

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1405 OF 2022
ALONG WITH
WRIT PETITION NO.1406 OF 2022

Maharashtra State Road Transport]
Corporation (MSRTC) Through Depot]
Manager.] ... Petitioner

Vs.

Machindra Anandrao Satkar] ... Respondent

...

Mr. Amit A. Gharte for the petitioner.

Mr. Manoj A. Patil for the respondent.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 16TH FEBRUARY, 2022.

P.C. :-

1. These matters were heard extensively on 14/02/2022 and were adjourned to 16/02/2022. Today, the learned advocate for the MSRTC submits that this court may pass an appropriate order since the Corporation cannot extend a consent to any offer put forth by the respondent.

2. The learned advocate for the respondent submits that the respondent is present in the court and he has specifically consented that the back wages granted by the Industrial Court to the extent of 100%, could be reduced to 40% in the backdrop of the Labour Court having granted 50%.

3. Having considered the strenuous submissions of the learned advocates for the respective sides and having perused the petition paper-books with their assistance, it is apparent that the Labour Court had granted 50% back wages along with reinstatement and continuity in service, since the employee had led evidence to state that he was not in gainful employment.

4. By the concurrent findings of the two courts on the second show cause notice proposing the punishment of the dismissal, it is concluded that the said punishment would be shockingly disproportionate as the charge of reporting for duties in a drunken state, is not proved. The past service record of the respondent indicates that the respondent had created a riotous situation on 19/11/2006 in the chamber of the Traffic Controller and had abused him.

5. Since both the courts have come to the conclusion that the charge of reporting for duties in a drunken state, was not proved, though the incident of 19/11/2006 can be kept in focus,

the respondent cannot be deprived of reinstatement in service.

6. In the above backdrop, I am required to assess as to whether the conclusion of the Industrial Court vide the impugned judgment dated 30/01/2020 granting 100% back wages, in place of 50% back wages granted by the Labour Court, can be said to be perverse or erroneous. It is a settled position of law that the revisional powers of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971 are akin to the revisional powers of this court under the writ of certiorari. Unless the order is found to be perverse or erroneous, interference in the impugned order would be restricted.

7. Taking into account that the major misconduct of reporting for duties in a drunken state, having not been proved and a minor misconduct having been proved, in the backdrop of the blemished past service record as noted above, the view taken by the Industrial Court in granting 100% back wages would practically amount to rewarding the employee. The Industrial Court should have taken into account the fact that unless the order passed by the Labour Court was perverse or erroneous, it could not have caused interference under Section 44 while exercising revisional powers. The view taken by the Industrial Court in granting 100% back wages is, therefore, perverse, erroneous and deserves to be quashed and set aside.

8. The learned advocate for the respondent, as noted above, submits that the respondent is agreeable to receive 40% amount of back wages, so as to end the litigation with the employer. The MSRTC is unable to consent to this concession. However, in view of the statement made by the respondent, I am of the opinion that reducing the back wages to 40%, would be a step towards bringing the litigation between the parties, to an end.

9. As such, these petitions are partly allowed. The impugned judgment of the Industrial Court, only to the extent of clause (3) (ii) granting full back wages, is quashed and set aside and is replaced by the grant of 40% back wages. The direction of the Industrial Court, to this extent, stands modified.

10. Needless to state that, in the event, the respondent is apprehended reporting for duties in a drunken state, any time in future, the management would be at liberty to adopt a very strict stand, since he is a driver with the MSRTC and deal with him strictly. This goes without saying that the first appellate authority and the second appellate authority would not show misplaced sympathy towards him.

11. Since the respondent would be superannuating on 31/05/2022, the MSRTC shall reinstate the respondent on 10/03/2022. He would report for duties at 10.00 a.m. on

10/03/2022 and, thereafter, shall abide by the duties, as may be allotted to him. Similarly, the quantum of back wages as granted would be paid to him on or before 31/05/2022.

[RAVINDRA V. GHUGE, J.]