

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

WRIT PETITION NO. 15725 OF 2022

Divisional Controller,
Maharashtra State Road Transport Corporation,
Satara Division.

...Petitioner

Versus

Deepak Raghunath Shinde.

...Respondent

Mr. Y. P. Deshmukh, for Petitioner.

Mr. Vaibhav Jagdale, for Respondent.

CORAM : SANDEEP V. MARNE, J.

DATE : 19 OCTOBER 2023.

JUDGMENT:

Rule. Rule is made returnable forthwith. With the consent of learned counsels for the parties, petition is taken up for final hearing and disposal.

2. Maharashtra State Road Transport Corporation has filed this petition challenging the Judgment and order dated 08 November 2019 passed by the Labour Court, Satara in Complaint (ULP) No. 54 of 2015 as well as the Orders dated 02 December 2021 and 20 December 2021 passed by the Industrial Court, Satara in Revision (ULP) No. 01 of 2020 and Revision No. 08 of 2020. By its Order dated 08 November 2019, the Labour Court has set aside the penalty of dismissal imposed on

Respondent and has directed his reinstatement with 50% backwages. Both Petitioner as well as Respondent challenged Labour Court's decision before the Industrial Court. The Industrial Court had proceeded to reject the Revision No. 01 of 2020 filed by Petitioner-Corporation whereas the Revision No. 08 of 2020 is allowed directing payment of full backwages in favour of Respondent. Petitioner-Corporation is aggrieved by the Order of Labour Court as well as by both the Orders of the Industrial Court and has accordingly filed present petition.

3. Facts of the case are in a narrow compass. Respondent is employed with the Petitioner-Corporation on the post of driver. On 03 September 2006 while Respondent was deputed to drive bus, an accident took place at Kalamboshi Katakavane bus stop where a bus dashed against a lady pedestrian injuring her. The lady pedestrian succumbed to her injuries on 04 September 2006. Petitioner-Corporation issued a memorandum of charge sheet dated 26 November 2007 to Respondent for holding disciplinary enquiry. Additionally, Respondent was subjected to criminal prosecution in respect of the same incident. He was however acquitted in the criminal trial by Judgment and Order dated 19 August 2018. In the disciplinary enquiry, charge was held to be proved and Petitioner-Corporation proceeded to pass Order dated 18 April 2015 imposing the penalty of dismissal from service on Respondent.

4. Respondent challenged the penalty of dismissal before Labour Court by filing Complaint (ULP) No. 54 of 2015. The Complaint was resisted by Petitioner-Corporation by filing its reply. By

Judgment and Order dated 08 November 2019, the Labour Court partly allowed the complaint and directed Respondent's reinstatement in service by awarding him 50% backwages.

5. Both Respondent as well as Petitioner-Corporation were aggrieved by the decision of the Labour Court. Respondent was aggrieved on account of not award of 100% backages and accordingly filed Revision (ULP) No. 08 of 2020 claiming full backwages. On the contrary, Petitioner-Corporation filed Revision (ULP) No. 01 of 2020 seeking to set aside the entire order of the Labour Court dated 08 November 2019.

6. The Industrial Court decided both the Revisions by two separate Orders. By Order dated 02 December 2021, the Industrial Court rejected Petitioner's Revision (ULP) No. 01 of 2020. By Judgment and Order dated 20 December 2021, Industrial Court allowed the Revision (ULP) No. 08 of 2020 partially setting aside the Labour Court's Order dated 08 November 2019 and directed Petitioner-Corporation to pay full backwages to Respondent with all consequential benefits. Petitioner-Corporation is aggrieved by the Order of the Labour Court dated 08 November 2019 as well as the Orders of Industrial Court Dated 02 December 2021 and 20 December 2021 and has accordingly filed the present petition.

7. I have heard Mr. Deshmukh, the learned counsel appearing for Petitioner-Corporation. He would submit that the Labour Court has erred in directing reinstatement of Respondent. That he was held

responsible for the accident resulting in death of a pedestrian and therefore the penalty of dismissal from service was rightly imposed on him. That findings recorded in the domestic enquiry are supported by evidence and the Labour Court erred branding the same as perverse. He would submit that Respondent cannot be awarded any backwages on account of serious charge proved against him. In support of his contentions, Mr. Deshmukh would rely upon Judgment of the Apex Court in *Depot Manager, A. P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and Ors.*, (1997) 2 SCC 699. He would pray for setting aside the impugned Orders.

8. *Per Contra* Mr. Jagdale, the learned counsel appearing for Respondent employee would oppose the petition and support the Orders passed by the Industrial Court. He would submit that the Part-I Award was decided against the Petitioner-Corporation vide Judgment and Order dated 15 June 2019 holding that the findings recorded by the Inquiry Officer are perverse. That the Part-I Award has attained finality as the same was not challenged by the Petitioners. That after Part-I Award, the Petitioner-Corporation failed to avail opportunity of proving the charge by leading evidence before the Labour Court. That once the findings are held to be perverse, the Labour Court cannot be faulted for setting aside the penalty of dismissal. He would submit that award of full backwages is a natural consequence arising out of setting aside the dismissal order. That since the Respondent proved before the Labour Court that he was not gainfully employed, he has been rightly awarded full backwages by

the Industrial Court. He would rely upon Judgment of the Apex Court in *Jorsingh Govind Vanjari Vs. Divisional Controller Maharashtra State Road Transport Corporation, Jalgaon Division, Jalgaon*, Civil Appeal No. 11807 of 2016, decided on 06 December 2016.

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

10. As rightly submitted by Mr. Jagdale, Part-I Award came to be delivered by the Labour Court on 15 June 2019 holding that the findings of the Inquiry Officer are perverse. Petitioner-Corporation did not challenge Part-I Award nor led evidence before the Labour Court to prove charge. Further it appears that after delivery of Part-II Award on 08 November 2019, Petitioner-Corporation has challenged even Part-I Award in its Revision (ULP) No. 01 of 2020.

11. However, perusal of the Order of the Industrial Court dated 02 December 2021 would indicate that the Industrial Court has not gone into the issue of correctness of Part-I Award dated 15 June 2019. Be that as it may. On perusal of the Part-I Award dated 15 June 2019, it appears that the only witness examined by the Petitioner-Corporation to prove the charge against Respondent was the Reporter who apparently prepared a report dated 05 September 2006 in respect of the accident. In the present petition no serious attempt is made by the Petitioner-Corporation to demonstrate that sufficient evidence was produced to prove the charge. In fact, evidence produced in the domestic enquiry is not even produced

in the present petition. Part-I Award dated 15 June 2019 is not under challenge in the present Petition as well. Though it may well be contended that the Order of the Industrial Court is under challenge and since challenge before Industrial Court included challenge to Part-I Award as well.

12. However if the Petitioner-Corporation is serious enough to demonstrate that there was sufficient evidence on record, the same ought to have been placed along with the petition. In that view of the matter, I am not inclined to go into the issue of correctness of Part-I Award dated 15 June 2019.

13. Since the Labour Court delivered Part-I Award on 15 June 2019 and since the Petitioner-Corporation failed to lead evidence before Labour Court, the Order of dismissal is rendered illegal and has been set aside by the Labour Court. No infirmity can be found in the directions of the Labour Court for reinstatement once it had come to the conclusion that findings recorded in the enquiry were perverse.

14. That leaves issue of consequential relief of backwages. After setting aside the order of dismissal, the Labour Court initially awarded only 50% backwages. The Industrial Court has however awarded 100% backwages by allowing the Revision filed by Respondent employee.

15. In my view, the order of the Industrial Court awarding 100% backwages to Respondent employee is not warranted in the facts and circumstances of the present case. Respondent faced a serious charge of

causing death of a pedestrian in the accident. Though the charge levelled against him is held to be not proved, on account of failure on the part of Petitioner-Corporation in adducing evidence of relevant witnesses in the Domestic Enquiry and later before the Labour Court, Respondent does not dispute occurrence of accident. It is undisputed that he was driving bus when the accident was caused. He does not dispute that the death of the pedestrian caused on account of injuries suffered by her in accident. Once these facts are undisputed, the question is whether Respondent can be awarded 100% backwages from the date of dismissal. Thus though order of dismissal is required to be set aside on account of failure on the part of Petitioner-Corporation to prove the charge by adducing cogent evidence, this is not a case where 100% backwages could have been awarded to the employee. Considering the nature of charge faced by Respondent, particularly the fact that the accident resulted in death of a pedestrian, in my view, ends of justice would meet if only 50% backwages are awarded to the Respondent.

16. The present petition therefore partly succeeds and I proceed to pass the following Order:

- i) The impugned Judgment and Order dated 20 December 2021 passed by the Industrial Court in Revision No. 08 of 2020 is set aside and the Order dated 08 November 2019 passed by the Labour Court awarding 50% backwages is upheld.

- ii) The Petitioner-Corporation shall reinstate Respondent within a period of 04 weeks from today.
- iii) Petitioner Corporation shall pay the amount towards 50% backwages to the Respondent within a period of 08 weeks from today.

17. The Writ Petition is accordingly partly allowed. The Rule is made partly absolute. There shall be no order as to costs.

SANDEEP V. MARNE, J.

****This Judgment is corrected as per speaking to the minutes Order dated 29 November 2023.**

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