

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

WRIT PETITION NO. 1704 OF 2024

Divisional Traffic Superintendent, MSRTC

Corporation, Thane Division & Anr.

... Petitioners

Versus

Shri. Kailash Narayan Bhoir

... Respondent

Mr. Amit Ashok Gharte *for the Petitioners.*

Mr. Yogendra Manik Koli *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 21 NOVEMBER 2024.

P.C. :

1) The Petition challenges Judgment and Order dated 4 September 2023 passed by Member Industrial Court, Thane allowing Complaint (ULP) No. 208 of 2018 filed by the Respondent and setting aside the chargesheet dated 30 June 2018 as well as show cause notice dated 29 September 2018.

2) I have heard Mr. Gharte, the learned counsel appearing for the Petitioners and Mr. Koli, the learned counsel appearing for Respondent-Employee.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that the Respondent was charged with misconduct of the assaulting and injuring in the other driver Mr. Vasant Narayan Rathod. However during the course of enquiry, the driver who was assaulted (Vasant Rathod) was not examined as witness. Though statements of other eye witnesses are shown to have been recorded in the preliminary enquiry, none of the said eye witnesses were examined in the enquiry. The sole witness examined was the officer who conducted the preliminary enquiry by recording statements of various persons including that of Mr. Vasant Rathod. In my view, when the Petitioners-Management failed to produce the best evidence in the form of examining the driver who is allegedly assaulted, it is dangerous to rely upon the evidence of officer conducting preliminary enquiry. In my view, there is no evidence against the Respondent in support of the charge levelled against him, the findings of the enquiry officer are therefore perverse. The Industrial Court has rightly set aside the show cause notice proposing to impose penalty on the Respondent. No error can be traced in the Judgment and Order of the Industrial Court. Writ Petition is accordingly **rejected**.

4) At this stage Mr. Koli has pointed out that the Respondent has already retired and his gratuity is withheld on account of pendency of the complaint. The Petitioners shall take immediate steps for release and gratuity of the Respondent as expeditiously as possible preferably within a period of two months.

[SANDEEP V. MARNE, J.]