

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7623 OF 2022

Saksham Pradhikari,  
Rajya Parivahan Mahamandal

...Petitioner

Versus

Shri. Hiralal Baburao Mahadik

...Respondent

...

**Mr. Amit A. Gharte**, for Petitioner.

**Mr. A. S. Rao**, for Respondent.

...

**CORAM : SANDEEP V. MARNE, J.**

**DATE : SEPTEMBER 20, 2023.**

**P.C.:**

1. By this Petition, Petitioner-State Transport Corporation has challenged the Judgment and Order dated 6 September 2021 passed by Industrial Court, Pune rejecting its Revision Application (ULP) No.105 of 2019 as well as the Judgment and order dated 18 April 2019 passed by the Labour Court, Pune allowing Complaint (ULP) No.127 of 2005 filed by the Respondent.

2. It is Petitioner's case that the Respondent was employed by it on the post of 'Art-C' at Dapodi workshop. That he was elected as Local Adviser in respect of State Transport Cooperative Bank Ltd., which is established by

the employees of the Petitioner-State Transport Corporation. The Petitioner initiated departmental inquiry against Respondent on the charge of deceiving Smt. Mandhare for Rs.71,000/- and Smt. Amale for Rs.30,000/-. It was alleged that after filing of complaints in the Police Station, Respondent returned the said amount by depositing amount of Rs. 66,926/- in the bank account of Smt. Mandhare and by returning Rs.30,000/- to Smt. Amale in the Police Station. In the departmental inquiry, the charge was proved and Respondent was dismissed from service by order dated 30 September 2005.

3. Respondent filed Complaint (ULP) No.127 of 2005 before the Labour Court. By order dated 18 December 2014, the Labour Court passed Part -I Award holding that the departmental inquiry conducted against the Respondent was fair and proper. Respondent filed Revision before the Industrial Court, which came to be allowed by order dated 8 October 2018 setting aside the Part -I Award holding that the findings recorded in the inquiry were perverse. Petitioner did not challenge the findings of the Industrial Court on preliminary issue and thus the issue of perversity in the findings of inquiry attained finally. The Labour Court thereafter proceeded to decide Complaint (ULP) No.127 of 2005 and by its Judgment and order dated 18 April 2019, allowed the same by setting aside the dismissal order dated 29

September 2005 with further directions to Petitioner to pay full backwages to the Respondent from 30 September 2005 till the date of his retirement i.e. 1 June 2009. Petitioner preferred Revision Application (ULP) No.105 of 2019 before the Industrial Court, which has been dismissed by Judgment and order dated 6 September 2021. Present Petition is filed challenging the decisions of the Labour and Industrial Courts.

4. I have heard Mr. Gharte, the learned counsel appearing for Petitioner and Mr. Rao the learned counsel for Respondent.

5. After considering the submissions canvassed by the learned counsels appearing for the parties, the short issue that arises for consideration is whether the labour Court was justified in directing reinstatement of Respondent and in awarding full backwages. In Part -1 award, though the Labour Court had initially held that the inquiry was conducted in a fair and proper manner and that the findings did not suffer from the vice of perversity, the Industrial Court reversed the order of Labour Court and held that the finding recorded in the inquiry are perverse. Since the Petitioner did not challenge the order of the Industrial Court further, the findings on Part -1 award have attained finality. Petitioner did not avail opportunity of leading evidence before the Labour Court.

6. Once Part-I Award holding findings as perverse has attained finality, it is difficult to hold that the Labour Court has committed any error in directing Respondent's reinstatement. Therefore, so far as direction for reinstating Respondent with effect from 30 September 2005 is concerned, no error can be found in the order of the Labour Court.

7. The second issue is about award of backwages. The Labour Court has awarded full backwages to the Respondent during the period from 30 September 2005 till date of attaining age of superannuation i.e. 1 June, 2009. Backwages are granted by taking note of pleadings of the Respondent of not being gainfully employed and failure on the part of the Petitioner in proving to the contrary.

8. However, what is ignored by the Labour Court as well as the Industrial Court is the nature of charge faced by Respondent as well as the reason why Part-I Award came to be decided against the Petitioner. Respondent faced serious charge of misappropriation of amounts of Rs.71,000/- and Rs.30,000/- in respect of two account holders in the Bank. Respondent was functioning as Local Adviser of the Bank and it was alleged that he had deceived Smt. Mandhare and Smt. Amale by misappropriating the amounts of Rs.71,000/- and Rs.30,000/- respectively. Upon filing of a police

complaint, Respondent deposited amount of Rs.66,926/- in the account of Smt. Mandhare and returned the amount of Rs.30,000/- to Smt. Amale in the Police Station. The charges levelled against the Petitioner were proved in the departmental inquiry and the Labour Court had held that the findings recorded in the departmental inquiry were supported by evidence. However, the only reason why the Industrial Court reversed the findings of the Labour Court is commission of misconduct by Respondents in the Co-operative Bank and Petitioner's capacity to punish him. The Industrial Court has arrived at a conclusion that the Petitioner-Transport Corporation did not have authority to punish Respondent for misconduct committed in connection with the affairs of the Bank. This again is a debatable issue as according to Petitioner, Respondent was in service of the Petitioner-Corporation and was merely deputed to work in the Co-operative Bank. Be that as it may. Since Petitioner has accepted Industrial Court's findings on Part-I Award, now it is too late to go into that issue.

9. For the purpose of entitlement of the Respondent for backwages, suffice it to state that he faced serious charge, which was actually proved in the departmental inquiry. Respondent has not disputed the factum of deposit/return of amount to the concerned complainants.

10. Considering this conduct on the part of the Respondent, award of full backwages to him would be like rewarding him despite commission of serious misconduct of misappropriation of amount. Petitioner has not been absolved on merits and dismissal order is set aside on account of a technicality. In such circumstances, award of full backwages to Respondent would be unwarranted. Therefore, while the order of reinstatement of Respondent is upheld, the direction to pay full backwages needs to be interfered with. In my view ends of justice will meet if the Respondent is awarded to 50% backwages during the intervening period.

11. Accordingly, while the orders passed by the Labour Court and Industrial Court are upheld, the direction for payment of full backwages is modified by directing that the Respondent shall be entitled to 50% backwages for the period from 30 September 2005 to 1 June 2009.

12. With the above directions, Writ Petition is disposed of.

**(SANDEEP V. MARNE, J.)**