

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

WRIT PETITION NO.7009 OF 2016

(Maharashtra State Road Transport Corporation, thr. its Divisional Controller,
Yavatmal and another Vs. Namdeo Bakshi Rathod, Yavatmal)

*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 Petitioners.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 4th JANUARY, 2020.

1] The petitioner MSRTC Corporation is aggrieved by the judgment and order delivered by the Labour Court dated 04.03.2015 by which Complaint (ULP) No.22/2007 filed by the respondent Bus Conductor has been allowed and he has been granted reinstatement with continuity and full back-wages till the age of superannuation. The petitioner is also aggrieved by the judgment and order dated 22.06.2016 delivered by the Industrial Court by which Revision (ULP) No.13/2015 filed by the Corporation, has been dismissed.

2] I have considered the submissions of the learned Advocate for the petitioner. The respondent had appeared through caveat. Notice was issued by this Court on 07.04.2017 which has been served on the respondent. No appearance has been entered. The name of the respondent was pronounced in the open court and yet there was no response.

3] The learned Advocate for the petitioner Corporation submits that the respondent was found having indulged in an act of misappropriation when his bus was checked on 19.08.2006 at Butibori. Three passengers were found to be travelling ticket-less. The bus was checked after it had travelled 30 Kms. The passengers contended that they had paid the fare to the respondent bus conductor. A full-fledged departmental enquiry was conducted under the discipline and appeal procedure and upon finding that the respondent was guilty of the charges levelled upon him, a second show cause notice was issued. After considering his reply, he was served with the order of dismissal dated 12.04.2007.

4] It is further pointed out that the past service record of the respondent is highly blemished. Though a copy of the default card is not placed on record by the petitioner, it is stated that earlier he was once dismissed from service for a similar misconduct. He was reinstated by the Competent Court and therefore, he was in employment. This is a second major misconduct committed by him. The Labour Court concluded that the enquiry was conducted in a fair and proper manner. However, the findings of the Enquiry Officer were held to be perverse, on the ground that the passengers were not examined in the enquiry, vide the Part-I order dated 09.12.2014.

5] I find from the Part-I order dated 09.12.2014 which has been challenged by the Corporation in this petition, that the Labour Court failed to consider that the

probative value of evidence in departmental enquiries is not to be equated with the probative value of evidence recorded in criminal cases. Non-examination of the passengers is not fatal to the enquiry. This has been settled by the Hon'ble Apex Court in the matter of *KSRTC vs. B.S. Hullikatti*, reported in *(2001) 2 SCC 574* and *Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane* reported in *(2005) 3 SCC 254*. The statements of the passengers recorded by the reporter and a witness on behalf of the MSRTC placing these documents before the Enquiry Officer and deposing on behalf of the Corporation to prove the said documents is held to be enough material to be considered in such cases.

6] The learned Division Bench of this Court has dealt with a similar case in the matter of *Hidayatali s/o Mehaboobali Sayyed v. Maharashtra State Road Transport Corporation, Chandrapur* reported in *2011(2) Mh.L.J. 949*, thereby concluding that there is no reason to presume that passengers travelling in a bus can be said to have falsely implicated the bus conductor when they stated that they have paid the fare and the bus conductor has not issued tickets.

7] In view of the law laid down by the Hon'ble Apex Court, the Labour Court had no reason to conclude that as passengers were not examined in the enquiry, the findings of the Enquiry Officer are vitiated.

8] In view of the above, this petition is allowed to the extent of the challenge set out by the Corporation as against the Part-I order dated 09.12.2014 delivered by the

Labour Court below Exh.36. The findings of the Enquiry Officer therefore, cannot be branded as being perverse. The findings of the Enquiry Officer having been upheld in the backdrop of the enquiry being sustained on the ground of compliance of the principles of natural justice, the impugned order dated 09.12.2014 stands quashed and set aside.

9] As the Part-I order of the Labour Court is perverse and erroneous, the judgment of the Industrial Court dated 04.03.2015 dismissing Revision (ULP) No.13/2015, consequentially stands set aside and the revision stands disposed off.

10] Having concluded as above, I am not required to go into the further developments that took place in the proceedings before the Labour Court. By way of a passing reference, I may note that though the Corporation reserved its right in its written statement to conduct a *de novo* enquiry and has not conducted a *de novo* enquiry leading to the Labour Court allowing the main complaint, would be in consequential in view of the above conclusion. A *de novo* enquiry will have to be conducted only if the enquiry is vitiated either on account of the non-observance of the principles of natural justice or on account of the findings of the Enquiry Officer being held to be perverse (*Bharat Forge Company Ltd. v. A.B. Zodge and another* reported in *AIR 1996 SC 1556*) and if a right to conduct a *de novo* enquiry is reserved in the written statement (*KSRTC v. Laxmidevamma and another* reported in *2001(2) CLR 640*).

11] In view of the above, this petition is allowed. The Part-I order of the Labour Court dated 09.12.2014 is quashed and set aside and the judgment of the Industrial Court dated 22.06.2016 also stands quashed and set aside.

12] Complaint (ULP) No.22/2007 stands restored to the file of the Labour Court, Yavatmal so as to enable the parties to address the court only on the proportionality of the punishment which is the solitary issue that remains to be considered by the Labour Court, once the enquiry is sustained. Needless to state, the subsequent final judgment of the Labour Court dated 04.03.2015 which was based on the Part-I order dated 09.12.2014, stands quashed and set aside.

13] The petitioner shall appear before the Labour Court at Yavatmal on 03.02.2020. Since the respondent workman has not appeared before this Court, the Labour Court would issue notice to the original complainant for causing his appearance and thereafter proceed to decide the proportionality of the punishment.

(Ravindra V. Ghuge, J.)