

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

LETTERS PATENT APPEAL NO. 82/2010 IN W.P. NO.2467/1997 (D)

Namdeo s/o Pandurang Parate,
Aged Adult, R/o At & Post Chikhali (Kanhoba),
Taluka Ner, District Yavatmal.

APPELLANT

....VERSUS.....

Maharashtra State Road Transport Corporation,
Through its Divisional Controller, Yavatmal.

RESPONDENT

Shri B.M. Khan, counsel for the appellant.
Shri A.S. Mehadia, counsel for the respondent.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 11TH AUGUST, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

The judgment of the learned Single Judge in Writ Petition No.2467 of 1997 dated 05.05.2009 is under challenge.

2. The appellant was employed as a Conductor with the respondent-Maharashtra State Road Transport Corporation. During the course of service on 23.08.1990, it was found while checking the bus in which the appellant was the Conductor that certain used tickets had been re-issued by him. A Departmental Enquiry was held and punishment of dismissal was imposed on the appellant on 22.07.1991. The dismissal order was challenged by filing a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The learned Judge of the Labour Court recorded a finding that the enquiry proceedings were conducted in a fair

and proper manner. After holding that the misconduct alleged against the appellant was proved, the Labour Court proposed to adjudicate whether the punishment of dismissal was valid. After noting that the past service record of the appellant was not satisfactory, the Labour Court directed reinstatement of the appellant but without back wages. The revision application preferred by the Corporation was dismissed by the Industrial Court. The learned Single Judge before whom the writ petition preferred by the Corporation was heard noted that for similar lapses in the past, the annual increments of the appellant had been stopped on two occasions and he had been fined on seven occasions. In view of these facts and as the misconduct was duly proved, the order of dismissal as imposed by the Corporation was restored. Being aggrieved, the original complainant has preferred the present appeal.

3. Shri B.M. Khan, learned counsel for the appellant submitted that the Labour Court as well as the Industrial Court having found that the punishment of dismissal was shockingly disproportionate had rightly modified the same by directing reinstatement without any back wages. According to him after the proceedings were decided by the Industrial Court, the services of the appellant were reinstated on 19.06.1998. However, subsequently since it was found that there was an interim order of stay granted in the writ petition, the appellant was again removed

from service on 20.04.2002. During this period the services of the appellant were satisfactory and on this count it was urged that the order passed by the Labour Court as confirmed by the Industrial Court deserves to be restored. In support of his submissions, the learned counsel placed reliance on the decision in *Scooter India Limited, Lucknow Versus Labour Court, Lucknow* [AIR 1989 SC 149]. It was thus submitted that the order of the learned Single Judge was liable to be set aside.

4. Shri A.S. Mehadia, learned counsel for the respondent on the other hand supported the impugned judgment. According to him, the past service record of the appellant was rightly taken into consideration by the learned Single Judge while maintaining the order of dismissal. Placing reliance on the decision in *U.P. State Road Transport Corporation Versus Vinod Kumar* [(2008) 1 SCC 115], it was submitted that the punishment of dismissal was rightly imposed and the error committed by the Labour Court and the Industrial Court was rightly corrected by the learned Single Judge. No interference was therefore called for in the present appeal.

5. After hearing the learned counsel for the parties and on perusing the material placed on record, we are satisfied that there is no merit in the letters patent appeal. It is an admitted position that the

enquiry held against the appellant was fair and proper. It is further not in dispute that for about seven occasions the appellant was fined and on two occasions his annual increments were withheld. It is thereafter that the punishment of dismissal was imposed on him. The Labour Court as well as the Industrial Court despite noticing the past record of the appellant modified the punishment of dismissal. This error was corrected by the learned Single Judge and in our opinion rightly so. It was clearly a case of misplaced sympathy shown on the appellant.

6. The ratio of the decision relied upon by the learned counsel for the appellant cannot be made applicable to the case in hand in the light of aforesaid facts. The reinstatement for a short period when the writ petition was pending is not very relevant in these facts. On the contrary, the decision in *U.P. State Road Transport Corporation* (supra) supports the contentions of the respondent.

7. In that view of the matter, we do not find any error committed by the learned Single Judge while allowing the petition filed by the Corporation. The letters patent appeal is dismissed with no order as to costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)