

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 137 OF 2017

Mr. Sakhawat Ibrahim Naik
Plot No.39, Room No.33, Colaba Plat,
New Collector Compound, Malwani Gate No.5,
Malad, Mumbai – 400 095. ... Petitioner

Versus

Maharashtra State Road Transport Corporation,
Bhandar Vibhag, Kurla, Mumbai – 400 086. .. Respondent

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- Ms. Komal Deshmukh, Advocate for the Petitioner.
 - Ms. P. M. Bhansali i/by G.S. Hegde, Advocate for Respondent No.1.
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CORAM : MILIND N. JADHAV, J.

RESERVED ON : AUGUST 29, 2023.

PRONOUNCED ON : SEPTEMBER 11, 2023.

JUDGMENT:

1. This Writ Petition is filed under the provisions of Articles 226 and 227 of the Constitution of India seeking the following reliefs:-

- “a. That this Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, or Order or Direction under Article 226 and 227 of the Constitution of India, calling for the records and proceedings of Complaint (ULP) No. 330 of 2015, from the office of the Industrial Court Mumbai and after examining the legality, validity and / or propriety of the same, quash and set aside the impugned judgment and order dated 06.06.2016;
- b. Be pleased to hold that the order of the Industrial Court suffers from fairness, good conscious equity and that the petitioner be given the position of wireman from the date of his termination i.e. from 31.01.2008 with all consequential benefits.”

2. Petition takes exception to the impugned judgment and order dated 06.06.2016 passed by Industrial Court in Complaint (ULP) No.330 of 2015 in complaint filed under Section 28 readwith Items Nos.9 and 10 of Schedule – IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short '**the said Act**'). By the impugned judgment and order, complaint filed by Petitioner stood dismissed, resultantly, confirming the judgment and order dated 18.03.2010 passed by the Second Appellate Authority of Respondent – Corporation at Exhibit – F (Page No.28) of the Petition. By the said judgment of the Second Appellate Authority, order dated 09.07.2009 passed by the First Appellate Authority, *inter alia*, indicting and penalising the Petitioner by reverting him back to the basic salary after 28 years of service stood partially set aside and substituted by directing reduction in his salary by three stages of increment.

3. Briefly stated, such of the relevant facts necessary for adjudication of the present Petition are as under:-

- (i) Petitioner was appointed as helper in Respondent – Corporation on 14.12.1981 and promoted to the post of wireman in the year 1989. Since then he worked in Respondent's Kurla Depot – Electrical department

stores in Mumbai as wireman.

- (ii) On 18.05.2007, chargesheet was issued to Petitioner, *inter alia*, alleging theft of a current tester type 7274 techno-4 electric machine (**for short 'amplifier'**) on 16.11.2006. It is pertinent to note that this chargesheet was issued 6 months after the date of incident and admittedly Respondent did not lodge any police complaint of theft.
- (iii) Reply dated 04.07.2007 was filed by Petitioner to the charge-sheet stating that he did not commit any overt act of theft and in fact took the amplifier which he found lying inside the Electrical Stores in scrap to his superior's office situated on the first floor who had given standing instructions to bring to his notice any shortcomings or repairs required to any equipment found in the Electrical Stores room in the depot which could be utilised for the Respondent – Corporation. Petitioner stated that the amplifier weighing 15 kilograms was infact carried by a contract labourer on his instructions inside the Depot and it was wrongfully construed that this was an act of theft. Petitioner stated that the contract labourer carrying the amplifier was

tired halfway and had kept it on the ground near the restroom for catching his breath and at that time the security guard called out to them alleging theft and directed them to take the amplifier to the Chief Gate - Keeper and asking the Petitioner to report to the Divisional Controller in the Depot.

(iv) Based on above facts, Security in-charge prepared a panchnama - report, alleging that Petitioner committed theft of the amplifier. Petitioner reported to the Divisional Controller immediately and explained the incident to him and he was directed to keep the amplifier in the storeroom at the place where it was found. Admittedly the entire incident occurred inside the premises of Kurla Depot of Respondent - Corporation. There is no dispute about this fact and it stands admitted by all parties.

(v) Chief Gate - Keeper prepared panchnama - report. Six months after the episode, Respondent - Corporation held enquiry on 27.06.2007 which was concluded on the same day itself. Enquiry Officer prepared report dated 01.09.2007 returning findings that charge of theft and dishonesty were proved against Petitioner and

proposed dismissal of Petitioner from service. It is pertinent to note here that role of enquiry and Enquiry Officer is only limited to the extent of concluding whether the charges are proved against the delinquent employee or not and the Enquiry Officer cannot propose any punishment. Petitioner has therefore submitted that in the first instance itself the enquiry is vitiated in law. Petitioner has therefore submitted that the enquiry held is not in accordance with the principles of natural justice.

(vi) In view of the above, by order dated 31.01.2008 Petitioner was dismissed from service of Respondent after serving the Respondent – Corporation for 28 years.

(vii) Being aggrieved, Petitioner filed departmental Appeal before First Appellate Authority. By order dated 09.07.2009, First Appellate Authority set aside the dismissal order dated 31.01.2008 as disproportionate and directed reinstatement of Petitioner in service on the post of helper with direction that Petitioner would not be entitled to any benefit for his past services (tenure). It is pertinent to note here that, First

Appellate Authority clearly returned the finding that the amplifier was not stolen by Petitioner as he had not taken it out of Respondent's Depot premises, however, it held that movement of Petitioner was suspicious and therefore he deserved to be reinstated instead of being dismissed from service. It is pertinent to note here that First Appellate Authority clearly returned the finding that the amplifier was not stolen or taken out of the Respondent's Depot / premises nor Petitioner had intention of committing act of theft.

(viii) Based on the order dated 09.07.2009, on 20.07.2009, Petitioner was reinstated as mazdoor (helper) with the Respondent – Corporation at Depot.

(ix) Being aggrieved by the order dated 09.07.2009 passed by First Appellate Authority, Petitioner filed Second Appeal before the Second Appellate Authority challenging his dismissal order and order of reinstatement on the post of mazdoor (helper) on the basic pay passed by the First Appellate Authority.

(x) By order dated 18.03.2010, Second Appellate Authority set aside the order of dismissal and modified the order of First Appellate Authority directing reinstatement of

Petitioner with reduction of his basic wages by three stages of previous increments received by him in the past. It is pertinent to note that in this order, it was not stated as to whether the Petitioner ought to be reinstated on the post of helper or on the post of wireman which was held by him at the time of his dismissal. This is the question agitated by the Petitioner before me.

- (xi) Based on the order of Second Appellate Authority, Respondent – Corporation reinstated Petitioner with reduction in pay by three stages of past increments, re-fixed and reduced his basic wages by three stages on the post of mazdoor (helper). It is pertinent to note here that, the Second Appellate Authority in its judgment and order returned a categorical finding that in the incident no theft was involved much less even an attempt to steal (theft), and if it had been so, Respondent - Corporation ought to have lodged a police complaint which in this case was not lodged. It is pertinent to note that Second Appellate Authority returned a further finding that the entire incident appeared suspicious but however no person had caught

the Petitioner in the act of stealing the amplifier and most importantly the entire incident occurred within the precincts and premises of Respondent's Kurla Depot.

(xii) Being aggrieved by the above, Petitioner filed Complaint under Section 28 read with Item Nos.9 and 10 of Schedule IV of the said Act and sought declaration that Respondent - Corporation engaged in unfair labour practices and sought direction for reinstatement as wireman as per Second Appellate Authority's judgment and order with a further direction to Respondent – Corporation to pay his full backwages with effect from 31.01.2008. Before the Industrial Court, none appeared for the Respondent – Corporation and the case proceeded *ex-parte*. A question was framed for consideration as to whether Petitioner had made out any case of unfair labour practice within the meaning of Item Nos. 9 and 10 of Schedule IV of the said Act and the same was answered in the negative against the Petitioner and his complaint stood dismissed by the impugned judgment and order dated 06.06.2016.

(xv) Hence, the present Writ Petition.

(xvi) On 28.02.2018, Petitioner superannuated and retired from the services of Respondent - Corporation.

4. Ms. Deshmukh, learned Advocate appearing for Petitioner submitted that judgment and order of Second Appellate Authority clearly directs reinstatement of Petitioner and sets aside the order passed by the First Appellate Authority and necessary implication of such order is that the Petitioner ought to be reinstated as wireman which was the post held by him since 1989 onwards and until he was dismissed from service. She would submit that order of Second Appellate Authority is completely silent as to on which post Petitioner is to be reinstated and according to the meaning of the word 'reinstatement' in the context of Labour Law as interpreted by the Supreme Court in its decision in the case of *S. S. Shetty Vs. Bharat Nidhi Limited*¹, it means to get appointed back on the original post which was held by the employee. Hence she would argue that in this case it would be the post of wireman. She would submit that reinstatement of Petitioner ought to have been on the post of wireman and not as mazdoor (helper) which is the basic flaw committed by Respondent - Corporation in executing and implementing the order of Second Appellate Authority which has been ignored by the Industrial Court. She would submit that the impugned

¹ 1975 (II) LLJ 696

order of the Industrial Court proceeds on an incorrect premise that Petitioner sought reinstatement in service. In the facts of the present case, she would argue that by the Second Appellate Authority's order, Petitioner stood reinstated in service but not as wireman which was the post held by him prior to his dismissal. She would submit that once the order of First Appellate Authority was set aside and direction was given by Second Appellate Authority to reinstate the Petitioner, such reinstatement should have been on the post of wireman and not as mazdoor (helper). According to Petitioner, this was the unfair labour practice committed by Respondent – Corporation for which complaint was filed before the Industrial Court. Next she would submit that, once order of dismissal stood set aside and reinstatement was directed, it had to be with effect from the date of dismissal i.e. 31.01.2008 and all consequential benefits such as backwages and other monetary and statutory benefits would therefore be payable to Petitioner as a wireman.

4.1. On the merits of the matter, she would submit that both orders by First Appellate Authority and Second Appellate Authority have returned identical and categorical finding that no theft has occurred of the amplifier. Both orders hold that there was a suspicious movement of Petitioner and nothing more and based on that both Authorities have passed their judgments / orders. She would submit that once the

Authorities having concluded and given a positive finding that no theft took place, that the entire episode unfolded within the premises of Respondent's depot and merely because allegation of suspicious movement was recorded, based on that Petitioner cannot be held liable and punished for theft and the resultant consequences. She would vehemently submit that Petitioner has had an unblemished record of 28 long years of service with Respondent – Corporation before the incident and was working as wireman since 1989. She would submit that no police complaint was filed by Respondent – Corporation regarding theft and in that view of the matter the present Writ Petition deserves to be allowed and the impugned judgment and order passed by the Industrial Court dated 06.06.2016 deserves to be set aside and Petitioner deserves to be reinstated on the post of wireman from the date of his termination i.e 31.01.2008 with all consequential benefits until the date of his retirement i.e. 28.02.2018. In that event, Petitioner would be entitled to the differential benefits / amounts for the above period as he stood superannuated.

5. *PER CONTRA*, Ms. Bhansali, learned Advocate appearing for Respondent – Corporation has taken a preliminary objection on maintainability of Complaint (ULP) No.330 of 2015 filed before the Industrial Court. That apart, she has drawn my attention to the fact that in the order of Second Appellate Authority there is a mention of a

past misconduct on the part of Petitioner. I have perused the same and find that it has been stated by Second Appellate Authority that in his 28 years and 2 months tenure of service, Petitioner was absent from duty on one occasion and there was some misconduct on another occasion. Save and except this, no other detail of the misconduct whatsoever is either stated by the Second Appellate Authority or has been brought on record by Respondent – Corporation subsequently to discredit the credentials of Petitioner. Next she would submit that being a Corporation, every small act of theft is required to be viewed strictly and seriously by the Corporation so as to ensure discipline and integrity amongst its employees and in that view of the matter the finding of suspicious movement is clearly returned by both the Authorities which is good enough for the punishment meted out to the Petitioner. She would submit that in the enquiry held, statement of witnesses were recorded and it is seen that Petitioner's act of removing the amplifier from its place was contrary to his duties and therefore he was responsible for such misconduct. Respondent – Corporation did not file any Affidavit-in-reply in the present Petition and made a statement which was recorded in the previous order passed by this Court that they did not intend to file any Affidavit-in-reply.

6. I have heard Ms. Deshmukh, learned Advocate for Petitioner and Ms. Bhansali, learned Advocate for Respondent and with their

able assistance perused the record and pleadings of the present case. Submissions made by them have been noted and received due consideration of the Court.

7. Considering the facts and records of the present case, it is crucial to understand the meaning of the word 'reinstatement' in its true colour and sense and hence, I find it necessary to refer to the definition of the word 'reinstate' as defined in Black's Law Dictionary Eighth Edition which defines it as "*to place again in a former state or position; to restore*". In the present case Respondent – Corporation has completely failed to understand and interpret the word 'reinstatement' as directed in order dated 18.03.2010 passed by Second Appellate Authority leading to failure of delivery of justice to the Petitioner.

8. In view of the above facts and findings by both the Authorities, I find that in so far as the act committed by Petitioner is concerned, it certainly does not amount to theft. Though both Authorities record suspicious movement, benefit of doubt is required to be given to Petitioner considering his past unblemished service record of 28 years and 2 months with the Respondent – Corporation.

9. It is seen that both judgments passed by the First Appellate Authority and Second Appellate Authority dated 09.07.2009 and 18.03.2010 once having concluded that no theft took place, that Petitioner could not be indicted for theft of the amplifier and most

pertinently the transit / movement of the amplifier having occurred within the premises of the Corporation's Depot, by no stretch of imagination Petitioner can be held guilty of theft of the amplifier. It is seen that Petitioner was appointed as mazdoor (helper) in 1981 and promoted as wireman in 1989 and the incident occurred in 2006. Between 1989 and 2006, the Petitioner worked as wireman for almost 17 years. As wireman his duty was to regularly visit the Electrical Stores and as explained by Petitioner to the Divisional Controller on the date of incident and also as stated in reply to the show-cause-notice, as also before the First Appellate Authority and the Second Appellate Authority that it was due to the standing instructions of his superior that if he found any electrical equipment which could be repaired and utilized for the benefit of the Respondent Corporation, he should bring it to the notice of his superior, that he had indulged in the incident. In view of this fact, he unearthed the amplifier which was an old machine lying in scrap in the Electrical Stores and with the help of a contract labourer carried it to his superior's office situated on the first floor inside the same depot to bring it to his notice. It is seen that though this fact has been held to be suspicious but certainly it does not amount to theft. It has also come on record that the amplifier was carried by the contract labourer and not by Petitioner. Hence, I am not inclined to even consider the movement of the Petitioner as suspicious. The past service of the Petitioner of 17 years

as wireman and 8 years as mazdoor (helper) in the very same depot is a critical factor for consideration in the facts and circumstances of the present case. In the enquiry held, findings of Enquiry Officer concluded that charge of theft and dishonesty was proved against Petitioner. It is not understood as to how the charge of dishonesty was proved against Petitioner or even for that matter, the charge of theft when Petitioner's act of bringing the said amplifier to the notice of his own superior was on the instructions of his superior himself. It has come on record in reply to the show-cause-notice that the amplifier was lying in the electrical scrap (*बर्बाद*) inside the electrical stores of the depot and it was removed by Petitioner from there to bring it to the notice of his superior to suggest that if it could be repaired, it can be brought in use for the benefit of the depot. In this regard explanation given by Petitioner dated 04.07.2007 is relevant which is at Exh. "B" to the Petition. There is no denial of this explanation as the said explanation gives precise details of the incident and what exactly transpired in so far as the act of Petitioner is concerned. On perusal of the same, I have no doubt in my mind that the act of theft cannot be attributable to the act committed by Petitioner, much less the act of any suspicious movement. This is coupled with the fact that the Second Appellate Authority has clearly held that if there was an act of theft, police complaint ought to have been lodged which was not done by the Respondent / Corporation. Considering the fact that Petitioner

was himself a wireman, he was the concerned person having access to the electrical stores to check the material lying there if the same could be utilized and used for the benefit of the Corporation. The indictment of Petitioner due to suspicious movement is because of the fact that he took a circuitous route to reach the office of the superior alongwith the contract labourer. Petitioner has in fact given explanation to this also that in view of repairs to the road, he was compelled to take the circuitous route. While taking the circuitous route, it is not the Corporation's case nor has been proved that Petitioner was carrying the amplifier outside the depot premises at all times. On the contrary, the said amplifier was very much within the depot premises and therefore the act of theft cannot be attributable to the movement of the Petitioner in the present case. In that matter, I am of the clear opinion that the impugned judgment dated 06.06.2016 passed by the Industrial Court in Complaint (ULP) No. 330 of 2015 requires interference.

10. On the basis of the above observations and findings, the judgment and order dated 06.06.2016 is not sustainable. I would also conclude that the order of the Second Appellate Authority dated 18.03.2010 setting aside dismissal of the order dated 31.01.2008 of the First Appellate Authority also deserves to be interfered with and modified in the facts and circumstances of the present case.

11. Hence, Impugned judgment and order dated 06.06.2016 passed in Complaint (ULP) No. 330 of 2015 stands quashed and set aside. Complaint (ULP) No. 330 of 2015 stands allowed with the following directions:-

- (i) Order dated 18.03.2010 passed by the Second Appellate Authority stands partially modified;
- (ii) Reinstatement of the Petitioner is directed to be made on the post of wireman pursuant to the order dated 18.03.2020 passed by Second Appellate Authority with all full consequential benefits w.e.f. 31.10.2008 (date of dismissal) to 20.07.2009 (date of reinstatement as helper) and thereafter from 20.07.2009 upto 28.02.2018 (date of retirement), the differential amounts be paid to the Petitioner as he would be entitled to as a consequence of this judgment and order;
- (iii) The full back wages with all statutory benefits as stated in (ii) above shall be paid by the Corporation to the Petitioner within a period of eight weeks from today on the basis of production of an authenticated copy of this order;

- (iv) Petitioner shall be entitled to simple interest @ 6% on the full back wages that would be payable to the Petitioner from the date from which it was due and payable;
- (v) Corporation is directed to pay the interest amount within the same period of eight weeks from today;
- (vi) Petitioner shall be entitled to all retirement benefits / statutory benefits of wireman in accordance with law.

12. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
MOHAN
AMBERKAR
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