

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

WRIT PETITION NO. 9351 OF 2024

Subhash Khandu Narke

... Petitioner

Versus

Vibhagiya Vahtuk Adhikshak, Maharashtra

Rajya Marg Parivahan Mahamandal

... Respondent

Mr. Sanjay Gunjkar *for the Petitioner.*

CORAM : SANDEEP V. MARNE, J.

DATE : 22 AUGUST 2024.

P.C. :

1) By this Petition Petitioner has challenged Part-I Award dated 21 October 2021, as well as Part-II Award dated 3 June 2021 of the Presiding Officer, Labour Court No.4, Pune. The Labour Court, in Part-I Award, has held the enquiry to be fair and proper and the finding of the Enquiry Officer to be not perverse. Thereafter, by Part-II Award, the Labour Court has not found the penalty of termination to be unlawful. Accordingly, Reference (IDA) No. 389 of 2016 has been answered in the negative.

2) I have heard Mr. Gunjkar, the learned counsel appearing for the Petitioner and have considered the submissions canvassed by him.

3) The gist of allegations levelled against the Petitioner in the chargesheet dated 18 September 2007 are that he was deputed to drive Bus No. 7719 on 12 September 2007 on route Aurangabad-Pune-Pune Station-Dadar. After the bus reached Pune Station, Petitioner on his own decided that the bus would not be driven to Dadar and told lady conductor that they would make a trip to Nashik. After the conductor ignored Petitioner that she did not possess the necessary stage tickets for making a trip to Nashik, Petitioner declared that trip to Aurangabad would be made. Without having any authority, without taking any permission of superior officers and without making any entry in official register, Petitioner on its own drove the bus from Pune to Aurangabad. After reaching Aurangabad, when the bus was expected to be driven back to Pune, Petitioner informed the conductor not to issue any tickets for Aurangabad-Pune journey and that tickets be issued only till Tarakpur (Ahmednagar) Station. It is the case of ST corporation that several passengers were available to board the bus for Aurangabad-Pune journey, but on account of insistence of the Petitioner, the conductor could not allow the said passengers to board the bus and only took eight passengers upto Tarakpur and this is how the return journey began from Aurangabad. After reaching Tarakpur (Ahmednagar) Station, it appears that, the conductor expected the bus to be driven till Pune Stand in Ahmednagar where her two-wheeler was parked. However, Petitioner insisted that he was feeling sleepy and

therefore refused to drive the bus till Pune Stand (Ahmednagar) and ended the journey at Tarakpur Station. It is alleged that the lady conductor slept on the last bench of the bus whereas the Petitioner slept on the front bench. After some time, Petitioner enquired with the lady conductor and uttered some words, which the lady conductor perceived to be a suggestion for possible sexual act. Accordingly, the lady conductor lodged a complaint with the superior officers on 13 September 2007. This is how chargesheet dated 18 September 2007 came to be issued to Petitioner.

4) I have gone through the records of the enquiry. It appears that, the lady conductor has been examined in the enquiry and has given detailed account of the entire journey as well as the behavior of the Petitioner. She has specifically confirmed in answer to question No. 23, that the Petitioner was not wearing his uniform at the time when he made the utterances in question and his intention behind asking her the question 'not now ?' was not bonafide. She has specifically stated in answer to question No. 23, that the intention of Petitioner in asking the said question was whether the lady conductor desired sexual relation at that time.

5) In my view, there is sufficient evidence on record to prove the misconduct alleged against the Petitioner. The test required in domestic enquiry is preponderance of probability. Direct evidence in the form of deposition of lady conductor has been produced in the enquiry who has fully supported and has stood by her version during entire course of enquiry. In the light of availability of sufficient evidence,

coupled with fact the that Petitioner was given full opportunity to defend himself in the enquiry, I do not see any reason to interfere in either Part-I and Part-II Award passed by the Labour Court. Writ Petition, being devoid of merits, is **rejected**. At this stage, the learned counsel for Petitioner submits that Petitioner has not received gratuity in respect of service rendered by him. If Petitioner is entitled in law to receive gratuity, he would be at liberty to exercise his remedies in that regard.

[SANDEEP V. MARNE, J.]