

HARSHADA SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1415 of 2023

Shri Ashok Bapu Kamble

.. Petitioner

Versus

Maharashtra State Road Transport Corporation,
Kolhapur Division

.. Respondent

.....

- Mr. Dheeraj Patil, Advocate for Petitioner.
- Mr. Nilesh Bhutekar a/w. Ms. Gargi Warunjikar, Advocates for Respondent – Corporation.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 03, 2023

JUDGMENT:

1. This Writ Petition is filed by the Petitioner - employee under the provisions of Article 227 of the Constitution of India to challenge the judgment dated 30.11.2022 passed by the Industrial Court, Kolhapur in Revision (ULP) No.20 of 2019 upholding and confirming the judgment dated 30.10.2018 passed by the learned Labour Court, Kolhapur in Complaint (ULP) No.31 of 2017.

2. Briefly stated the relevant facts necessary for adjudication of the present Writ Petition are outlined hereunder:-

2.1. Petitioner - employee was in employment with the Respondent – Corporation as Driver since the year 2011 and had an unblemished record until the date of the incident. On 04.12.2016, Petitioner - employee was deputed to drive the ST bus of the

Respondent -Corporation on the Rashiwade to Rankala route and near village Vashi on an ascending road was dashed head-on by one motorcyclist resulting into an accident. Thereafter the injured motorcyclist was rushed to the hospital where he succumbed to his injuries. Due to this incident, Petitioner - employee was suspended immediately without enquiry and issued suspension order dated 05.12.2016.

2.2. Respondent – Corporation submitted preliminary report alongwith statements and panchnama and carried out initial enquiry concluding that the Petitioner - employee was responsible for the accident.

2.3. On 13.01.2017, Petitioner - employee was served with a charge-sheet alleging misconduct caused due to rash and negligent driving under clauses 10, 15 and 22 of the Disciplinary and Appeal Procedure amenable to the Respondent - Corporation. Between 18.01.2017 and 21.01.2017, Respondent - Corporation held departmental enquiry and the Enquiry Officer submitted his Report thereafter.

2.4. On 11.05.2017, Respondent – Corporation issued show-cause notice to Petitioner - employee proposing his dismissal from service based on the enquiry Report.

2.5. Being aggrieved by the above action on part of the

Respondent – Corporation, Petitioner - employee filed Complaint (ULP) No.31 of 2017 under Item 1(a), 1(b), 1(f) and 1(g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short “**MRTU & PULP Act**”). On 20.05.2017, learned Labour Court granted *status quo* order in favour of Petitioner - employee. Thereafter, pleadings were completed by both parties in the Complaint before the learned Labour Court.

2.6. By judgment Part - I dated 30.10.2018, the learned Labour Court held that the enquiry conducted against the Petitioner - employee was just, reasoned and proper and in consonance with the principles of natural justice, however the findings recorded by the Enquiry Officer were perverse.

2.7. Being aggrieved by the judgment Part - I dated 30.10.2018, the Respondent – Corporation filed Revision Application No.20 of 2019 before the Industrial Court to challenge the judgment Part - I dated 30.10.2018 passed the Labour Court holding that the findings of the Enquiry Officer are perverse.

2.8. By judgment dated 30.11.2022, the Industrial Court allowed the Revision Application filed by the Respondent - Corporation and declared that the findings recorded by the Enquiry Officer were not perverse and remanded the case back to the learned Labour Court and expedited the hearing of the Complaint.

2.9. The Petitioner – employee has challenged the impugned judgment dated 30.11.2022 passed by the Industrial Court in the present Writ Petition.

3. Mr. Patil, learned Advocate appearing for the Petitioner - employee would submit that the judgment – Part I dated 30.10.2018 passed by the learned Labour Court is a well reasoned and cogent judgment taking into account all parameters of a *bonafide* enquiry conducted by the Enquiry Officer in the facts of the present case and has been passed with regard to the facts which are scrutinized by the learned Labour Court. He would submit that the Industrial Court while passing the impugned judgment and reversing the Labour Court's judgment Part - I has failed to consider the fundamental and well settled principles of law enunciated by the Supreme Court in the decision of *Sur Enamel and Stamping Works Ltd Vs. the Workmen*¹ with respect to holding of enquiry as legal and proper. He would submit that the preliminary report considered by the Enquiry Officer and the Labour Court consisted of statements of witnesses and the panchnama carried out by the police authorities alongwith the FIR . He would submit that the exact spot on which the accident occurred was a sloping road on which the bus driven by the Petitioner was ascending the road whereas the motorcyclist who had a frontal collision was descending the road in high speed. In that view of the matter, he

1 1963 AIR 1914

would submit that since the bus was ascending it could not have been driven at a faster speed and therefore the fact that the motorcyclist was on the sloping part of the road ought to have been considered by the Industrial Court. He would submit that what has weighed with the Industrial Court is the FIR, Panchnama and statements of witnesses recorded by the police officers and without the authors of such evidence having deposed, the same could not be treated to be evidence in departmental enquiry proceedings. He would submit that the Industrial Court has failed to appreciate that the speed of the bus at the time of the incident as recorded in the preliminary report was 40 km/hour. He would next submit that the Respondent – Corporation has admitted in the departmental enquiry that there was no eye-witness to the accident nor any eye-witness was examined in the departmental enquiry. He would therefore submit that considering the Petitioner's track record being clean and unblemished coupled with the fact that the enquiry was conducted in a hasty manner which is evident from the timeline and the entire enquiry violated the principles of natural justice and hence the learned Labour Court rightly held that the findings returned by the Enquiry Officer were perverse. He would therefore urge that on a careful reading of the judgment Part - I delivered by the learned Labour Court, it would be evident that it gives reasoned and cogent findings unlike the impugned judgment dated 30.11.2022 which proceeds merely on the basis of the enquiry

papers and criticizes the findings returned by the learned Labour Court. He would submit that the Industrial Court has noted and held that when the accident occurred, the bus was on the right side of the road and if the bus was driven by the Petitioner - employee on the left side, then no accident could have occurred. On this basis the Industrial Court has concluded that the Enquiry Officer has considered all aspects properly and therefore his enquiry is just and proper and his findings are not perverse. He would submit that, there is acute inadequacy of reasons in the judgment passed in Revision proceedings by the Industrial Court. He would submit that no adequate reasons are given while coming to this conclusion by the Industrial Court. He would submit that in the facts of the present case, though the bus was driven by the Petitioner - employee at a slow speed, due to the error of the motorcyclist the accident had occurred. He would submit that there is also a discrepancy in the statements recorded by the police and considered by the Enquiry Officer as to whether there was one person driving the motorcycle or there were two persons on the motorcycle and which one out of the two sustained fatal injuries. He would submit that considering the overall facts and circumstances of the present case, it cannot be construed that the Enquiry Officer's findings are proper and correct attributing 100% negligence to the Petitioner. He would therefore urge the Court to set aside the judgment passed by the Industrial Court and restore the judgment Part - I passed by the

learned Labour Court in its entirety in respect of the preliminary issues.

3.1. *PER CONTRA* Mr. Bhutekar, learned Advocate appearing for the Respondent - Corporation has drawn my attention to the Affidavit-in-reply dated 27.10.2023 filed on behalf of the Respondent – Corporation and would submit that once the Industrial Court has decided the issue of having held that the findings of the Enquiry Officer are not perverse, there is very little scope for the Petitioner - Employee to invoke the extra-ordinary jurisdiction of this Court and plead that the Industrial Court's findings are invalid. He would submit that this Court should not re-appreciate the evidence and interfere in the conclusion of the enquiry or consider the adequacy of the evidence before the Enquiry Officer or refer to the reliability of the evidence or correct any error of fact or even to that extent go into the proportionality of punishment unless the act of the lower Court shocks its conscious. He would submit that such is not the case over here. He would submit that the charges attributable to the Petitioner - employee were specific in nature and before the Enquiry Officer adequate opportunity was given to the Petitioner - employee to defend his case which the Petitioner – employee availed of. He would submit that, the learned Labour Court did not apply its mind by holding that the findings of the Enquiry Officer were perverse since there was enough evidence on record to hold that the findings drawn against the Petitioner - employee were legal, fair and proper.

3.2. He would submit that one crucial factor needs to be looked into and that is when the accident occurred the Petitioner - employee at the then time was attempting to overtake another vehicle from the right side and therefore in that view of the matter the Industrial Court has rightly set aside the conclusion arrived at by the learned Labour Court and held that the findings of the Enquiry Officer are not perverse. Hence he would submit that the impugned judgment dated 30.11.2022 passed by the Industrial Court in Revision proceedings deserves to be upheld in its entirety.

4. I have heard Mr. Patil, learned Advocate appearing for the Petitioner - employee and Mr. Bhutekar, learned Advocate appearing for the Respondent – Corporation and with their able assistance perused the record and pleadings of the matter. Submissions made by the learned Advocates have received due consideration of the Court.

5. In the present case, it is seen that admittedly the site and spot of accident was an incline and the Petitioner - employee's bus was ascending whereas the motorcyclist who came from the opposite side was descending. It is common sense that on an ascending road the speed will always be slow whereas on a descending road because of gravity the speed is always high. The preliminary report exhibited in the present proceedings shows that the speed of the bus driven by the Petitioner was 40 km/hour while ascending. The evidence given by the

Petitioner - employee before the Enquiry Officer clearly records that the motorcyclist was driving his motorcycle rashly and since he was on the descent he could not control his motorcycle and dashed it with the bus. The preliminary report consisting of different statements of witnesses and panchnama reveals that considering the topography of the road, it was improbable that the bus would run at a high speed while ascending since the width of the road was only 20 feet. In that view of the matter, if the bus was not driven at a high speed while ascending it cannot be construed that he drove the bus negligently and knocked down the motorcyclist.

6. It is seen that no doubt driving a vehicle rashly and negligently is considered as a major misconduct but the test to be applied is whether it was an intentional or knowledgeable act. In the given facts and circumstances of the case, error of judgment cannot be construed as an intentional act. An error of judgment while driving may sometimes lead to an accident but it cannot be termed as rash and negligent driving in the absence of any intention or knowledge. The Enquiry Officer while holding the enquiry ought to have considered the above factor with an open mind. What is important in the present case is to scrutinize and analyze the standard of proof *prima facie* in the disciplinary proceeding. A disciplinary proceeding does not call for strict proof but is dependent upon the principle of preponderance of probabilities. Strict rules of law of evidence cannot be applied to a

departmental proceeding and enquiry. In the present case it is seen that the Report placed by the Enquiry Officer is written by the Disciplinary officer and it is based upon the FIR, panchnama and the statement of witnesses recorded before the police officer. It is an admitted position that these documents are not strictly proved in the enquiry proceedings nor the author of the said documents are / have been examined in the enquiry proceedings. I am inclined to accept the finding that the purported evidence collected during police investigation by itself cannot be treated to be evidence in enquiry proceedings. It is clearly seen that the subject material before the Enquiry Officer was in the form of statements recorded by the police behind the back of the Petitioner - employee and such statements were used against the Petitioner - employee. Strictly speaking, such evidence is not yet established or proved strictly in the eyes of law and therefore cannot be the sole basis of concluding the enquiry against the Petitioner. In this view of the matter, the learned Labour Court has rightly held that the findings recorded by the Enquiry Officer are perverse and they deserve to be interfered with.

7. The question before the Court is whether the dismissal proposed is based on valid domestic enquiry. In the present case, it is found that the domestic enquiry in the Petitioner - employee's case could not be sustained and therefore the findings were held to be perverse by the learned Labour Court. Even though the parameters of

valid enquiry and natural justice may have been followed by the Respondent – Corporation in holding the enquiry, it is clearly seen that the findings recorded by the Enquiry Officer are perverse. I am therefore inclined to accept the submissions of the learned Advocate of the Petitioner.

8. In view of the above, the impugned judgment dated 30.11.2022 allowing the Revision Application and setting aside the findings returned by the learned Labour Court on point No.2 of the operative order of judgment Part-I dated 30.10.2018 passed by the learned Labour Court needs to be interfered with. The impugned judgment dated 30.11.2022 declaring that the findings recorded by the Enquiry Officer are not perverse is quashed and set aside. Resultantly, the Writ Petition succeeds.

9. The learned Labour Court is directed to dispose Part-II of the original Complaint (ULP) No.31 of 2017 within a period of 8 months from the date of uploading this judgment, strictly in accordance with law.

10. With the above directions, Writ Petition is allowed.

[MILIND N. JADHAV, J.]