

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

WRIT PETITION NO.13991 OF 2022

Satish Vijaysingh Khade	 Petitioner
Versus	
MSRT Corporation, Ratnagiri	 Respondent

**WITH
WRIT PETITION NO.13992 OF 2022**

Prakash Tanaji Adhav	 Petitioner
Versus	
MSRT Corporation, Ratnagiri	 Respondent

...

Ms. Pavitra Mahesh, i/b. Mr. Saurabh Mandlik for Petitioner.
Mr. Dhananjay Rananaware, for Respondent.

...

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 18 DECEMBER 2023.
PRONOUNCED ON : 22 DECEMBER 2023.

P. C.:

. These Appeal are filed by Driver and Conductor of Maharashtra State Road Transport Corporation (**MSRTC**), who are issued Show Cause Notices proposing to impose penalty of dismissal from service, upon being found guilty of misconduct in the Domestic Enquiry. The Show Cause Notices were challenged by them before the

Labour Court, Ratnagiri by filing Complaints under provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PUPL Act**). The Labour Court delivered Part-I Awards dated 26 December 2018 holding that the enquiry was fair, proper and that the findings recorded by the Inquiry Officer are not perverse. The Labour Court thereafter proceeded to deliver Part-I Award dated 26 March 2019 setting aside the Show Cause Notices and granted liberty to the Respondent Corporation to impose penalty other than dismissal. The Respondent-Corporation approached Industrial Court by filing Revision Applications. The Industrial Court by its Orders dated 20 October 2022, has set aside the Part-II Awards dated 26 March 2019 of Labour and has dismissed the Complaint filed by the Petitioner. Aggrieved by the decisions of the Industrial Court, Petitioners have filed the present petition.

2. Ms. Manesh, the learned counsel appearing for Petitioner would submit that the Industrial Court has exceeded its jurisdiction in interfering with findings and setting aside the decision of the Labour Court. That the Labour Court had correctly appreciated the fact that the penalty proposed on Petitioners is disproportionate to the misconduct alleged and proved. That Petitioners were required to take the decision of turning the bus back at Hattargi on account of repeated breakdowns. That the bus had developed breakdown at Kagal and was required to be repaired. Since it once again developed problems, the same could not be driven up to Belgaon and was required to be brought back to

Sangmeshwar from Hattargi. Therefore, presence of only one passenger in the bus noticed by checking squad cannot amount to any serious misconduct. That the Industrial Court has exceeded jurisdiction by taking into consideration extraneous factor of claiming overtime allowance and not informing senior officers at Sangameshwar about the incident. That claim of overtime allowance and failure to inform superior officers was not a charge levelled against Petitioners in the domestic enquiry. Consideration of extraneous factor by Industrial Court for adding to the gravity of misconduct is a clear error in exercise of jurisdiction thereby rendering impugned judgment of the Industrial Court invalid and unjustifiable. She would seek confirmation of the Orders dated 26 March 2019 passed by the Labour Court.

3. *Per contra* Mr. Rananaware, the learned counsel appearing for Respondent-Corporation would oppose the petition and support the Orders passed by the Industrial Court. He would submit that the entire conduct of the Petitioners has been dishonest who cut the circuitous route till Belgaum short and brought bus back to Sangameshwar depot without completing the journey till Belgaum. That they not only suppressed factum of non-completion of scheduled journey but claimed and availed overtime by pretending that they had completed the entire journey. They also suppressed the factum of short journey from their senior officials at Sangameshwar depot. That failure of Petitioners to take bus to Belgaum Bus Stand resulted in financial loss to the Corporation where only one passenger was found in the bus when the squad checked

the same. That the misconduct proved is serious warranting imposition of punishment of dismissal from service. He would pray for dismissal of the petitions.

4. Rival contentions of the parties now fall for my consideration.

5. Petitioner in Writ Petition No.13991 Shri. Satish Vijaysing Khade is employed as Driver whereas the Petitioner in Writ Petition No.1392 Prakash Tanaji Adhav is employed as Conductor. 01 August 2017, they were deployed on the bus plying on the route of Sangameshwar (District Ratnagiri) to Belgaum (Karnataka) and back to Sangameshwar. Disciplinary proceedings were initiated against them by issuance of charge-sheets on 04 October 2017. The Driver was alleged to have committed the misconduct of failure to wear the logo of MSRTC on his uniform and carrying only one passenger on route of Belgaum to Sakeshwar. The Conductor was charged with misconduct of carrying only one passenger from Belgaum to Sankeshwar. Enquiry was held in the misconduct. Petitioners took a defence during the course of enquiry that the bus had breakdown during the onward journey from Sankeshwar to Belgaum at Kagal, where it was required to be repaired. During the course of further journey to Belgaum, the bus again developed problem at Hattargi on account of which bus could not be driven up to Belgaum. The duo brought bus back to Sangmeshwar from Hattargi. The bus was checked by flying squad which found only one passenger in the bus.

6. The Enquiry Officer submitted reports in both the enquiries holding that the charges leveled against Petitioners were proved. Based on the report of the Enquiry Officer, the Respondent-Corporation issued Show Cause Notices on 19 April 2018 calling them upon to show cause as to why penalty of dismissal from service could not be imposed.

7. At stage of issuance of Show Cause Notices, Petitioners invoked jurisdiction of Labour Court by filing Complaints under provisions of Section 21 of the MRTU & PULP Act challenging Show Cause Notices and sought restraint Order against Respondent-Corporation from passing any penalty Order based on the Show Cause Notices dated 09 April 2018.

8. The Labour Court delivered Part-I Awards on 26 December 2018 holding that the domestic enquiry was conducted in fair, proper manner and that the findings recorded in the enquiry are not perverse. Part-I Awards dated 26 December 2018 have attained finality as the same were not questioned by Petitioners. The Labour Court therefore proceeded to deliver Part-II Awards on 26 March 2019 holding that the Respondent-Corporation has committed unfair labour practices and has set aside the Show Cause Notices dated 09 April 2018. The Labour Court further granted liberty to Respondent-Corporation to impose any penalty other than dismissal from service. The Labour Court has done so by recording a finding that the misconduct proved against Petitioners is of minor and technical nature and therefore the penalty of dismissal is shockingly disproportionate. The Labour Court has also taken into

consideration the fact that the Petitioner had not committed similar misconduct in the past. The Labour Court has observed that though they were punished in the past, said punishments were for minor misconduct.

9. I am not in agreement with the findings recorded by the Labour Court that the misconduct alleged and proved is of minor or technical nature. Petitioners were deputed to ply bus on circuitous route of Sangameshwar–Belgaon–Sangameshwar with intermittent halts at Kolhapur, Kagal and Sankeshwar. The route is planned by MSRTC considering both convenience of passengers as well as the financial viability. It is therefore incumbent that the bus completes entire route so that passengers can board the bus at Belgaum for travel to Sankeshwar, Kagal, Kolhpur or Sangameshwar. Additionally Belgaum being a fairly large city, it has higher potential of passengers boarding the bus. In such circumstances, failure on the part of Petitioners to take the bus till Belgaum bus stand not only caused inconvenience to the passengers who could not board the bus at Belgaum, but it resulted in financial loss to the Corporation. It is unknown as to whether any inconvenience is caused to the passengers who had booked tickets upto Belgaum during onward journey on account of cutting short the journey by Petitioners at Hattargi. Possibly Petitioners took advantage of absence of any passenger purchasing ticket upto Belgaum and cut short the journey at Hattargi. What is most certain is the fact that no passenger could board the bus at Belgaum as the bus was admittedly not taken to Belgaum bus stand. Thus, by their acts, Petitioners have caused financial loss to the

Respondent-Corporation.

10. Though Ms. Manesh made strenuous efforts to convince this Court that the bus was required to be brought back from Hattargi on account of repeated breakdowns, the said defence can no longer be treated as valid. This defence was taken in the enquiry and has been rejected by the Enquiry Officer. Findings of the Enquiry Officer have been upheld in the Part-I Award, which has attained finality. Thus, the misconduct of unauthorized shortening of the route by turning back the bus at Hattargi has been proved. Therefore the defence for turning back the bus at Hattargi sought to be advanced before me is totally irrelevant. The only issue which need consideration is whether misconduct proved can entail punishment of dismissal from service. To my mind, the misconduct cannot be treated as technical or minor as sought to be suggested by Labour Court.

11. Industrial Court has taken into consideration two extra factors for treating the misconduct as grave to justify penalty of dismissal. It has taken into consideration the fact that Petitioners did not inform senior officials at Sangameshwar about shortening of journey. The other factor is about claiming and availing overtime by misleading authorities that they had completed entire journey. True it is that these two allegations did not form part of charge-sheet and in ordinary course, ought to be ignored as extraneous to the domestic enquiry. However, both the facts are admitted and there is no dispute about the same. At the same time, even if these factors are to be ignored for deciding the penalty

to be imposed on them, the charge of unauthorised shortening the journey and failure to complete the route is sufficient to impose the proposed penalty on Petitioners. Though the factors of dishonest claim to overtime allowance is ignored for deciding the enquiry proceedings, the same would attract attention of this court exercising writ jurisdiction and becomes a factor relevant for denial of any relief to Petitioners.

12. I therefore do not find any valid ground for entertaining the Petitions. Petitions, being devoid of merits, are dismissed without any orders as to costs.

SANDEEP V. MARNE, J.

KISHOR
VISHNU
KAMBLE

Digitally signed
by KISHOR
VISHNU
KAMBLE
Date:
2023.12.22
16:33:16 +0530