

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

Writ Petition No.8504 of 2005

Dinkar Vithal Manjrekar

... **Petitioner**

v/s.

Maharashtra State Road Transport
Corporation

... **Respondents**

Mr Amey Nargolkar, a/w. Advocate Vishal Shirsat for the petitioner.
Ms. P.M. Bhansali i/b. M/s. G.S.Hegde & Associates, advocate for
respondents.

CORAM : SANDEEP V. MARNE, J.

DATE : 18th March 2024

P.C. :

Petitioner has filed this petition challenging the judgment and order dated 21st November 2005 passed by a Member, Industrial Court, Kolhapur by which the Industrial Court has allowed Revision (ULP) No.293/1997 filed by the respondents-Corporation and set aside the judgment and order passed by Labour Court on 30th June 1997 in Complaint (ULP)No.268/1996. The Labour Court had allowed the complaint filed by the petitioner by its order dated 30th June 1997 and had directed the respondents to reinstate petitioner in service with continuity after imposition of substituted penalty of withholding of one increment with cumulative effect from the year 1993.

2. Facts in brief are that petitioner, while being employed as a Conductor with the respondent–Maharashtra State Road Transport Corporation was issued with charge-sheet dated 11th September 1993 on the charge of failure to issue correct tickets to the passengers despite collecting fare from them. The charge was held to be proved in the domestic enquiry and petitioner was imposed with the penalty of dismissal from service. Petitioner questioned the dismissal order before Labour Court, Kolhapur by filing Complaint (ULP) No.268/1996. The Labour Court, though did not disturb the finding of guilt of the petitioner, felt that penalty of dismissal from service was too harsh and severe. The Labour Court, therefore, directed that penalty of dismissal from service be replaced with that of withholding one annual increment with cumulative effect from the year 1993. Petitioner was directed to be reinstated in service with the substituted penalty.

3. The decision of the Labour Court was challenged by respondents before Industrial Court, Kolhapur by filing Revision Application (ULP) No.293/1997. The Industrial Court allowed respondent's revision and has set aside the order passed by the Labour Court. The net result of the order of Industrial Court is that the penalty of dismissal of service originally imposed on the petitioner would continue to operate. Aggrieved by the decision of the Industrial Court, petitioner has filed the present petition.

4. By order dated 20th December 2005, this Court has admitted the petition.

5. Though petitioner was dismissed from service by order dated 21st November 1994, Labour Court passed interim order dated 23rd October 1996 directing petitioner's reinstatement. This is how petitioner continued to be in service after 23rd October 1996 during pendency of his complaint. His complaint was later allowed by the Labour Court by order dated 30th June 1997. During pendency of Revision before the Industrial Court, it appears that an exparte stay to the order of the Labour Court was granted on 9th October 1997, which led to operation of dismissal order against petitioner. The Industrial Court vacated the exparte stay on 3rd November 1997. Finally, the Industrial Court allowed respondent's Revision on 21st November 2005 and this is how the penalty of dismissal came to be restored. When this Court admitted the present petition, interim order was granted in favour of the petitioner on 20th December 2005 on account of which petitioner was reinstated in service. During pendency of the petition, respondents continued him in service till he attained the age of superannuation on 30th November 2012.

6. This is how though the dismissal order is upheld by the Industrial Court, petitioner continued in service till attaining the age of superannuation barring 3 gaps (i) 1 year 11 months 26 days

(ii) 25 days (iii) 29 days.

7. It, however, appears that in pursuance to order passed by this Court on 27th February 2015 respondent has deposited an amount of Rs.4,79,531/- towards retirement benefits of the petitioner. As petitioner could not offer bank guarantee for withdrawal of the said amount, the said amount continues to be deposited in this Court.

8. In the above background, I have heard Mr. Nargolkar, the learned counsel appearing for the petitioner and Ms.Bhansali, the learned counsel appearing for respondents.

9. After having considered the submissions canvassed by the learned counsel appearing for the parties and on perusal of the orders passed by the Labour Court and Industrial Court, I am not in agreement with the view taken by the Labour Court that the charge proved against the petitioner could not have entailed the penalty of dismissal from service. Petitioner faced serious charge of not issuing tickets to the passengers despite collecting fare and this charge amounts to misappropriation of funds. The charge is undoubtedly grave and while the Labour Court held that finding of guilt need not be disturbed, it ought not to have interfered in the quantum of punishment. Punishment of dismissal from service imposed upon the petitioner is not shockingly disproportionate. Rather it is commensurate with the gravity of misconduct proved against the

petitioner. The Industrial Court has rightly reversed the finding of the Labour Court by allowing Revision filed by the respondent.

10. However, it appears that during the pendency of proceedings before Labour Court, Industrial Court and before this Court, petitioner has continued in service (barring gaps as indicated above) till he attained the age of superannuation on 30th November 2012. This Court had considered similar case in *Maharashtra State Road Transport Corporation v/s. Prakash Vasant Hardikar* in Writ Petition No.6275/2009 decided on 22nd February 2024 where this Court directed payment of retirement benefits to respondent therein even after arriving at a conclusion that penalty of dismissal from service could be upheld. The said direction was issued only on account of the fact that respondent therein continued to remain in service till attaining age of superannuation. In that case, penalty of dismissal from service could not be implemented on account of interim order passed by this Court. Therefore, though the penalty of dismissal was upheld, this Court directed that same was rendered ineffective and the respondent therein would be entitled to pensionary benefits by excluding the period during which he remained out of service.

11. In my view, similar course of action can be adopted in the present case as well.

12. The 3 gaps in the service of the petitioner (i) 1 year 11 months 26 days (ii) 25 days (iii) 29 days are required to be ignored for the purpose of computing petitioner's entitlement for pensionary benefits. Similarly, pensionary benefits are required to be paid to the petitioner by implementing the order of the Labour Court imposing the penalty of withdrawal of one increment with cumulative effect.

13. The writ petition is accordingly disposed of by passing the following order.

(i) The penalty of dismissal from service imposed on the petitioner is declared to be valid, however, the same has become ineffective on account of petitioner's continuation in service till attaining the age of superannuation on 30th November 2012.

(ii) The respondents shall accordingly pay to the petitioner retirement benefits arising out of services rendered by him upto 30th November 2012 by ignoring the period during which he remained out of service.

(iii) The respondents shall compute the retirement benefits payable to the petitioner by passing the order to that effect within 6 weeks. Respondents shall be permitted to withdraw the amount deposited in this Court alongwith accrued interest.

(iv) Respondents shall immediately after passing of the order as directed aforesaid, shall pay to the petitioner the amount of retirement benefits so determined within 4 weeks from passing of the order together with simple interest at the rate of 6% per annum w.e.f. 1st December 2012.

14. With the above observations, the writ petition is partly allowed. Rule is made partly absolute.

SANDEEP V. MARNE, J.

Lata Panjwani, P.S.