

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.8336 OF 2022**

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|---|---|-----------------|
| 1. Kolhapur Municipal Transport, | } | |
| Shahu Cloth Market, Kolhapur. | } | |
| Through The Additional Transport Manager, | } | |
| Shri Mangesh Ashok Gurav, | } | |
| Age – 44 years, Occu. : Service, | } | |
| R/o. Kolhapur. | } | |
| 2. The Kolhapur Municipal Transport, | } | |
| Shahu Cloth Market, Kolhapur, | } | |
| Through The Commissioner. | } | ... Petitioners |

Versus

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|--|---|----------------|
| Shri Wallappa Ganapati Bhaskar | } | |
| Age – Major, Occu. : Service, | } | |
| R/o. : Tawade Hotel, Mannaday Mala, | } | |
| E Ward, House No.124, Uchangaon, Kolhapur. | } | ... Respondent |

WITH**WRIT PETITION NO.8343 OF 2022**

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|---|---|-----------------|
| 1. Kolhapur Municipal Transport, | } | |
| Shahu Cloth Market, Kolhapur. | } | |
| Through The Additional Transport Manager, | } | |
| Shri Mangesh Ashok Gurav, | } | |
| Age – 44 years, Occu. : Service, | } | |
| R/o. Kolhapur. | } | |
| 2. The Kolhapur Municipal Transport, | } | |
| Shahu Cloth Market, Kolhapur, | } | |
| Through The Commissioner. | } | ... Petitioners |

Versus

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|---|---|
| 1. Smt. Mumtaj Gulab Shaikh | } |
| Age : Major, Occu. : Household, | } |
| R/o. : Ghat No.2514, D Ward, Shukrawar Peth | } |
| Kesapur Galli, Kolhapur. | } |

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|---|---|-----------------|
| 2. Shri Imtiyaz Gulab Shaikh | } | |
| Age : Major, Occu. : Service, | } | |
| R/o. : Ghat No.2514, D Ward, Shukrawar Peth | } | |
| Kesapur Galli, Kolhapur. | } | |
| 3. Shri Salim Gulab Shaikh | } | |
| Age : Major, Occu. : Service, | } | |
| R/o. : Ghat No.2514, D Ward, Shukrawar Peth | } | |
| Kesapur Galli, Kolhapur. | } | ... Respondents |

Mr. Abhijiti Adagule for Petitioners in both Writ Petitions.

Ms. Pavitra Manesh i/b Mr. Saurabh Mandlik for Respondent in WP No.8336/2022.

None for Respondents in WP No.8343/2022.

CORAM :- SANDEEP V. MARNE, J.

RESERVED ON :- 03 NOVEMBER, 2023

PRONOUNCED ON :- 09 NOVEMBER, 2023

JUDGMENT :

1. These two petitions are filed by Kolhapur Municipal Corporation challenging the two separate Judgments and orders dated 02 January 2020 passed by the Industrial Court no.1 Kolhapur.

2. Respondent in Writ Petition no. 8336 of 2022-Wallappa Ganapati Bhaskar was employed as Driver with the Petitioner. Respondent in Writ Petition no.8343 of 2022 are legal heirs of late Gulab Jamal Shaikh who was employed with the Petitioner as Conductor. Both were deputed on bus enroute Kagal-Bondrenagar on 31 May 2004. An accident occurred on account of collusion between two motorcyclists coming from opposite directions and one of the motorcyclists fell on the road and came under the rear left wheel of the bus. The accident unfortunately proved to be fatal for the motorcyclist. The Driver and Conductor of the Bus were accused of not accepting any responsibility for the accident and not

reporting the details of the same, and fleeing the accident spot. Disciplinary enquiry was initiated against both the Driver and Conductor on 14 July 2004 by issuance of chargesheet. Four charges were levelled against Driver and Conductor. The charges were held to be proved in the enquiry. The Transport Committee of the Petitioners adopted resolution to inflict punishment of withholding two annual increments permanently on both Driver and Conductor. The said resolution was forwarded by the Petitioners to the State Government seeking its cancellation under Section 451 of the Maharashtra Municipal Corporation Act, 1949. By order dated 24 February 2006, the State Government rescinded the resolution of the Transport Committee and directed dismissal of both Driver and Conductor. Accordingly, both were dismissed from service by orders dated 20 April 2007.

3. The dismissal orders were challenged by both Driver as well as the Conductor before Labour Court, Kolhapur by filing Complaints under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Driver filed Complaint (ULP) no.211 of 2006 and the Conductor filed Complaint (ULP) no.210 of 2006. The Labour Court delivered Part-I awards in the case of Driver and Conductor in April 2015. In Part-I Award, the Labour Court held that the enquiry conducted against both were legal and proper. The finding of the Enquiry Officer with regard to only one charge was held to be just and proper and in respect of remaining three charges, the same was held to be perverse.

4. Petitioner-employer therefore led evidence to prove Respondents. The Labour Court decided the complaint of the Driver by Judgment and order dated 17 January 2015 and set aside the dismissal order dated 24

April 2006. Petitioner was directed to reinstate the driver with full backwages while upholding the penalty of stoppage of two increments adopted by Transport Committee vide Resolution dated 25 February 2005. In respect of the Conductor, the complaint was partly allowed by Judgment and order dated 08 December 2016 setting aside the dismissal order and directing grant of backwages to the legal heirs of Conductor who in the meantime had passed away on 21 November 2015.

5. Petitioner challenged the decision of the Labour Court in cases of Driver and Conductor by filling Revision Petition no.19 of 2015 before Industrial Court. By separate Judgment and order dated 28 September 2017 both the Revision Petition were partly allowed and the complaints were remanded to the Labour Court for being heard afresh. After remand, the Labour Court passed Judgment and order dated 23 March 2018 in the case of Driver and set aside the order of dismissal and directed Driver's reinstatement in service with full backwages. In the complaint of the Conductor, however the Labour Court was pleased to dismiss the same vide Judgement and order dated 06 January 2018.

6. In case of Driver, Petitioner got aggrieved by the decision of the Labour Court and instituted Revision (ULP) no.42 of 2018 before Industrial Court. In the case of Conductor, his legal heirs got aggrieved by the decision of the Labour Court and filed Revision Application ULP no.29 of 2018 before Industrial Court.

7. The Industrial Court had delivered two separate orders on 02 January 2020. In the case of Driver, the Industrial Court has dismissed the Revision filed by the Petitioner and has thereby upheld the Labour Court's decision. In case of Conductor, the Industrial Court had allowed the Revision and had directed payment of full wages to the heirs of

Conductor till his death. Petitioners are before this Court challenging the decisions of the Industrial Court.

8. I have heard Mr. Adagule, the learned counsel for the Petitioner who would submit that the Industrial Court has erred in setting aside the dismissal orders even though serious misconduct of causing death of the motorcyclists was proved against both Driver and Conductor. He would submit that both were legally under obligation to give intimation of the accident to the Superior Officers. In this connection he would place reliance on the duties and responsibilities of the Driver and Conductor published by Additional Transport Manager, Kolhapur Municipal Corporation. Additionally, he would place reliance of Section 138 of the Motor Vehicles Act, 1988 which also enjoins a duty upon Driver and makes him liable for punishment upon failure to provide medical aid to the victim of the accident. He would submit that the Transport Committee had erroneously recommended punishment imposition of minor penalty of stoppage of two increments ignoring the gravity of misconduct and that the State Government had rightly directed imposition of punishment of dismissal from service on both Driver as well as the Conductor. In support of his contentions Mr. Adagule would rely upon Judgments of Single Judge of this Court in ***Zonal Manager, Maharashtra Rajya Sahakari Kapus Utpadak Panan Mahasangh Maryadit and Another Vs. Gulabrao Laxmanrao Kotwal***¹.

9. *Per Contra*, Ms. Manesh the learned counsel appearing for the Respondents would oppose the petition and support the orders passed by the Industrial Court. She would submit that majority of the charges (3 out of 4 have been held to be disproved in Part-I Award which has not been challenged. That, the misconduct proved is in respect of minor

¹ (2023) SCC Online Bom 800

allegations of failure to report the accident. Even this charge according to Ms. Manesh, was disproved on account of specific admission given by Shri Narayan Pawar, Petitioner's witness, that Driver and Conductor had given him an intimation about the accident. She would submit that for such minor misconduct Respondents could not have been dismissed from service and that therefore, the Industrial Court had rightly set aside the penalty of dismissal.

10. I have considered the submissions canvassed by the learned counsel appearing for the parties.

11. Respondents faced four charges in the chargesheets dated 14 July 2004 as under:-

1) willful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior;

(2) habitual breach of any Standing Order or any law applicable to the establishment or any rule made there-under;

(3) failure to observe safety instruction notified by the employer;

(4) commission of an act subversive of discipline or rule.

12. All the charges were proved in the enquiry. It was found that after occurrence of the accident, the passengers invited the attention of the Conductor about injury suffered by the motorcyclist. Conductor accordingly instructed Driver to stop the bus. Both Driver and Conductor accordingly inspected the accident scene but took a stand that they were not concerned with the said accident. They completed the bus journey and after giving vague intimation to the on-duty traffic inspector, they

parked the bus at the depo and then they both went home. The Police thereafter approached the Depot and after conducting inquiries, the Driver and the Conductor were called to the Police Station for further investigations. The Enquiry Officer held both Driver and Conductor to be guilty of all the four charges and show cause notices dated 18 December 2004 were issued to them. The Enquiry Report as well as reply of Driver and Conductor were placed before the Transport Committee along with a proposal to impose punishment of dismissal from services. However, during the course of discussions in the meeting of the Transport Committee, the Committee proposed imposition of penalty in permanent stoppage of two increments by treating the period of suspension as such. The Municipal Commissioner sent proposal dated 07 March 2005 to the State Government for rescinding the Resolution adopted by the Transport Committee on 25 February 2005. The State Government by its order dated 24 February 2006, passed under the provisions of Section 451 of the Maharashtra Municipal Corporation Act, 1949, rescinded the Resolution dated 25 February 2005. The Municipal Commissioner and Transport Manager accordingly passed Order dated 24 April 2006 dismissing both from service.

13. In Part-I Award, the Labour Court held that the enquiry was fair and proper. However, it held the findings of guilt in respect of the charge nos. 1 to 3 to be perverse and only upheld the finding relating to charge no. 4. The Part-I Award was not challenged by Petitioners and it attained finality. It instead proceeded to lead evidence to prove charge nos. 1 to 3 as well. The Labour Court has evaluated considering the evidence adduced before it by the then Traffic Controller (Accident) Mr. Mehboob Mahat and Traffic Controller Mr. Mohan Pawar. After considering the evidence of the two witnesses, the Labour Court decided not to disturb its earlier finding in

Part-I Award about perversity in respect of charge nos.1 to 3. The Industrial Court had proceeded to accept the said finding of the Labour Court. This Court, in exercise of jurisdiction under Article 227 of the Constitution of India could not be justified in reappreciating the evidence once again and to arrive at a different finding.

14. This leaves the issue of proportionately of penalty of dismissal from service on the basis of charge no.4 which is ultimately held to be proved. The State Government proceeded to rescind the resolution of the Transport Committee essentially on count of fact that the all the four charges were held to be proved against the Respondents. If at that point of time, only charge no.4 was proved the State Government would not have proposed penalty of dismissal from service.

15. Charge no.4 relates to failure on the part of the Respondents to give intimation of the accident. No doubt, Respondents have acted negligently and have taken irresponsible stand of shirking responsibility about the accident. Whether the Driver caused accident is different matter altogether. The Driver is absolved of the charge of causing accident. The issue was about their conduct in running away from the spot as if they had nothing to do with the accident. This is the conduct which is found to be ultimately proved against the Driver and the Conductor. No doubt there is some evidence on record that some intimation of accident were given to him. However, vaguely informing occurrence of incident and fleeing the spot where the death had occurred under the wheel of the bus are two different aspects. In my view, both Driver and Conductor cannot be absolved in respect of their act of running away from the spot where the accident had resulted in death of a motorcyclist. Being employees of public transport services, both ought to have acted responsibly. Therefore

Charge no.4 has rightly been held to be proved.

16. The next issue is about the quantum of penalty that can be imposed for proof of charge no.4. The State Government has proceeded to rescind the Resolution adopted by Transport Committee which had imposed penalty of stoppage of two increments permanently. As observed above, if the State Government was to consider proof of only charge no.4, it would not have rescinded the Resolution. Considering that the charge of failure to give intimation of accident and details thereof is ultimately found to be proved against the Driver and Conductor, in my view, the penalty of stoppage of two increments permanently earlier imposed by the Transport Committee appears to be proportionate to the gravity of misconduct proved.

17. The Labour Court has proceeded to set aside the penalty of dismissal on the ground that the same amounts to double punishment. This appears to be a glaring error on the part of the Labour Court. While imposing the penalty of dismissal from service on the Driver and the Conductor, earlier penalty of permanent stoppage two increments was withdrawn and the Respondents were called upon to collect the difference of amount arising out of the withdrawal of the Appellant.

18. While setting aside the Order of dismissal on the ground of proportionality, the Labour Court has not granted an opportunity to the employer to impose lesser penalty. The net result is that Respondents have been let off completely despite charge no.4 being proved against that.

19. The issue is whether the proceedings need to be remanded to enable the employer to inflict lesser penalty than dismissal? In my view considering various rounds of litigation and passage of substantial period

from the date of the incident, ends of justice would be met if penalty stoppage of two increments permanently is imposed on the Driver and Conductor.

20. The Labour Court has also granted the relief of full backwages in the case of Driver. Similar direction is passed by the Industrial Court in the case of Conductor by directing payment of full backwages till the date of death of the Conductor. It has come on evidence that Driver was working as Agricultural Labour during the intervening period. The Driver and the Conductor are not fully exonerated in the incident. In such circumstances grant of full backwages to them is not justified on the principle of “No Work No Pay”. In my view, ends of justice would be met if the Petitioners are directed to pay 50% backwages to both Driver and Conductor during the intervening period.

21. I accordingly proceed to pass the following Order:-

- i) Judgement and Order dated 2 January 2020 passed by the Industrial Court, Kolhapur in the Revision Application (ULP) nos. 42 of 2018 and 29 of 2018 are modified to the extent that the Petitioner shall impose the penalty of stoppage of two increments permanently on both the Respondents with effect from 24 April 2006.
- ii) The Respondents in Writ Petition No.8336 of 2022 shall be reinstated in service with effect from 24 June 2006 with 50% backwages and other benefits of continuity in service.
- iii) Heirs of Respondent- Conductor in Writ Petition no.8343 of 2022 be paid 50% backwages with effect from the date of his

dismissal till the date of his death by treating him as having been reinstated in service with effect from 24 June 2006.

(iii) The period of suspension of Respondents shall be treated as duty for all purposes.

22. With the above directions, the Writ Petitions are **disposed** of.

(SANDEEP V. MARNE, J.)