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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8066 OF 2006**

LAXMAN HARISCHANDRA MADHVI ..PETITIONER
VS.
DIVISIONAL TRAFFIC SUPERINTENDENT
MSRTC & ANR. ..RESPONDENTS

Mr. Sameer Mhatre i/b. Mr. Amol Mhatre for the petitioner.
Mr. G. S. Hegde a/w. Ms. Dharini Jain for the respondents-
MSRTC.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 17, 2022.

ORAL JUDGMENT :

1. The challenge in this writ petition under Article 227 of the Constitution of India is to the judgment and order passed by the Industrial Court dated November 13, 2006 thereby dismissing the revision filed by the petitioner. The Revision under Section 44 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereafter 'the MRTU & PULP Act' for short) filed before the Industrial Court by the petitioner challenging the order passed by the Labour Court dated October 8, 2002 dismissing the complaint of unfair labour practices.

2. The petitioner at the relevant time was working as a bus conductor with respondent-Maharashtra State Road Transport Corporation (hereafter 'MSRTC' for short). Sometime in 1998 the petitioner was assigned duties as a

bus conductor on the Roha-Vithalwadi route. There was a surprise check conducted by the MSRTC. It was found that though the petitioner had collected fare from nine passengers, however, he did not issue tickets. It is the case of the petitioner that he was assigned the route for the first time. He further contended that there was ample time for the passengers to disembark the bus within which time he would have issued the tickets.

3. The petitioner was charge-sheeted on October 10, 1998. After conducting the full fledged disciplinary enquiry, the Enquiry Officer reported that the misconducts levelled against the petitioner stand proved. Accordingly, a show cause notice as to why the petitioner should not be dismissed came to be issued on February 23, 1999. The petitioner challenged the show cause notice of dismissal by filing a complaint of unfair labour practices under Items 1a, 1b, 1f and 1g of Schedule IV of the MRTU & PULP Act. The Labour Court held that the enquiry is fair, legal and proper and the findings of the Enquiry Officer cannot be said to be perverse. The Labour Court then went on to dismiss the complaint by the judgment and order dated October 8, 2002.

4. The order passed by the Labour Court was challenged by the petitioner before the Industrial Court under Section 44 of the MRTU & PULP Act. By an interim order dated November 13, 2006, the Industrial Court directed the MSRTC to maintain status-quo in respect of the services of

the petitioner. The interim order was continued till the disposal of the revision. By an order dated November 13, 2006, the Industrial Court dismissed the revision. The petitioner challenged the order passed by the Industrial Court by way of the present writ petition.

5. On December 19, 2006, this Court issued 'rule' and during the pendency of the writ petition, the status-quo dated November 13, 2006 passed by the Industrial Court was directed to be continued.

6. During the pendency of the writ petition, it is reported that the petitioner superannuated on May 31, 2013.

7. I have gone through the findings of the Labour Court as well as the Industrial Court. The Labour Court took into consideration the past service record and observed that as many as eleven (11) instances were reported when the petitioner was found to have recovered the fare for which he has not issued tickets to the passengers. The Labour Court observed that it is a case of misappropriation of the public funds. So far as the past misconducts are concerned, on four (4) occasions the petitioner was awarded the punishment of stoppage of increment.

8. In ordinary course, there was no reason for me to have interfered with the concurrent orders passed by the Courts below as the findings cannot be said to be perverse.

9. However the intervening circumstance during the pendency of the writ petition, that the petitioner has

superannuated on May 31, 2013, will have to be taken into consideration. What was challenged before the Labour Court was a show cause notice of dismissal. The show cause notice could not be taken to its logical conclusion due to the pendency of the proceedings initially before the Labour Court, then before the Industrial Court and ultimately in this Court. The petitioner was protected by virtue of the interim orders passed by the Courts below as well as this Court. In view of the superannuation of the petitioner, there is no question now of imposing any punishment of dismissal/discharge/reduction/reversion in terms of the Disciplinary and Appeal Rules of MSRTC. It is pointed out that during the pendency of the proceedings, there is nothing adverse reported against the petitioner till his superannuation.

10. Though the punishment of dismissal/discharge/reversion cannot now be imposed on the petitioner, yet the petitioner cannot be allowed to go scot-free. The petitioner is personally present in the Court. Learned counsel, on instructions, submits that the petitioner is willing to voluntarily accept the punishment of withholding increment for a period not exceeding three annual increments as provided in the Disciplinary and Appeal Rules of MSRTC. In my opinion, considering the peculiar facts and circumstances of the present case, though the orders passed by the Industrial Court as well as the Labour Court do not call for any interference, in view of the fact that now

that the petitioner is superannuated, the punishment of withholding increment for a period not exceeding three annual increments, would meet the ends of justice.

- 11.** The writ petition stands disposed of.
- 12.** Rule is disposed of in the above terms.
- 13.** No costs.

(M.S.KARNIK, J.)