managing Director of petitioner - corporation by registered post acknowledgment due and file affidavit of compliance on record of this petition within one month.

JUDGE

Tambaskar.