

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

WRIT PETITION NO.8369 OF 2006

Maharashtra State Road Transport
Corporation

...Petitioner

V/s.

Chandrakant Anna Jadhav

...Respondent

WITH

WRIT PETITION NO.8371 OF 2006

Maharashtra State Road Transport
Corporation

...Petitioner

V/s.

Dilip Sadashiv Mali

...Respondent

WITH

WRIT PETITION NO.3917 OF 2007

Maharashtra State Road Transport
Corporation

...Petitioner

V/s.

Shridhar Vishnu Kalangutkar

...Respondent

Ms P.M. Bhansali *with Ms. Dharni Jain(through VC) for the Petitioner.*

Ms Pavitra Manesh *i/b. Mr. M.S. Topkar with Ms Bhargavi Patil for the Respondent in WP/3917/2007.*

Mr. Nilesh Wable *i/b. Mr. Umesh Mankapure for the Respondent in WP/8371/2006 and WP/8369/2006.*

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CORAM : SANDEEP V. MARNE, J.

DATED : 12 December 2024.

P.C.:

1) These Petitions are filed by Petitioner-Maharashtra State Road Transport Corporation (**MSRTC**) challenging the orders passed by the Industrial Court partly allowing the Complaints of unfair labour practice instituted by Respondent-employees and directing the second Appellate Authority to inflict the punishment as prescribed in Rule 7 of Discipline and Appeal Procedure Rules applicable to MSRTC, except the punishment of discharge or dismissal or otherwise termination of service for the misconduct proved against them.

2) I have heard Ms. Bhansali, the learned counsel appearing for the Petitioner and Mr. Wable and Ms. Manesh, the learned counsel appearing for the Respondent-employees.

3) At the outset, Mr. Wable and Ms. Manesh would rely upon order passed by this Court in ***Maharashtra State Road Transport Corporation V/s. Yamanappa Huvappa Jadhav***¹ in support of their contention that the issue involved in the present Petitions is fully covered by the said order. Ms. Bhansali, on the other hand, would disagree and submit that this Court upheld the Industrial Court's order passed in ***Yamanappa Huvappa Jadhav*** (supra) only on account of the fact that misconduct alleged against the Respondent therein was for absence for 25 days. She would submit that in the present case, Respondent -employees have committed serious misconduct involving

1. Writ Petition No.2719 of 2006, decided on 5 September 2024.

moral turpitude and therefore cannot be placed on same pedestal as that of ***Yamanappa Huvappa Jadhav***.

4) It appears that Respondents in the present Petitions faced serious charges of either not issuing tickets to the passengers despite collecting fare or collecting lesser fare from the passengers and pocketing the amounts. In respect of one of the Respondents there is also allegation of detection of excess cash in the ST bag. Respondents were dismissed from service after they were found guilty in the domestic enquiry. The First Appeals were rejected in the case of Chandrakant Jadhav and Dilip Mali. However, in the case of S.B. Kalgunkar, the First Appeal was partly allowed and the employee was directed to be reappointed afresh on daily wages basis. His Second Appeal was dismissed by second Departmental Authority on 2 January 1988. In respect of Respondents - Chandrakant Jadhav and Dilip Mali, their further Appeals were partly allowed by the second Appellate Authority and they were directed to be reappointed afresh in the minimum of the pay scale by denying them the benefit of past service.

5) There is no dispute to the position that all the three employees accepted the orders of re-appointment and joined services without any demur. After joining the services by availing the benefits of orders passed by the first /second Appellate Authorities, Respondents-employees turned around and filed complaints of unfair labour practices before the Industrial Court.

6) The issue before the Industrial Court was whether Respondent-employees could be permitted to question the orders passed by the first /second Appellate Authorities after they accepted and acted upon

the same, without any demur and whether the principle of *estoppel* would apply against them. This issue in my view is clearly covered by judgment of this Court in ***Maharashtra State Road Transport Corporation, Bombay Vs. Prakash Tulshiram Pardeshi***² In that case as well, misconduct alleged against Respondent therein was pocketing the amount of fare and detection of excess cash in his money bag. This Court held in ***Prakash Tulshiram Pardeshi*** (supra) as under:

But in the facts of the present case, it needs emphasis that the order of the Appellate Authority properly construed, was an offer for a fresh appointment which was duly accepted by the Respondent. If the Respondent believed that the Appellate Authority had no authority to impose such a direction upon him, he could have challenged the order in its entirety. Having taken the benefit of the order, the Respondent was estopped from challenging the order by which he was given fresh appointment. The Appellate Authority while justifying its own finding, confirmed the order of dismissal. The Respondent was, however, offered re-employment on humanitarian grounds, particularly in the light of the fact that he accepted his mistake and stated that he would not commit such a mistake in future. The interference of the Labour Court in the proceedings, was therefore, clearly not warranted. The principle that estoppel must apply in a situation such as this is consistent with the judgment of the Supreme Court in the State of Punjab vs. Krishan Niwas, 1997 1 CLR 855. The same view has been taken by the Division Bench of the Gujarat High court in Union of India vs. N. M. Dhobi, 2006 I CLR 587.

7) Mr. Wable and Ms. Manesh would submit that this Court has distinguished the judgment of ***Prakash Tulshiram Pardeshi*** while dismissing MSRTC's Petition in ***Yamanappa Huvappa Jadhav*** (supra). They would submit that orders passed by the Appellate Authorities in the case of Respondents herein are identically worded as that of ***Yamanappa Huvappa Jadhav***. It would be apposite to reproduce the order passed by the second Appellate Authority in the case of Shri. Chandrakant Jadhav. It reads thus:

2 Writ Petition No.1858 of 2003 decided on 22 April 2008

श्री. चंद्रकांत आण्णा जाधव, माजी वाहक क्र. २०४९,
शाहूनगर, मु. पो. विटा,
ता. खानापूर, जि. सांगली

विषय-द्वितीय आवेदन समितीची बैठक दिनांक २०.५.२००२

संदर्भ- आपले दि. ८. २० २००२ रोजीचो-द्वितीय आवेदन.

आपण केलेले द्वितीय आवेदन व त्यासंबंधीची कागदपत्र यांची द्वितीय आवेदन समितीचे तपासणी केली. तसेच आपणांत युनियन प्रतिनिधी समवेत वैयक्तिक सुनावणीचे संधी देण्यात आली.

आपले वरील आवेदन व त्यासंबंधीची कागदपत्रे यांचा योग्य तो विचार करून द्वितीय आवेदन समितीने असा निर्णय दिला आहे कि, समा प्राधिकारी, विभागीय वाहतुक [अपराध], रा.प. सांगली यांनी वि. आ. आ.क्र.१००६ दिनांक १७.१.२००२ अन्वये दिलेली बडतर्फीची शिक्षा रद्द करून तुमची वाहक या पदी पुनर्नमणूक [रिपॉइंटमेंट] केली असून, त्या पुनर्नमणुकीने आपणास पूर्वीच्या नोकरीचा फायदा मिळणार नाही, याची नोंद घ्यावी.

सही/-

विभाग नियंत्रक, राज्य परिवहन,

सांगली

8) It appears that similar order was passed in the case of Dilip S. Mali by the Appellate Authority on 10 January 2001. There is no doubt to the position that orders passed by the second Appellate Authority in Chandrakant Jadhav and Dilip Mali are identically worded as that of ***Yamanappa Huvappa Jadhav*** (supra). In the present cases as well, dismissal orders were set aside by the second Appellate Authority while granting reappointment to the Respondents. No doubt in ***Yamanappa Huvappa Jadhav*** this Court has considered the factor of second Appellate Authority setting aside the dismissal order at the time of ordering re-appointment of Respondent therein in service, however, the main reason that weighed with this Court while upholding the order of the Industrial Court is that Respondent therein faced significantly minor charge of absence from duties for only 25 days. This Court held in paragraphs 9 and 11 of the Order as under:-

9) Perusal of the Order passed by the Appellate Authority would indicate that it has set aside the dismissal order dated 23 November 1994 and has thereafter ordered re-appointment of the Respondent in service. Furthermore in Prakash Tulshiram Pardeshi (supra), the Respondent therein faced serious charge of misappropriation whereas in the present

case, the Respondent suffered the charge of remaining absent for 25 days. In my view therefore, the punishment of dismissal from service was otherwise not commensurate with gravity of misconduct alleged and proved. Therefore, the Order passed by the Appellate Authority directing re-appointment was required to be interfered not because the Appellate Authority could not have done so, but only because the punishment of dismissal was not proportionate to the misconduct of absence of only 25 days.

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- 11) In the facts and circumstances of the present case, considering the fact that the misconduct alleged and proved against the Respondent was absence for only 25 days, in my view, wiping off his past service from 18 April 1969 to 18 October 1995 was absolutely unwarranted. Therefore, no serious error can be traced in the order passed by the Industrial Court, which has granted liberty to Petitioner- MSRTC to impose a substituted penalty on Respondent as prescribed under Rule 7 of Discipline and Appeal Procedure Rules, except punishment of discharge, dismissal or otherwise termination. By no means has this Court interpreted the misconduct committed by Respondent as minor misconduct and Petitioner-MSRTC would be free to impose any major penalty, other than discharge, dismissal or termination. Time to impose substituted penalty on the Respondent shall stand extended by a period of three months from today. After imposition of substituted penalty, the arrears of pay and retirement benefits, if any, be paid to Respondent.

9) Thus, the main reason why this Court refused to interfere in the order of the Industrial Court in ***Yamanappa Huvappa Jadhav*** was because this Court found punishment of dismissal to be disproportionate to the misconduct of absence of only 25 days. In the present case, it cannot be contended, by any stretch of imagination, that the charges of permitting ticketless passengers in the bus, collecting excess fare, detection of excess cash, etc. are minor misconducts. Respondents have been found guilty of serious misconduct to suggesting corrupt practices amongst them. Therefore, the findings recorded by this Court in ***Yamanappa Huvappa Jadhav*** would not be attracted in the present case.

10) Mr. Wable and Ms. Manesh would strenuously seek to defend the orders passed by the Industrial Court contending that there is no punishment of re-appointment as prescribed under Rule 7 of Discipline

and Appeal Procedure Rules applicable to MSRTC. Apart from the fact this this issue stands fully covered by judgment of this Court in ***Prakash Tulshiram Pardeshi***, what the Industrial Court has essentially ignored is the fact that grant of re-appointment is not a measure of penalty. The second Appellate Authority has apparently considered plea of mercy raised by the employees and has taken lenient view by offering them fresh appointment in the services of MSRTC. Such fresh appointments are not granted as a measure of penalty. Therefore the Industrial Court has erred in holding that first /second Appellate Authorities could not have ordered fresh appointments not forming part of the prescribed punishment under Rule 7 of Discipline and Appeal Procedure Rules applicable to MSRTC. If such contention was to be raised by the employees before the first /second Appellate Authorities, they might have simply dismissed Appeals of the Respondents, rather than showing any mercy considering the gravity of misconduct. Respondents cannot take benefit of mercy pleas raised before the Appellate Authority by accepting the offer of re-employment as fresh appointees and thereafter take a volte face and file complaints of unfair labour practices before the Industrial Court. What Industrial Court did not appreciate is the fact that operative directions issued by it would virtually tantamount accepting the principle that for serious misconduct proved against Respondents, penalty of either stoppage of increment or reduction in rank could only be ordered and not dismissal, removal or discharge. In my view, therefore, orders passed by the Industrial Court are clearly unsustainable.

11) Writ Petitions accordingly succeed and I proceed to pass the following order:

- (i) Judgments and Orders dated 18 October 2005 passed by the Member, Industrial Court, Sangli in Complaint (ULP) Nos. 750 of 2001 and 72 of 2002 as well as Judgment and Order dated 17 June 2006 in Complaint (ULP) No.143 of 1998 are set aside.
- (ii) With the above directions, the Writ Petitions are allowed.
- (iii) Rule is made absolute.
- (iv) There shall be no order as to costs.

[SANDEEP V. MARNE, J.]