

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.482 OF 2023 IN
MISC. CIVIL APPLICATION ST. NO.14097 OF 2022 IN
MISC. CIVIL APPLICATION ST. NO.04 OF 2022 IN
WRIT PETITION NO.7727 OF 2018 (D)

M.S.R.T.C., through Divisional Controller, Yavatmal .Vs. Devchand Nagoji Rathod

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.S. Gawai, Advocate for the petitioner.
Shri S.A. Nerkar, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : 03/08/2023

1. For the reasons stated in the application and as the reasons are found to be satisfactory, the application is **allowed** and the delay of 157 days caused in filing the application for restoration is condoned.

The civil application is **disposed of** accordingly.

MISC. CIVIL APPLICATION ST. NO.14097 OF 2022

2. For the reason stated in the application, the application is **allowed**. The matter is restored back to its original number.

The civil application is **disposed of** accordingly.

WRIT PETITION NO.7727 OF 2018

3. The judgment and order dated 01.02.2017 passed by the Member, Industrial Court, Yavatmal in

Complaint (ULP) No.183 of 2015 allowing the complaint and thereby setting aside the punishment order dated 24.06.2013, is under challenge in this writ petition.

4. The respondent was serving with the petitioner since 1984 and when he was a Traffic Controller, the impugned punishment was imposed alleging that, he issued concession pass to the student on the basis of bogus certificate of typing institute.

5. It is alleged that the respondent directed the said student to bring bogus bonafide certificate of typing institute for getting passes and for that he received excess amount from the students while issuing passes.

6. Accordingly, the enquiry was held and on finding, the respondent was guilty, the punishment was imposed reducing his two increments permanently. The said punishment was challenged before the Industrial Court which came to be set aside vide impugned judgment and order dated 01.02.2017.

7. The ground on which the punishment was set aside and the complaint was allowed is that the finding recorded by the enquiry officer are perverse and without evidence.

8. The learned counsel for the petitioner submits that, no strict rule evidence applies but on the basis of preponderance of probability, the enquiry officer has to arrive at a conclusion whether the charges are proved or not? He, therefore, submits that, the Industrial Court has committed error in allowing the complaint.

9. In the present matter, there is no dispute that the statement of students are recorded in absence of the complainant as regards the charges leveled against the respondent and no opportunity was granted to the respondent to cross examine. However, the findings of the enquiry committee are based on such statement of the students.

10. Similarly, while alleging that the certificates issued by the typing institute were bogus, no witnesses were examined in this regard particularly the proprietor of typing institute.

11. Even, it is not the case of the petitioner that, some enquiry was made with the proprietor of the typing institute. Therefore, in absence of any prayer made by the petitioner before the Industrial Court to lead oral evidence to prove the misconduct to show that the punishment which was awarded, is just and proper, the learned Industrial Court has rightly allowed the complaint and set aside the

punishment as there is no perversity committed by the learned Industrial Court. Hence, I do not find any merit in the present writ petition.

Accordingly, the writ petition is **dismissed**.

JUDGE