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

WRIT PETITION NO. 7123 OF 2004

Mr. Bharat Ramchandra Bhandvalkar ...Petitioner

vs.

The Divisional Transport Officer,
Maharashtra State Road Transport
Corporation and anr.

..Respondents

Mr. Vaibhav Jagdale i/b Mr. A.K.Jalisatgi, for petitioner.

Mr. G.S.Hegde a/w Ms. Dharini Jain i/b G.S.Hegde &
Associates, for Respondents.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 28, 2022

JUDGMENT :

1. Heard Shri Jagdale, learned counsel for the petitioner and Shri Hegde, learned counsel for the respondent.

2. The writ petition is of the year 2004. The petitioner, an employee of the Maharashtra State Road Transport Corporation (hereafter "MSRTC", for short) was working as a driver at the relevant time. On the date of the incident i.e. 10/12/1992, he was to ply a bus for ferrying passengers of

a marriage party in respect of the family members of one Shri Sadanand Laxman Mukadam. As many as three buses were deployed on contract basis. The officials of MSRTC conducted a surprise check of the buses. It was found that these three buses were carrying passengers almost in excess of 100 in number for which the fare was not collected. It was the contention of the petitioner that the members of the marriage party were unruly and it was not possible for the petitioner or the other drivers to control the number of passengers boarding the bus and collect fare from all of them. The excess fare was recovered from the passengers and there was no financial loss to the MSRTC. The petitioner was chargesheeted for failure to collect fare from the passengers. The charges were proved. The punishment of dismissal from the service was proposed. At this stage, the petitioner moved the Labour Court by filing complaint (ULP) No. 471 of 1993 under section 28 read with Item I of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('the Act', for short) The petitioner prayed for the

relief of setting aside the said show cause notice. The Labour Court by its judgment and order dated 21/04/2003 found that the enquiry held was fair, legal and proper, however, was of the opinion that the proposed punishment of dismissal is unwarranted and disproportionate. The Labour Court took into consideration the past record of the service of the petitioner which was not adverse. The complaint was allowed and the show cause notice of dismissal was set aside.

3. MSRTC filed a revision under section 44 of the Act before the Industrial Court. The Industrial Court was of the opinion that for the proved misconduct of having allowed 33 excess passengers to travel in the bus driven by the petitioner without any fare charges paid to MSRTC, it cannot be said that the punishment is disproportionate. As the Industrial Court was of the opinion that the misconduct cannot be said to be of a minor or technical in character, it interfered with Labour Court's order and consequently set it aside. The Industrial Court by its order dated 11/08/2004 protected the petitioner for period of three weeks.

4. The petitioner challenged the order of the Industrial Court in this Court. By an order dated 07/09/20004, this Court issued rule and granted interim relief in terms of prayer clauses (b) and (c). The petitioner continued in service and eventually retired on 31/05/2018 during the pendency of this petition.

5. Considering that the petitioner has now retired, at this distance of time, the question of dismissing the petitioner from service will not arise. The show cause notice was issued as to why the petitioner should not be dismissed from service in view of the proved misconduct. The show cause notice in that sense has worked itself out in view of the petitioner's superannuation.

6. Learned counsel for the petitioner submitted that at the relevant time, the departmental enquiry was conducted against three drivers which included the petitioner. So far as the colleague driver, namely Mr. Mishra, who was proceeded against with for the very same charges, the punishment of stoppage of three increments was imposed. This aspect was however not placed before the Labour or

Industrial Court. There is nothing on record to demonstrate that such a plea was taken by the petitioner before the Courts below.

7. Learned counsel for the respondents argued in support of the impugned order and tried to justify the Industrial Court's order. According to him, for the misconduct proved, the revisional Court was justified in allowing the revision, thereby, rightly interfering with the order of the Labour Court. He submitted that no leniency be shown to the petitioner.

8. In my opinion, now that the petitioner has superannuated, the question of imposing the punishment of dismissal on the basis of the show cause notice does not arise as the same cannot be taken to its logical conclusion. During the pendency of this petition, while the petitioner continued in service by virtue of the interim order passed by this Court, there is nothing placed on record to indicate that there has been any aberration on the part of the petitioner while discharging his duty. As regards the past service record of the petitioner, prior to the issuance of the show

cause notice of dismissal is concerned, it is pointed out that on two occasions, the petitioner had unauthorizedly absented himself. Apart from this, there is nothing to indicate anything adverse is reported against him. Though the aspect regarding imposition of the punishment of stoppage of three increments of the colleague driver-Mr. Mishra was not placed before the Labour Court or the Industrial Court, nonetheless, considering that now the petitioner has superannuated, in my opinion, the order of the Labour Court which directed imposition of punishment of stoppage of increments for a period of two years with cumulative effect, needs to be maintained, which would meet the ends of justice. It is pointed out that the petitioner's colleague-Mr. Mishra was awarded a punishment of somewhat similar nature by MSRTC as the one imposed by the Labour Court on the petitioner. Accordingly, the impugned order is set aside. The order passed by the Labour Court is upheld. The petition is allowed. Rule is made absolute with no order as to costs.

9. Needless to mention that the MSRTC will ensure that

the retiral dues of the petitioner are calculated and paid to the petitioner as expeditiously as possible.

(M. S. KARNIK, J.)