

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13870 OF 2021

THE DIVISIONAL CONTROLLER MAHARASHTRA STATE ROAD
CORPORATION AND ANOTHER
VERSUS
KISHORE NATHU CHALSE

Mr.A.B.Dhongade, Advocate for the petitioners.
Mr.V.Y.Patil, Advocate for the sole respondent.

(CORAM : RAVINDRA V. GHUGE , J.)

DATE : MARCH 23, 2022

PER COURT :

1. By this petition, the MSRTC has put forth prayer clause B and C, which read as under :-

"B. By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature of writ, the judgment and order passed by Learned Labour Court, Jalgaon in Complaint (ULP) No.29/2014 dated 18.09.2019 and the judgment and order passed by Learned Industrial Court, Jalgaon in Revision (ULP) No.01/2020 dated 01.02.2021 may kindly be quashed and set aside.

C. Pending hearing and final disposal of this writ petition, the judgment and order passed by Ld. Labour Court, Jalgaon in Complaint (ULP) NO.29/2014 dated 18.09.2019 and the

judgment and order passed by Ld. Industrial Court, Jalgaon in Revision (ULP) NO.01/2020 dated 01.02.2021 may kindly be stayed."

2. I have considered the strenuous submissions of Mr.Patil, learned Advocate for the original complainant/respondent, who has vehemently opposed this petition. He further submits that the original complainant has now superannuated. The Labour Court has rightly vitiated the enquiry since the co-passenger of the passenger, who was found travelling ticket less and had stated to the checking squad that the fare was paid, was not examined in the enquiry. So also, as the checking squad contended that the amount was paid, but the ticket was not issued, the Labour Court rightly concluded that no loss was caused to the MSRTC.

3. I find from the impugned Part I judgment of the Labour Court that the enquiry has been vitiated since the ticket less passengers as well as the co-passenger Narmadabai Koli, were not examined .

4. I find that the learned Judge of the Labour Court was not properly assisted by either side. The following judgments clearly lay

down the Law that a passenger need not be examined and the enquiry cannot be vitiated owing to non examination of the passenger :-

- [a] **State of Haryana and another Vs Rattan Singh [(1977) 2 SCC 491].**
- [b] **Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane, (2005) 3 SCC 254**
- [c] **KSRTC Vs. B.S.Hullikatti, (2001)2 Supreme Court Cases 574**

5. It is also well settled that whether the mis-deed committed by an employee has caused loss to the employer or not, is an insignificant issue. The charges of misconduct are to be considered in the light of the charge sheet and the allegations. The quantum of loss caused and the quantum of misappropriation is not a ground to be considered (Read : **Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. [(2000) 7 SCC 517 = 2000 AIR SCW 3439 = AIR 2000 SC 3129]** and **P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33]**)

6 I find from the record that the mistake committed by the Labour Court was repeated by the Industrial Court for the same reason. If the correct position of Law would have been brought to the notice of the Courts, the impugned orders would not have been passed. So also, the

Hon'ble Apex Court has held in **State Bank of Patiala and others Vs. S.K.Sharma**, reported [AIR 1996 SC 1669] that unless substantive rights are violated, an enquiry cannot be vitiated even if there are procedural lapses.

7. In view of the above, this petition is allowed. The impugned Part I judgment of the Labour Court vitiating the enquiry is quashed and set aside. The judgment of the Industrial Court dated 01.02.2021 is also quashed and set aside and Revision (ULP) No.1/2020 stands disposed off. The enquiry and the findings of the Enquiry Officer are sustained.

8. Since by this order, the enquiry and the findings have been sustained, the litigating parties are at liberty to proceed with Complaint (ULP) No.29/2014 as regards the proportionality of punishment. It is informed that the respondent has been earlier dismissed on two occasions for the same misconduct. This aspect is left open to be considered by the Labour Court in the light of the judgment delivered by the Apex Court in **Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain**, [2005(104) FLR 291=AIR 2005 SC 584].

9. Since the complaint is of 2013, the learned Labour Court is requested to decide the same on or before 30.08.2022 with the due co-operation of both the parties.

(RAVINDRA V. GHUGE, J.)