

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 8401 OF 2003**

Maharashtra State Road Transport Corporation. .... Petitioner

**Versus**

Shri.Dilip Uttam Jayabhay .... Respondent

.....

Mr. Vilas B. Tapkir for Respondent.

**CORAM : S.C. GUPTE, J.**

**DATE : 23 JANUARY 2020**

**P.C. :**

. This writ petition challenges an order passed by the industrial court at Pune on a complaint of unfair labour practice. The complaint was filed by the Respondent herein, under items 1a, b, c, d, f & g of Schedule IV of the MRTU & PULP Act.

2. The allegation in the complaint was that the Petitioner herein had wrongfully terminated the Respondent on and from 06.06.1993. The Labour Court, by its order dated 18.09.2004, dismissed the complaint. The matter was carried by the Respondent before the Industrial Court, Pune in revision. The Industrial Court, by its impugned order dated 31.07.2003, allowed the revision partly *inter alia* directing reinstatement of the Respondent with continuity of service, but without backwages, from the date of his dismissal and till the date of his reinstatement. The Petitioner was given three months' time to

comply with the order. The revisional order has been challenged by the petitioner in the present petition.

3. The writ petition was called out on 20.01.2020, when none appeared for the Petitioner and the matter was kept back. Today, when the petition is called out, once again none appears for the Petitioner.

4. The Revisional Court held that it was an admitted position that the complainant employee was driving an ST bus from Pune to Bhimashankar, when it met with an accident with a jeep coming from the front side, and this accident gave rise to some fatalities and injuries. The charge against the employee was that when he noticed the jeep coming from front, in order to avoid a collision, he took the S.T. bus to right hand side of the road which was a wrong side for him; at the same time, the jeep driver also turned his jeep to his left and as a result the two vehicles collided. The Court noticed that in the original papers of the inquiry proceedings, there was a map of the place of incident, which did show that the place of actual impact was on the right hand side of the main road. The Court, however, noted that the reporting officer, who was examined in the inquiry, had stated before the inquiry officer that the jeep was coming from the right side, i.e. from a wrong side and on noticing this, the complainant took his bus to the right. The Court noticed that there was practically no evidence before the Investigating Officer that the S.T. bus was being driven at an excessive speed, except the fact that the jeep was dragged for about 25 feet backward. The Court observed that merely because the jeep was so dragged, it could not be said that the bus was being driven at excessive speed. The Court

noticed that even the confidential report submitted by the Investigating Officer indicated that the jeep was driven on the wrong side. The Court further observed that it was an admitted position that the complainant employee was prosecuted for an offence punishable under Section 304-A read with Section 279 of Indian Penal Code before the Judicial Magistrate; and was acquitted after a trial. The Court noticed that even in the trial Court judgment, it was observed that the driver of the jeep was driving it without any driving licence, and at a high speed, and from a wrong side, and the learned Magistrate came to a definitive conclusion that the driver of the S.T. bus was not driving it in a rash or negligent manner. The revisional Court, accordingly, came to the conclusion that from the evidence before the Investigating Officer as well as before the Labour Court, it was established that the accident did not occur because of negligence on the part of the S.T. bus driver; there was contributory negligence on the part of the jeep driver; and that in the premises, the employer Corporation should not have imposed the extreme punishment of dismissal. Before the revisional Court, the complainant employee had made a statement that if he was reinstated in the service, he would not press for backwages. The Court obviously was of the view that that would be an adequate punishment. In the premises, though the revisional Court ordered reinstatement, it refrained from awarding any backwages.

5. These are all assessments of facts, which are supported by evidence on record; these cannot be termed either as unreasonable or perverse. The revisional Court has taken into account all relevant and germane materials and circumstances of the case and has not

disregarded any. So also, no irrelevant or non-germane material or circumstance is considered by the Court, while arriving at these conclusions.

6. In the premises, there is no infirmity to be found in the impugned order of the Industrial Court from the point of view of judicial scrutiny under Articles 226 or 227 of the Constitution of India.

7. The writ petition is accordingly dismissed.

8. Considering that the Respondent employee has already reached the age of superannuation and considering the fact that the order of reinstatement without backwages but with continuation of service was to be implemented within three months, the Respondent shall be entitled to his wages with effect from 1 November 2003 and till 31 May 2018, which is the date of his superannuation. The Respondent shall also be entitled to retiral benefits on the basis of continuity of service with effect from date of his dismissal and till his superannuation.

**( S. C. GUPTE, J. )**