

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7439 OF 2018

Haridas Kishanrao Adhau,
Aged about 48 years, Occ. : Nil,
R/o. Astoli, Taluka : Morshi,
Dist. : Amravati.

.... **PETITIONER.**

// **VERSUS** //

Maharashtra State Transport Corporation,
Through its Divisional Controller,
Amravati Division, Amravati.

.... **RESPONDENT.**

Shri A.D.Mohgaonkar, Advocate for Petitioner.
Shri A.S.Mehadia, Advocate for the Respondent.

CORAM : ANIL S. KILOR, J.
DATED : JULY 25, 2023.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The petitioner, who was working as Conductor in the respondent- State Transport Corporation, was dismissed from the service on the charge of misconduct and it was upheld by the Labour Court as well as the Industrial Court. Hence, this petition.

4. On 14/12/1998 while the complainant was discharging his duty as Conductor, two passengers were found without tickets. Accordingly, charge-sheet was issued, in turn the petitioner filed his reply denying the charges. Thereupon, the departmental enquiry was initiated against the petitioner and he was found guilty of the charges of misconduct. As a result, show cause notice was issued and after considering the reply filed by the petitioner, the punishment of dismissal was inflicted on the petitioner.

5. The petitioner, feeling aggrieved by the said dismissal, approached the learned Labour Court by filing complaint under Section 28 read with Item I of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as “MRTU & PULP Act”).

6. The respondent Corporation strongly opposed the said complaint by filing written statement.

7. The learned Labour Court vide its judgment and order dated 15/02/2008 dismissed the complaint holding that the respondent-Corporation has proved the misconduct against the petitioner/complainant, as alleged in the charge-sheet, and therefore, the petitioner is not entitled for reinstatement with continuity of service and full back wages.

8. The said judgment and order was upheld by the learned Industrial Court in the Revision (ULPN) No.3 of 2008, filed by the petitioner, vide judgment and order dated 06/02/2014. The said judgment and order dated 06/02/2014 is under challenge in this writ petition.

9. Shri Mohgaonkar, learned counsel for the petitioner makes following submissions:

- a) Both the Courts below have ignored and discarded the fact that the statement of the passenger Shri Pravin Nagpure, recorded on the spot, was recorded under pressure;

- b) The Respondent-Corporation while leading evidence to establish the charges, failed to produce tickets and waybill and thus, in absence of sufficient evidence the learned Labour Court as well as Industrial Court erred in holding the dismissal of the petitioner as valid;
- c) The findings recorded by both the Courts below that the charges are proved against the petitioner, are perverse.

10. On the other hand the learned counsel for the respondent-Corporation makes following submissions:

- i) The respondent-Corporation has brought on record sufficient and cogent evidence to establish the charges against the petitioner and both the Courts below have rightly upheld the dismissal of the petitioner;
- ii) Both the Courts below have not committed any perversity or illegality as the findings recorded by both the Courts below are based on the evidence available on record.

11. In light of the rival contentions I have perused the record and the judgment and orders passed by both the Courts below.

12. In the present matter, the learned Labour Court while deciding the preliminary issue about fairness of the enquiry and whether the finding of the Enquiry Officer were perverse, has held that the enquiry was conducted in a fair and proper manner. However, the findings recorded by the Enquiry Officer are perverse and suffer from vice of non-application of mind. Accordingly, the learned Labour Court granted liberty to the respondent-Corporation to prove the charges by leading fresh evidence against the complainant. Accordingly, the respondent-Corporation examined two witnesses and the petitioner examined the passenger Shri Pravin Nagpure, who alleged to have found without ticket.

13. From the record, it is evident that the petitioner in his defence time to time change his defence and took in all three different stands, which are contradictory to each other. Even the pleadings are contradictory. In the complaint he says that he had issued the valid ticket from Teosa to Lehgaon worth Rs.9/- to one passenger. Whereas, in the statement recorded at the spot he stated that he received Rs.40/- from a

passenger and he returned back Rs.10/- and issued ticket for Satargaon to Lehgaon. Contrary to this, in reply, he has stated that the valid fare from the passengers was recorded and returned them a balance amount of Rs.4/-.

14. Thus, from the above three contradictory stands taken by the petitioner, it is evident that every time the petitioner has come up with a new stand as he himself was not sure about the recovery of fare charges from the passengers.

15. It be noted that, the bus was proceeding from Tiwasa to Morshi via Chandur Bazar. It is a matter of fact that, at the relevant time there were 13 passengers (disputed) in the bus. It is specific case of the complainant that, he convinced the passengers explaining that, this bus is going to Morshi via Chandur Bazar but from Lehgaon there are other buses which directly proceeding to Morshi having a short distance and less fare and therefore, he is issuing the ticket to them up to Lehgaon by recovering Rs.9/-(8+1) each of the passengers and total he has recovered Rs.18/- and issued the valid ticket. Before reaching to Lehgaon his bus was checked and all the passengers were holding valid tickets. However he failed to establish this fact.

16. It be further noted that, after checking the bus immediately the spot statement of the complainant and passengers were recorded. The statement of Prvain Nagpure reflect that, he has paid Rs.30/- and the complainant has issued him ticket till the destination of checking i.e. Rajurwadi.

17. At the same time, if the statement of the complainant dated 14/12/1998 is taken into account in his statement he has stated that, the passengers have given him Rs.40/- and out of Rs.40/- he has returned him Rs.10/-. The ticket fare from Tiwasa to Chandur Bazar is Rs.17/- for one passengers, therefore, for two passengers it comes to Rs.34/-. However, it is not explained why the complainant has issued the ticket of less denomination which resulted to cause loss to the respondent establishment.

18. The passenger, who entered into the witness box on behalf of the petitioner, first time, made allegations against the reporter that because of his pressure he gave a statement against the petitioner. From the above recitals of reply to the change-sheet one fact is clear that, the statement recorded by the checking squad on spot is neither under the influence or pressure. Moreover, if there was any pressure, the petitioner

or the said passenger could have made a complaint to the Higher Authorities immediately after the statement was recorded on the spot. However, it appears that to help out the petitioner the said statement was made first time before the Court.

19. The petitioner has not explained the reason for pressurizing the passenger by the reporter. It is not the case of the petitioner that there was any enmity between the reporter and the petitioner. Thus, it cannot be said that the reporter was not fair in recording the statement of the passenger.

20. Both the Courts below have scrutinized the evidence in detail and on considering the different defences raised by the petitioner, recorded the findings in elaborate manner and held against the petitioner. Nothing has been pointed out which would lead this Court to a conclusion that any finding recorded by the Labour Court and upheld by the Industrial Court, is not based on evidence or contrary to the evidence and hence, perverse.

21. In the circumstances, as there is no perversity or illegality committed by the learned Labour Court as well as the Industrial Court in

upholding the order of dismissal against the petitioner, I see no reason to interfere with the impugned orders. Accordingly, I pass the following order:

The Writ Petition is **dismissed**. No order as to costs.

(ANIL S. KILOR, J)

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