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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6666 OF 2019
WITH
WRIT PETITION NO. 8113 OF 2019
WITH
WRIT PETITION NO. 8114 OF 2019

Bhatu Kautik Kumbhare
Age – 57 years, Occ – Service,
R/o Parbhat Nagar,
Behind S.S.V.P.S.College,
Deopur, Dhule,
Taluka and District – Dhule

PETITIONER

VERSUS

The Divisional Controller,
Maharashtra State Road Transport Corporation,
Dhule Region
Dhule

RESPONDENT

.....

Mr. Prakash S. Paranjape, Advocate for the petitioner
Mr. D. S. Bagul, Advocate for the respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th SEPTEMBER, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.
2. Since all these three writ petitions raise similar questions of law and fact between the same parties, they were heard together and are being decided by this common judgment.

3. Hereinafter, the petitioner in these petitions shall be referred to as "Complainant" and the respondent as "MSRTC".

4. The Complainant is working as driver with the MSRTC since 1992. Three accidents are caused by the Complainant while he was driving ST bus. First accident is caused by the Complainant on 25th March, 1996 wherein one person lost life. In second accident, caused by the Complainant on 23rd October, 2006 another person was killed. In the third accident, caused by the Complainant on 10th March, 2009, another person has lost life. For all the three accidents, the Complainant was prosecuted in RCC No. 40 of 2001, SCC No. 4102 of 2006 and SCC No. 3187 of 2009. So far as SCC No. 4102 of 2006 is concerned, the same resulted into acquittal of the Complainant, since the prosecution failed to lead evidence in the said case. In RCC No. 40 of 2001 and SCC No. 3187 of 2009, the Trial Court, after considering the evidence led by the prosecution, has acquitted the Complainant.

5. In respect of the said accidents, three Departmental Inquiries were conducted against the Complainant and in all the three Departmental Inquiries, the Complainant was held guilty of the charge of negligence levelled against him and punishment of lowering down his basic pay by three stages permanently, stoppage of two annual increments permanently and stoppage of

annual increment for two years was imposed on the Complainant. The Complainant unsuccessfully challenged the punishment orders, by filing Departmental Appeals. Thereafter the Complainant filed Complaint (ULP) Nos. 86 of 2012, 13 of 2013 and 14 of 2013, before the Industrial Court, Dhule.

6. In the earlier round of litigation, the Complainant had challenged the findings recorded by the Industrial Court on preliminary issue, by filing Writ Petitions No. 2736 of 2015, 2737 of 2015 and 3027 of 2015. This Court, by order dated 2nd August, 2016, partly allowed the Writ Petitions, only to the extent of the directions set out in paragraphs No. 10, 11, and 12 of the order, so as to enable the Industrial Court to consider these issues and remitted back Complaint (ULP) Nos. 86 of 2012, 14 of 2013 and 13 of 2013 to the Industrial Court.

7. After remand of the matter, the Industrial Court has dismissed the Complaints filed by the Complainant. Hence, the present writ petitions.

8. Heard learned advocate for the Complainant and the learned advocate for the MSRTC. Perused the memos of writ petitions, annexures, the impugned order and the citations relied on by the parties.

9. Learned advocate for the Complainant assailed the impugned judgments, principally on the ground that charges levelled in the Departmental Enquiry and in the criminal case were identical and once the Complainant is acquitted by the competent Criminal Court, he could not have been held guilty in the Departmental Enquiry for the same charges. Therefore, according to him, the findings recorded by the Enquiry Officer and the punishment imposed on the basis of the same, is unsustainable. In support of his submissions, he placed reliance on "*Capt. M. Poul Anthony V/s Bharat Gold Mines Ltd & Anr*" *1999 (3) SCC 679* and "*S.Bhaskar Reddy V/s Superintendent of Police*" *(2015) 1 SCC (LS) 478*.

10. He further submits that the impugned punishment is shockingly disproportionate to the charge levelled and this aspect is not properly considered by the Industrial Court in the impugned judgments. He submits that the MSRTC has failed to lead any evidence in support of the charges levelled. Neither a single eyewitness nor the Conductors of the buses involved in the accidents were examined in the Departmental Enquiry. Therefore, there is no evidence on record in support of the charge of negligence alleged against the Complainant. It is also submitted that the three accidents have no nexus *inter se* and,

therefore, the MSRTC is not justified in imposing punishment of lowering down his basic pay by three stages permanently, stoppage of two annual increments permanently and stoppage of annual increment for two years. He, therefore, submits that the impugned judgments are liable to be quashed and set aside.

11. Per contra, learned advocate for the MSRTC has supported the impugned judgments. He submits that, in view of the order passed by this Court dated 2nd August, 2016 in Writ Petition No. 2736 of 2015 and connected matters, filed by the Complainant, the argument that the Enquiry Officer has recorded perverse findings and this is a case of no evidence, is no more available to the Complainant. He further submits that the standard of proof in Departmental Enquiry and Criminal Trial is different. This Court had remanded the matter back only on limited issues and those issues are dealt with by the Industrial Court and no fault can be found with the findings arrived at by the Industrial Court. He, therefore, submits that there is no merit in the writ petitions and the writ petitions may be dismissed.

12. Perusal of the order passed by this Court in Writ Petition No. 2736 of 2015 and connected matters, filed by the Complainant, shows that the matter was remanded back by this Court to the Industrial Court, only on the limited points i.e.

"whether the complainant proves that the inquiry is vitiated for non observance of the principles of natural justice?"

and

whether the punishment awarded is shockingly disproportionate to the gravity and seriousness of misconduct?"

13. The contention of the Complainant that perversity of the findings recorded by the Enquiry Officer would come within the purview of non observance of the principles of natural justice, cannot be accepted in the facts of the present case. The said argument is no more available to the Complainant, as that aspect has already been dealt with by this Court in paragraph No. 8 of the order dated 2nd August, 2016 passed in Writ Petition No. 2736 of 2015 and connected matters, by observing thus -

"8. I do find that the evidence before the Enquiry Officer was considered by the Industrial Court and after concluding that the findings are supported by the available material, the Industrial Court has rightly held that the Enquiry Officer's findings cannot be termed as being perverse".

14. Since this Court has already made the above observations, the Complainant is not entitled to re-agitate the same issues on the spacious ground that the issue of perversity of findings by the Enquiry Officer would come within the purview of non observance of the principles of natural justice. The said argument is, therefore, liable to be rejected at the threshold.

15. It is a matter of record that three accidents have taken

place at three different times, by the bus driven by the Complainant, causing death of three persons. The Industrial Court has also taken into consideration the previous record of the Complainant whereby punishments were imposed on the Complainant. It is a matter of record that about 33 various misconducts i.e. absenteeism from duty, taking illegal halts on a Hotel en-route, causing loss of glass windows, changing the route of the bus, breakage of side lock of Tyre, damage to engine and driver side mirror and fatal accidents etc. are proved against the Complainant and he was punished on every instance, by penalty, recovery of loss and by temporary stoppage of annual increments and admonition etc. These punishments earlier imposed on the Complainant have not been challenged by the Complainant. The Industrial Court has, therefore, recorded a finding that past service record of the Complainant is full of misconducts and minor mistakes or lapses and he has been penalized for the same, but despite these, he has not been cautious and careful while driving ST buses, while on duty.

16. Taking into consideration Rule 7 (2) of the Maharashtra State Road Transport Corporation (Discipline and Appeal) Rules, which provides punishment, including discharge or dismissal from service and recovery of losses incurred due to misconduct

of the delinquent, besides demotion and stoppage of promotion for three years, it is held that the punishment imposed on the Complainant cannot be said to be harsh, in view of the proved misconduct.

17. Finding of fact is recorded by the Industrial Court that the Complainant has failed to prove that there is violation of principles of natural justice during the course of Departmental Enquiry and that the punishment imposed on the Complainant at culmination of inquiry, is shockingly disproportionate to the proved misconduct. The Complainant has failed to prove on record that the punishment imposed on him is shockingly disproportionate to the charges levelled against him. The findings recorded by the Industrial Court are supported by the record and the Complainant has failed to make out a case to warrant interference in exercise of extraordinary writ jurisdiction, in the said findings.

18. In this respect, judgment of the Supreme Court in "***State of Karnataka and Another V/s Umesh***" (2022) 6 SCC 563, may usefully be referred, wherein it is held that -

"16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to

establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

21. In “Karnataka Power Transmission Corpn. Ltd V. C. Nagaraju” (2019 10 SCC 367, this Court has held that-

13. It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the enquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court.”

22. In the exercise of judicial review, the Court does not act as an

appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether :

- (i)*
- (ii) the finding of misconduct is based on some evidence;*
- (iii) ...*
- (iv) whether the findings of the disciplinary authority suffer from perversity.*

23. *However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the enquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding.”*

19. The aforesaid ratio is followed by the learned Single Judge of this Court in order dated 23rd November, 2022 passed in Writ Petition No. 1964 of 2022.

20. **"Capt. M. Poul Anthony"** (supra), relied on by the

Complainant, is on the point that if charge in Departmental proceedings and the criminal case is based on the same set of facts and since in criminal case appellant has already been acquitted and the prosecution case was not found established, the respondents could not legally refuse reinstatement or the consequent back-wages to the appellant. In the same citation it is held by the Supreme Court that *“Moreover, ‘advisability’, ‘desirability’ or ‘propriety’, as the case may be, has to be ‘determined in each case taking into consideration all the facts and circumstances of the case.’”*

21. In ***S.Bhaskar Reddy***” (supra), considering honourable acquittal of the petitioners therein, it was held that considering undisputed fact that charges in criminal case and disciplinary proceedings conducted against the appellants by the first respondent are similar and since the appellants have been acquitted honourably for want of evidence on record, the punishment imposed on the appellants therein was not justified.

Both these citations are of no help to the case of the Complainant in as much as, in earlier round of litigation, this Court has remanded the matter back to the Industrial Court only on limited points, as stated in the foregoing paragraphs. In that view of the matter, both the above decisions can be distinguished on facts and they are of no assistance to the case

of the Complainant.

22. For the aforesaid reasons, there is no illegality or perversity in the orders impugned in the present petitions. No jurisdictional error or error of law is committed by the Industrial Court while dismissing the complaints filed by the Complainants. Writ petitions being devoid of merit, are dismissed. Rule stands discharged. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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