



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**219 WRIT PETITION NO.3649 OF 1999**

The Divisional Controller,  
Maharashtra State Road Transport  
Corporation, Parbhani

**.. PETITIONER**

**VERSUS**

Madhavrao s/o. Shamrao Kokare  
(deceased) Pensionpura,  
At & Post : Ghudanki,  
H.No.21/50, Tq. Hingoli,  
Dist. Parbhani.

Through his legal heirs/L.R.

1. Usha Madhavrao Kokare,  
Age : 32 years, Occu. Nil,  
R/o. Behind Kandi Hospital  
Pensionpura, Hingoli,  
Taluka Hingoli, Dist. Parbhani.
2. Rekha Madhavrao Kokare,  
Age : 15 years, Occu. Nil  
(under the Guardianship of  
respondent No.1)
3. Alka Madhavrao Kokare,  
Age : 11 years, (under the  
Guardianship of Respondent no.1);
4. Sandeep Madhavrao Kokare,  
Age : 7 years, Occu. Nil,  
(under the Guardianship of  
Respondent No.1).

**.. RESPONDENTS**

...  
Mr.A.D.Wange, Advocate for the petitioner.

...

**CORAM : ARUN R. PEDNEKER, J.**

**DATE : 26.09.2024**

**P.C. :**

1] By the present petition, the petitioner – MSRTC challenges the order dated 26.11.1998 passed by the Industrial Court, Jalna in Revision [ULP] No.35/1994 whereby the Industrial Court was pleased to set aside the order passed by the Labour Court dismissing the complaint filed by the respondent – complainant and the Industrial Court held the petitioner guilty of unfair labour practices. No reinstatement is granted by the Industrial Court as the complainant had expired during pendency of the proceedings so also he worked till his demise. As such, there is no order of back-wages passed by the Tribunal. However, the retirement benefit is directed to be paid to the legal heirs of the deceased-complainant arising out of the past service of the deceased complainant.

2] In the instant case, the respondent – complainant worked as Conductor in the bus of the petitioner - MSRTC. The deceased complainant was attached to the Hingoli depot within Parbhani Division. On 20.05.1987, while the complainant was manning bus No. MTB-9738 on Bolda to Balapur route on scheduled duty, his bus came to be checked in between village Bolda Phata and village Potra, and particularly at Potra. In the said checking, the Checking Officers found that there was group of 5 passengers and another group of 2 passengers, having no tickets and the ticket fare of such passengers was 70 ps. each. On enquiry, it transpired that the passengers had paid the S.T. fare to the complainant/conductor at the boarding stage Bolda but the complainant/conductor did not issue tickets to such passengers till the checking stage at Potra. As such, enquiry was conducted and the charge sheet was filed against the complainant-conductor. Thereafter, the employee was dismissed from the service. The complainant filed complaint [ULP] No.219/1987 before the Labour

Court and Labour Court, by order dated 24.04.1989 dismissed the said complaint. Against the said order, the complainant filed Revision [ULP] No.35/1994 before the Industrial Court. During pendency of the said revision, the complainant Madhavrao Shamrao Kokare expired, and therefore, the said Revision was prosecuted by the legal heirs of the deceased-complainant.

3] The Industrial Court held that the statements of the witness to examination Officer must have been dictated by somebody else. On examination of the material, the Industrial Court held that when the S.T. passengers themselves have not supported the case of the respondents, the statement of conductor definitely can be said an outcome of dictation of the Officers. The Industrial Court held that in the present matter, another circumstance deserve to be accepted and it is that very pity amount is involved in the present alleged misappropriation. Admittedly, 00.70 ps. fare was required in between Bolda to Potra. It is also held by the Tribunal that when passengers

had boarded in the bus at Shingi Phata, when way bill was already closed by the conductor / complainant, it cannot be said that the complainant had mind and intention to misappropriate such small amount. These passengers have specifically disclosed that they had boarded in the bus on the way after Shingi Phata bridge and Shri Punde has disclosed that he had a note of Rs.100/- denomination. He was to take the ticket against the said note but the Conductor had asked for change and in the meantime bus came to be stopped by brown dress persons. The defence of the Conductor was that Rs.100/- was given by the passengers and he did not have change for the same and the same is returned to them. Thus, the finding recorded by the Labour Court, so also, by the Enquiry Officer, is based on no evidence. It is also to be noted that the passengers have not supported the case of petitioner. The findings of the Industrial Court is that 00.70 ps. fare was required in between Bolda to Potra and it was very short distance, which is not more than 2.1/2 k.m., it is difficult to accept the submissions of the learned counsel for the petitioner

that the respondent employee was guilty of misappropriation of 00.70 ps.

4] The finding of the Industrial Court is not perverse. The same is based on the evidence of the passengers and also on the fact that the alleged misappropriation is of small amount, which is unlikely. The finding so recorded cannot be interfered in the present Writ Petition.

5] The learned counsel for the petitioner has relied upon the judgment in the case of **Karnataka State Road Transport Corporation Vs. B.S.Hullikatti** reported in **AIR 2001 SC 930** to contend that for misappropriation of even small amount the petitioner is justified in terminating the bus conductor – employee. However, in the said judgment, the Hon'ble Supreme Court maintained order of reinstatement but without back wages. In the said case, it was pointed out that the Conductor has charged excess fare from the passengers, by not issuing tickets. However, the Hon'ble Supreme Court in the fact situation has not set

aside the order of reinstatement. Therefore, no case is made out to interfere with the impugned order passed by the Industrial Court. Hence, the present Writ petition is dismissed.

**[ARUN R. PEDNEKER]**  
**JUDGE**

DDC