

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

WRIT PETITION NO.8353 OF 2006

Maharashtra State Road Transport
Corporation

...Petitioner

V/s.

Shahaji Krishna Vagare (deceased)
1A. Anusaya Shahaji Vagare and Ors.

...Respondents

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

Mr. Nilesh Wable *i/b. Mr. Umesh Mankapure for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATED : 12 December 2024.

P.C.:

1) Heard Ms Bhansali, the learned counsel appearing for the Petitioner. She would fairly invite the attention of this Court to order dated 5 September 2024 passed in ***Maharashtra State Road Transport Corporation V/s. Yamanappa Huvappa Jadhav***¹ and would submit that the issue involved in the Petition is squarely covered by the said order.

2) In ***Yamanappa Huvappa Jadhav*** (supra) the charge against the Respondent therein was about remaining absent for 25 days whereas in the present case the charge against Respondent is absence

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

from duty for only 18 days. Except this, all other circumstances involved in the present case are on par with the one involved in ***Yamanappa Huvappa Jadhav*** (supra). Order dated 5 September 2024 passed in ***Yamanappa Huvappa Jadhav*** (supra) reads thus:

- 1) The Petitioner-Maharashtra State Road Transport Corporation (MSRTC) has filed this petition challenging the Judgment and Order dated 20 April 2005 passed by Member Industrial Court, Sangli partly allowing the Complaint (ULP) No. 30 of 1997 filed by the Respondent. The Industrial Court has set aside the Order dated 18 October 1995 of the Second Appellate Authority in granting re-appointment and has directed the Second Appellate Authority to impose the appropriate punishment under Rule 7 of the Discipline and Appeal Procedure Rules, except the punishment of discharge, dismissal or otherwise termination.
- 2) It appears that Petitioner, who was working since 18 April 1969 in Petitioner-MSRTC as Helper, was subjected to disciplinary proceedings on the charge of remaining unauthorizedly absent during 6 March 1994 to 31 March 1994. Punishment of dismissal from service was imposed on him on 23 November 1994. In departmental appeal preferred by him, the Second Appellate Authority passed order dated 18 October 1995 setting aside the order of dismissal and instead directed that the Respondent shall be granted re-appointment without any benefit in respect of his past services. To the extent of granting him re-appointment by wiping off his past service, Respondent approached Industrial Court by filing Complaint (ULP) No. 30 of 1997, which has been partly allowed by Industrial Court by impugned Judgment and Order dated 20 April 2005, which is the subject matter of challenge in the present petition.
- 3) I have heard Ms. Bhansali, the learned counsel appearing for Petitioner-MSRTC and Mr. Mankapure, the learned counsel appearing for Respondent-Employee.
- 4) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that extreme penalty of dismissal from service was imposed on the Respondent for remaining absent for 25 days during 6 March 1994 to 31 March 1994. Ms. Bhansali would urge that under the Rules of Petitioner-MSRTC any absence exceeding period of 7 days constitutes a major misconduct and that the Respondent had committed major misconduct in the present case. She has submitted that the Respondent had admitted the charge in the disciplinary enquiry. While there can be no dispute to the position that Respondent admitted the charge in the enquiry and that continuous absence for 25 days cannot be treated as minor misconduct. At the same time, imposition of harsh penalty of dismissal from service was not

warranted considering the gravity of misconduct. Appreciating this position, the second Appellate Authority set aside the dismissal Order dated 23 November 1994. However, instead of replacing the penalty of dismissal by any other suitable penalty, the second Appellate Authority directed grant of re-appointment to Respondent on the post Helper which has the effect of wiping off his entire past service from 18 April 1969 till 18 October 1995.

- 5) Ms. Bhansali would submit that Petitioner-MSRTC is entitled to grant re-appointment to its employee depending on facts and circumstances of the present case. She would criticize the Industrial Court in interfering in the order dated 18 October 1995 on the ground of impermissibility for the second Appellate Authority to grant re-appointment to the Respondent. In my view, grant of re-appointment to the employee concerned, who has been dismissed from service, is entirely the matter of discretion of the employer. It cannot be stated that the employer is without authority to offer re-employment to the employee, who has already been dismissed from service considering the facts and circumstance of each individual case. It cannot be stated as a matter of absolute proposition of law that in no case, Petitioner-MSRTC is authorised to offer fresh appointment or re-appointment to its employee who has already been dismissed from service. It depends on facts and circumstances of each case.
- 6) Ms. Bhansali would submit that once the Petitioner accepted the modified penalty and joined the service, it was not open for him to turn around and challenge the modified penalty by instituting Complaint before the Industrial Court. She would submit that the Respondent would be bound by the principle of estoppel. She would rely upon judgment of the Apex Court in *State of Punjab Vs. Krishan Niwas*'. However, facts in the case of *Krishan Niwas* (supra) appear to be completely different. In that case, the Respondent therein was convicted for offence under Section 302 of Indian Penal Code and was sentenced to undergo imprisonment for life. By summary proceedings under Article 311(2) of the Constitution of India, he was removed from service based on his conviction. Later the High Court partly allowed the Appeal and modified the sentence by reducing the same to rigorous imprisonment for one and half years. After undergoing imprisonment, Respondent therein filed Appeal before the Appellate Authority, which passed Order dated 1 March 1989 by reducing the punishment from removal from service to reduction to lower scale of pay without backwages. Respondent accepted the punishment and joined services on 5 June 1989. Subsequently, he filed a Civil Suit challenging his dismissal. It is in the light of the above peculiar facts, the Apex Court held that the Respondent having accepted the Order of Appellate Authority and having joined the post, could not turn around and question the penalty of dismissal. The judgment in *Krishan Niwas* would therefore have no application to the facts of the present case.

- 7) Ms. Bhansali would also rely upon Judgment of this Court in Maharashtra State Road Transport Corporation, Bombay Vs. Prakash Tulshiram Pardeshi². In that case, the Respondent therein was terminated after the misconduct of pocketing the amount of fare and detection of excess cash in the money bag was established. The Appellate Authority however maintained the punishment of dismissal but allowed him a chance to improve himself by directing that he would be appointed as a fresh appointee. After joining services in pursuance of offer of re-appointment, the Respondent instituted complaint of unfair labour practice. In the light of the above facts this Court held 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.

- 8) The distinguishing factor in the present case and in the case of. Prakash Tulshiram Pardeshi (supra) is that the Appellate Authority has not confirmed the Order of dismissal in the present case. On the contrary, the Order of the Appellate Authority specifically directs that the order of dismissal from service is set aside. It would be apposite to reproduce the order passed by the Appellate Authority on 18 October 1995.

पोचदेय ड़ाकनोदपत्राने

क्र राप/विनिसा/प्रशा/द्वीआ/७६४५
विभाग नियंत्रक सांगली यांचे कार्यालय
श.प. सांगली दिनांक १८ ऑक्टोबर १९९५

प्रति

श्री. वाय एच जाधव माजी सहा क रा(प)
द्वारा तानाजी पाटील यांचे घरी

विद्यानगर, मु पो ता - कवठेमहांकाळ, जि-सांगली

विषय : द्वितीय आवेदन समिती बैठक दिनांक-२७/७/९५
संदर्भ :- आपले द्वितीय आवेदन दिनांक - १६/१/९५

आपण केलेले द्वितीय आवेदन व त्यासंबंधीची कागदपत्रे यांची द्वितीय आवेदन समितीने तपासणी केली, तसेच आपणास युनियन प्रतिनिधी समवेत वैयक्तीक सुनावणीची संधी देण्यात आली.

आपले वरील आवेदन व त्यासंबंधीची कागदपत्रे यांचा योग्य तो विचार करून द्वितीय आवेदन समितीने निर्णय दिला आहे की, सक्षम प्राधिकारी, अगार प्रमुख (क) रा(प) कवठेमहांकाळ यांनी आ. आ. आ. क्र १०५ दिनांक २३/११/१९९४ अन्वये दिलेली बडतर्फीची शिक्षा रद्द करून आपली सहा काश (प) यापदी पुनर्नमनुक (रिअपॉइंटमेंट) केली आहे. मात्र या पुनर्नमनुकीने आपणास पूर्वच्या नोकरीचा कोणताही फायदा मिळणार नाही याची नोंद घ्यावी.

सोबत: निष्कर्षाची प्रत.

सही

विभाग नियंत्रक
राज्यपरीवहन, सांगली.

- 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.
- 10) Ms. Bhansali has also relied upon judgment of this Court in Dnyaneshwar P. Gharat Vs. General Manager BEST Undertaking in support of her contention that absenteeism for even 28 days also constitutes major misconduct warranting punishment of dismissal. However, the facts in Dnyaneshwar P. Gharat (supra) appears to be totally different. Petitioner therein was found to have indulged in similar misconduct of absenteeism during 1988, 1989, 1990 and 1991. The case involved chronic case of absenteeism and Petitioner therein had not utilized the opportunities repeatedly provided to him to reform himself. It is in the light of those unique facts that this Court considered his conduct to be worth imposition of extreme penalty of dismissal from service. In the present case, there is nothing on record to indicate that the Respondent was a chronic case absenteeism.
- 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.

12) I therefore do not find any valid ground to interfere in the impugned order of the Industrial Court. Writ Petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

3) For the reasons recorded in the order passed in ***Yamanappa Huvappa Jadhav*** (supra), I am not inclined to interfere in the order passed by the Industrial Court. 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.

4) Writ Petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]