

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

**WRIT PETITION NO.6492 OF 2007
WITH
INTERIM APPLICATION NO.10057 OF 2024
IN
WRIT PETITION NO.6492 OF 2007**

1. Pune Municipal Transport
(through its General Manager Shri
Anupkumar)

2. Pune Municipal Transport
(through its Depot Manager, Shri
Sunil Gavali).

...Petitioners

Versus

1. Amey Jayant Killedar
2. The Member, Industrial Court,
Pune at Pune.

...Respondents

Ms. Madhavi Tavanandi *for the Petitioners.*

Mr. Avinash Belge *with Mr. Nitin A. Kulkarni for Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

Dated : 14 November 2024.

ORDER:

1) Pune Municipal Transport has filed this Petition challenging the Judgment and Order dated 5 July 2007 passed by the Industrial Court, Pune allowing Revision Application (ULP) No.14 of 2007 and modified the Judgment and Order dated 22 November 2006 passed by the Labour Court, Pune, in Complaint (ULP) No.309 of 2000. The Labour Court had directed reinstatement of Respondent with 25%

backwages. In Revision preferred by Respondent No.1-employee, the Industrial Court directed payment of full backwages.

2) The Petitioner is a Transport Undertaking of Pune Municipal Corporation, which provides for transportation services in and around Pune city. Respondent No.1 was engaged as a *Badli* Driver in the Petitioner-undertaking since 1 December 1991. He was issued two charge-sheets dated 14 April 2000 and 25 April 2000 alleging unauthorised absence. Enquiry was conducted and the charges levelled against Respondent No.1 were held to be proved vide report of the Deputy Manager dated 14 June 2000. By order dated 4 August 2000, the General Manager of the Petitioner-Undertaking dismissed Respondent No.1 from service with effect from 4 August 2000. Petitioner challenged the dismissal order before the Labour Court, Pune, by filing Complaint (ULP) No.309 of 2000. The Complaint came to be partly allowed by the Labour Court by Judgment and order dated 22 November 2006 holding that the misconduct alleged against Respondent No.1 could not be proved either in the enquiry or by leading evidence before the Court. The Labour Court therefore directed reinstatement of Respondent in service with 25% backwages. Petitioner-Pune Municipal Transport did not challenge the order of the Labour Court dated 22 November 2006 and it appears that it offered reinstatement to the Respondent by order dated 29 December 2006 w.e.f. 1 January 2007. Respondent No.1 accordingly joined duties on 6 January 2007. He made a representation for grant of light duties on account of injuries suffered by him to right leg due to accident during the intervening period. Petitioner however rejected Respondent's representation for award of light duty and accordingly discharged him from service w.e.f. 14 September 2007 after he was found unfit to perform the duties of

Driver. Respondent No.1 simultaneously challenged the order of the Labour Court to the limited extent of non-grant of full backwages by filing Revision Application (ULP) No.14 of 2007. The Industrial Court has allowed the Revision filed by Respondent No.1 and has modified the order of the Labour Court by directing payment of 100% backwages. Petitioner -Undertaking has filed the present Petition challenging the order of the Industrial Court dated 5 July 2007. This Court admitted the Petition by order dated 1 October 2007 and stayed the order passed by the Industrial Court subject to the condition of Petitioner depositing the backwages as awarded by the Industrial Court. Accordingly, Petitioner-Undertaking has deposited an amount of Rs.1,92,354/- in this Court towards backwages on 29 November 2007, which amount is invested by the registry in interest bearing deposits.

3) I have heard Ms. Tavanandi, the learned counsel appearing for the Petitioner-Undertaking, who would submit that the Respondent No.1 had grossly misconducted by remaining unauthorisedly absent from duties continuously for a long period of time. She would submit that his service on record from 1 April 1999 to 31 March 2000 would show that he remained present for only 245 days and was absent for 59 days on leave without pay and for 15 days without giving any intimation. She would therefore submit that being a mere *Badli* Driver, Petitioner-Undertaking was fully justified in dismissing the Respondent No.1 from service. She would therefore submit that Respondent No.1 is therefore neither entitled to reinstatement nor any backwages. That the Industrial Court has accordingly erred in awarding 100% backwages to *Badli* Driver, who admittedly remained unauthorisedly absent for a considerable period of time. She would submit that not reporting for duties by Drivers is critical to the

activities carried out by a transport undertaking and unauthorised absence by a Driver disturbs the entire schedule of the Transport Undertaking. She would therefore submit that unauthorised absence without intimation is thus required to be viewed seriously in connection to public duties performed by a Transport Undertaking. She would further submit that Respondent No.1 is ultimately found to be unfit for performing the duties of Driver and was again terminated on medical grounds on 14 September 2007. She would submit that the second termination effected on 14 September 2007 has not been challenged by Respondent No.1. In that view of the matter, according to Ms Tavanandi, Respondent No.1 cannot be paid any backwages when he was unfit to be continued on the post of Driver. She would therefore pray for setting aside the order passed by the Industrial Court.

4) The Petition is opposed by Mr. Belge, the learned counsel appearing for Respondent No.1. He would submit that Petitioner-Undertaking did not challenge the order passed by the Labour Court directing reinstatement with 25% backwages. That therefore challenge in the present Petition is restricted only to the order passed by the Industrial Court enhancing the amount of backwages from 25% to 75%. That therefore Petitioner -Undertaking cannot be permitted to raise contentions with regard to the dismissal order since the order of the Labour Court has attained finality. He would therefore strongly object to the submissions canvassed on behalf of the Petitioner-Undertaking about alleged absence of the Respondent No.1. He would submit that the only issue that can be decided in the present Petition is about correctness of the order passed by the Industrial Court in enhancing the amount of backwages to 100%. He would take me through the evidence of Respondent No.1 in support

of his contention of non-availability of any gainful employment. He would submit that the Labour Court had erred in erroneously assuming that Respondent was earning Rs.3,000/- per month by supplying milk to the customers when in fact, evidence led by Respondent No.1 was about earning Rs.250 to 300 per month through supply of milk to the customer. He would therefore submit that the order of the Labour Court denying full backwages clearly suffered from vice of perversity and has rightly been set aside by the Industrial Court. He would submit that the order passed by the Industrial Court does not suffer from any grave error for this Court to interfere in the same in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. He would pray for dismissal of the Petition.

5) Rival contentions of the parties now fall for my consideration.

6) As observed above, Respondent faced two charge-sheets dated 14 April 2000 and 25 April 2000 alleging unauthorised absence. The charge-sheets were slightly vague as they did not specify the exact period of absence. Charge-sheet contained spaces when it came to indicating the exact dates of absence. The charge-sheet dated 14 April 2000 was in respect of absence from 11 April 2000 onwards. Similar is the case of charge-sheet dated 25 April 2000, which was in respect of absence on 20 April 2000 onwards (which would be upto 25 April 2000). Petitioner-Undertaking proceeded to dismiss Respondent No.1 from service by order dated 4 August 2000 after the charges were held to be proved. However, an important event occurred in the meantime. It appears that during the course of his service Respondent No.1 had filed Complaint (ULP) No. 852 of 1997 for permanency. The Industrial Court allowed the said Complaint

and directed relief of permanency in his favour. Thus, Respondent No.1 no longer remained as a *Badli* Driver and had attained the status of being a permanent Driver. The Labour Court took the above aspect into consideration and held that dismissal of services of Respondent No.1 for absence of few days clearly amounted to victimisation. The Labour Court accordingly directed reinstatement of Respondent No.1 in service alongwith 25% backwages by order dated 22 November 2006.

7) Petitioner-Undertaking did not challenge Labour Court's order dated 22 November 2006 and proceeded to implement the same. On 29 December 2006, Petitioner -Undertaking reinstated the Respondent in service w.e.f. 1 January 2007 alongwith continuity of service and further directed payment of 25% backwages. Respondent No.1 presented himself for duties on 6 January 2007 and on the same day, made a representation for allotment of light duties on account of the injury suffered by him to his right leg in an accident occurred during the interregnum. It appears that Depot Manager rejected the said request observing that there was shortage of Drivers in the concerned Depot. Respondent No.1 relied upon certificate issued by private Doctor about his disability. Petitioner-Undertaking referred the Respondent No.1 for medical examination on 10 January 2007 stating that the birth date of Respondent was 29 August 1953 and his age was 53 years and he was claiming injury in an accident occurred on 8 November 2002. It appears that after the Petitioner referred Respondent No.1 for medical examination on 10 January 2007 he approached Industrial Court and filed Revision Application (ULP) No.14 of 2007 on 17 January 2007. After conduct of his medical examination, Respondent No.1 was adjudged unfit for any further service by certificate dated 14 February 2007.

Accordingly, General Manager of Petitioner-Undertaking issued order dated 28 February 2007 terminating his services.

8) Above chronology of events would indicate that Petitioner-Undertaking was not aggrieved by the order of the Labour Court directing reinstatement of the Respondent No.1 with 25% backwages and implemented the same vide order dated 29 December 2006. It is now aggrieved only by the order passed by the Industrial Court awarding the balance 75% backwages. It is also an admitted position that Respondent No.1 has been subsequently terminated from service on 14 September 2007, which has not questioned by him and his second termination has attained finality.

9) The short issue that therefore arises for consideration is whether the Industrial Court is justified in awarding balance 75% backwages to Respondent No.1 during the period from 4 August 2000 till 31 December 2006 (since Respondent was reinstated from 2007).

10) It appears that the main factor for the Labour Court to reduce the amount of backwages to 25% was an assumption on its part that Respondent No.1 was earning Rs.3,000/- per month by supplying milk to the customers. The said assumption is based on the admissions given in the cross examination. However, perusal of the evidence of Respondent No.1 would indicate that he admitted receipt of income of Rs.250/- to Rs.300/- by supplying milk to the customers. Thus, the order passed by the Labour Court clearly suffered from non-application of mind and perversity. This is the reason why the Industrial Court has modified the order of the Labour Court by awarding full backwages to Respondent No.1. I do not see any reason why interference by this Court in the order of the Industrial

Court is warranted when the Labour Court had relied upon erroneous figure of monthly income of the Respondent No.1 for restricting the backwages to 25%.

11) As observed above, the period during which 75% additional backwages are to be paid to Respondent No.1 is 4 August 2000 to 31 December 2006. Respondent was reinstated in the service on 1 July 2007 and has been subsequently terminated on account of his medical disability. The subsequent termination is not a subject matter of challenge before me. Petitioner has deposited an amount of Rs.1,92,354/- in this Court in pursuance of order passed on 1 October 2007 while admitting the Petition. Whether Respondent could have been terminated on account of disability suffered by him is itself questionable. However, since issue of validity of his second termination order dated 28 February 2007 is not the issue involved in the present Petition, it would not be appropriate to comment further in that regard. Suffice it to observe that since the order of reinstatement with 25% backwages is not questioned by the Petitioner coupled with the fact that there was obvious error on the part of the Labour Court in assuming earnings @ Rs.3,000/- per month by the Respondent No.1, I am not inclined to interfere in the impugned order, which merely directs payment of 75% backwages (remaining backwages) during the period from 4 August 2000 to 31 December 2006. Such amount would also represent some amount of compensation to Respondent No.1 on account of his subsequent termination because of disability acquired by him. It is however, clarified that Respondent No.1 shall not be entitled to claim any amount from Petitioner towards backwages over and above the amount deposited in this Court together with interest accrued thereon.

12) I accordingly do not find any merit in the present Petition. Writ Petition is accordingly **dismissed**. Respondent No.1 shall be entitled to withdraw the entire deposited amount in this Court alongwith accrued interest. It is clarified that beyond such amount, Respondent No.1 shall not be entitled to any further amount towards backwages from the Petitioner-Undertaking.

13) Rule is accordingly discharged. There shall be no orders as to costs.

14) In view of disposal of the Writ Petition, Interim Application filed by Respondent for withdrawal of deposited amount does not survive and the same stands disposed of.

[SANDEEP V. MARNE, J.]