

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3591 OF 2020

Vandana Dnyaneshwar Solunke,
Age-37 years, Occu-Service as
S.T.Conductor, Batch No.48554,
R/o C/o Krishna Bajirao Aher,
At Post : Sillod, Tal.Sillod,
Dist.Aurangabad

– PETITIONER

VERSUS

1. Maharashtra State Road Transport
Corporation, Through its Divisional Controller,
S.T.Divisional Office, Aurangabad,
At Post, Tq. And Dist. Aurangabad

2. Divisional Traffic Superintendent,
(D.T.S.Default) (Competent Authority)
Maharashtra State Road Transport Corporation
S.T.Divisional Office, Aurangabad,
At Post, Tq. And Dist.Aurangabad

– RESPONDENTS

Mr.P.L.Shahane, Advocate for the petitioner.
Mr.A.D.Wange, Advocate for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/03/2020

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. The petitioner/lady bus conductor joined service with the respondent/corporation as a Bus Conductor on 20/07/2009. She was taken on regular time scale in 2011. By the present petition, she seeks to challenge the order dated 21/04/2016 passed by the Labour Court below Exh.U-2 by which the Court declined to grant interim protection in Complaint (ULP) No.6/2015. She is further aggrieved by the judgment dated 28/02/2020 delivered by the Industrial Court, by which, her Revision (ULP) No.18/2016 has been dismissed. The petitioner has been protected under the orders of the Labour and Industrial Courts since 2015 and is still in employment today as the protection has been continued.

3. On 28/09/2013, the complainant was discharging her duties as a Bus Conductor on a journey from Buldhana to Aurangabad. The bus was subjected to a surprise check at Ganori Phata. The reporter from the squad noticed that one lady passenger was travelling from Sillod to Aurangabad and was issued with a lower denomination ticket. A group of one and half passengers travelling from Sillod to Aurangabad also were issued with lower denomination tickets. A group of 3 persons travelling from Fulambri to Aurangabad were also issued lower denomination tickets. The cash in hand with the petitioner, was found to be less by Rs.95/-.

4. The petitioner faced the checking squad and informed them about the fault in the Electronic Tickets Issuing Machine (ETIM). Though she was unwell on the said date, she had still reported for duties. With this defence, she faced the departmental enquiry and was held guilty. After she was issued with the second show cause notice of dismissal dated 16/12/2014, she approached the Labour Court. By an ex-parte ad-interim order passed below Exh.U-2, she was granted interim protection and she continues to be protected for more than 5 years till today.

5. Having considered the strenuous submissions of the learned Advocates for the respective sides, I have perused the default card submitted by the learned Advocate for the MSRTC. The scheduled date of retirement of the petitioner is 31/05/2040 and she has another 20 years of service. She has put in 11 years having joined in 2009.

6. Having perused the default card, it indicates that there are 10 misdemeanors. The misconduct mentioned at Sr.No.2, is the case in hand. In 2014, one passenger was found travelling without ticket for which the petitioner was subjected to a penalty of Rs.200/-. In 2015,

one passenger was similarly found travelling ticketless and the petitioner was subjected to a fine of Rs.100/-. These two misconducts are purely with regard to ticketless passengers, who had not paid the ticket fare to the petitioner. In 2016 and 2017, the petitioner had reported a deficit of Rs.95/- and Rs.30/- and she was penalized with a fine of Rs.200/- in each case. In 2017, one person was found travelling ticketless without having paid the ticket fare to the petitioner and she was penalized with a fine of Rs.1,000/-. A similar incident of one passenger was noticed in 2018 and she suffered the fine of Rs.200/-.

7. There is no dispute that the present petitioner has never been alleged of having collected ticket fare / money from the passengers and by misappropriating the money, tickets were not issued. A ticketless passenger who admits of having not paid the fare to the bus conductor, is said to be not a misconduct committed by the bus conductor, amounting to negligence in not being able to trace out a ticketless passenger. As such, there is no case reported against the petitioner that she has taken the fare of the tickets and has not issued any ticket. The present case, as noted by the Labour Court from the facts emerging from the record, indicates that 5 passengers were found with tickets of less denomination.

8. It is equally undisputed that the present petitioner had once found Rs.700/- having fallen on the floor of the bus. It appeared that the said amount of Rs.700/- had fallen from some bus passenger. The petitioner collected the said amount and after reaching the MSRTC Depot at Sillod, had tendered the money with the appropriate authorities and a receipt No.003-397708 was issued to her.

9. I have considered the above fact situation in the light of the petitioner having put in 11 years in employment. After 2018, when only one bus passenger was found travelling ticketless and had not paid any fare to the petitioner, she has been discharging her duties, properly.

10. It also cannot be ignored that the petitioner is in employment for the last 5 years under Court orders. The complaint filed by her before the Labour Court is more than 5 years old and can be expedited. The learned Advocate for the petitioner submits on instructions from the petitioner present in the Court that she is willing to suffer any punishment, except dismissal from service. She is in dire need of employment.

11. In view of the above, I find that the Law crystallized by the Hon'ble Apex Court in paragraph No.54 in Hindustan Lever Ltd., Vs. Ashok Vishnu Kate and others [(1995) 6 SCC 326], would apply to this case. I deem it appropriate to allow the petitioner to continue in employment and expedite the decision in the pending ULP complaint.

12. Considering the above, this petition is disposed off. The relief granted by the Labour Court and which has been continued by the Industrial Court by order dated 28/02/2020, shall continue to protect the petitioner under the following conditions :-

[a] The petitioner shall tender her explanation to the show cause notice dated 16/12/2014, on or before 16/03/2020.

[b] After considering her explanation, the MSRTC is at liberty to award any punishment as is prescribed under the Regulations, save and except the order of dismissal or discharge or compulsory retirement from service.

[c] If the MSRTC agrees to award any other punishment, except of terminating or relieving the petitioner from employment, the parties are at liberty to tender a joint purshis and seek disposal of the ULP complaint.

[d] In the event, the MSRTC does not desire to award any other punishment and decides to rely upon the decision of the Labour

Court in Complaint (ULP) No.6/2015, the petitioner would be continued in employment till the decision in the said complaint.

[e] In the event, the petitioner is apprehended having committed any misconduct of collecting fare and not issuing tickets or issuing used tickets or of any kind of misappropriation in future, the MSRTC would be at liberty to take a strict view in the matter and in such a case, the Labour Court would not show any sympathy towards the petitioner.

13. In the event the ULP complaint is required to be prosecuted, the Labour Court shall endeavour to decide Complaint (ULP) No.6/2015, as expeditiously as possible and preferably on or before 31/03/2021.

(Ravindra V.Ghuge, J.)