



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.897/2011

1. Maharashtra State Road Transport Corporation, Thr. its Divisional Controller, Divisional Office, Arni Road, Yavatmal, Tq. & Distt. Yavatmal.
2. Maharashtra State Road Transport Corporation, Thr. Divisional Traffic Officer and Competent Authority, Yavatmal Division, Divisional Office, Arni Road, Yavatmal, Tq. & Distt. Yavatmal.**PETITIONERS**

...VERSUS...

Shri Jaiprakash S/o Gulabrao Giramkar,
Aged about 41 Yrs., Occ. Not Known,
R/o Pravin Nagar, Yavatmal,
Tq. & Distt. Yavatmal.**RESPONDENT**

Mr. A. S. Mehadia, Advocate for petitioners.
Mr. C. V. Jagdale, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.
DATE OF RESERVING THE JUDGMENT :- 23.10.2024
DATE OF PRONOUNCING THE JUDGMENT :- 11.11.2024

JUDGMENT

Heard Mr. A. S. Mehadia, learned counsel for the petitioners and Mr. C. V. Jagdale, learned counsel for respondent.

2. Petitioner – Maharashtra State Road Transport Corporation (hereinafter referred to as the, “MSRTC”) is aggrieved by judgment and order dated 05.08.2010 passed in Revision ULP

No.14/2010 by Industrial Court, Yavatmal, arising out of judgment dated 07.05.2010 passed in Complaint ULP No.28/2008 by Labour Court, Yavatmal.

3. The Labour Court dismissed the complaint filed by respondent alleging unfair labour practice against the MSRTC. The complaint arose out of an accident occurred on 10.02.2007. The respondent was working as Driver with the MSRTC and at the relevant time, was driving bus bearing registration No.MH31/W-9547. While on route from Adilabad to Yavatmal, the respondent reached Ghatangi Bus Stand at about 06:30 p.m. After a brief halt and to proceed further, while taking reverse, a fatal accident occurred and an old man expired.

4. The respondent – Driver and the Conductor, Chandole were both charge-sheeted for the incident for misconduct and dereliction in discharging the duties. Both suffered departmental inquiry. The MSRTC imposed punishment to both. The Conductor suffered stoppage of two increments whereas the respondent suffered punishment of dismissal. Accordingly, the respondent lodged complaint of unfair labour practice on the ground of victimization by imposing shockingly disproportionate punishment in colourable exercise of employer's rights.

5. The Labour Court did not find substance in the complaint and accordingly dismissed the same. The Industrial Court, however, found that the charges were not proved and accordingly reversed the finding of Labour Court and allowed the complaint.

6. Having heard both sides and having gone through the material placed before me, the controversy revolves around who out of the two viz. respondent – Driver or the Conductor, is responsible for the accident and secondly whether the evidence led was sufficient to hold respondent responsible for the accident.

7. Admittedly, during the course of inquiry, no eye witness was examined. According to the respondent, while he was taking reverse at about 06:45 p.m., he was looking back from driver's side i.e. right side of the bus. The Conductor got down and was looking towards the left side. According to him, it was the Conductor's duty to raise an alarm and having not done so the accident occurred.

8. This theory has been disputed by MSRTC. According to it, the conductor was sitting in the bus and, therefore, the respondent ought not to have reversed the bus. The learned

counsel for the MSRTC submits that the documents filed by the respondent before the inquiry officer were self sufficient to prove his guilt.

9. It appears that the respondent relied upon the statements recorded by Assistant Traffic Inspector to file accident report. One such statement is of the eye witness namely Santosh Pandurang Potpalliwar, who stated that the Conductor was sitting on his seat. Since this document was relied upon by the respondent, upon his own saying, his misconduct has been proved, is the contention.

10. Accordingly, Mr. Mehadia, learned counsel for the MSRTC, submits that the respondent ought not to have taken reverse until the Conductor got down and gave signal. The counsel further submits that the respondent has admitted in the cross-examination before the Labour Court that he was aware of the rules of the reverse driving and has committed such breach.

11. The Labour Court has relied upon evidence of this eye witness to blame the respondent for causing accident and accordingly found punishment of dismissal proportional to the charge proved.

12. Learned counsel for the respondent submits that this

finding is apparently illegal inasmuch as the Labour Court has not considered the statement given by the Conductor. The respondent had filed various statements, one of which was of Conductor. The Labour Court picked up the statement of witness Santosh but ignored the statement of the Conductor which would stand on the higher footing as regards his position/location at the time of occurrence of the accident.

13. He invited my attention to the Conductor's statement. He stated that at about 06:45, the respondent was taking reverse, he (Conductor) got down from his side (which naturally would be the left side of the bus) and was giving signal to the respondent for taking reverse. He further stated that it was little dark having low visibility. Therefore, he was informing the persons with a loud voice that the bus is coming towards backside. At that time, he heard chaos of the people and, therefore, gave signal to the respondent to stop the bus. He then went towards backside and saw that bus hit on old man. Thus, according to the respondent's counsel, the Conductor himself has stated that he got down and gave signal. Accordingly, he argued that respondent cannot be blamed for the accident.

14. The question, therefore, is who out of the two viz.

Driver and the Conductor, is responsible for the accident. On this point, the Industrial Court has rightly referred to the duty of the Conductor. It has referred to Rule 34 (xxx) of the Maharashtra Motor Vehicles Rules, 1989, (hereinafter referred to as the, “Rules of 1989”). Rule 34(xxx) reads thus:

“34. Duties and conduct of conductors of stage carriage - The conductor of a stage carriage :-

(i) to (xxix)

(xxx) when the driver is taking the bus in reverse shall get down from the bus and be on the look out for any other motor vehicle or other obstacle in the rear of the vehicle and effectively give signal to the driver;”

15. As could be seen, when the Driver is taking the bus in reverse, the Conductor is duty-bound to get down from the bus and be on the lookout for any other motor vehicle or obstacle in the rear of the vehicle and effectively give signal to the driver. Thus, it is for the Conductor to get down from the bus and to lookout for not only the motor vehicle but also an obstacle which would include standing/moving person at the rear of the vehicle. The Conductor is supposed to give effective signal to the Driver. Thus, the entire responsibility is of the Conductor when the bus is moving on the reverse side. If the Conductor fails to get down and give effective signal, it will be he who has to carry blame of accident.

16. In the present case, the Conductor himself made a statement that he got down and was giving signal. It appears that he failed to notice the movement on the backside because of the darkness, resulting into failure to give an effective signal to the Driver. Accordingly, the accident occurred. In the circumstances, one cannot blame the respondent for the accident.

17. The argument of the MSRTC that upon own saying of respondent, the Conductor was sitting in the bus and, therefore, he should not have reversed the bus, is without any substance for two reasons. One is that the Conductor himself has made a statement that he got down from his side and was giving signal. Secondly, even if it is presumed that the Conductor was sitting in the bus, it is he who failed to act in terms of the Rules of 1989 because it was mandatory for the Conductor to get down if the Driver is driving the bus in reverse.

18. Learned counsel for the petitioners has relied upon judgment passed by Coordinate Bench of this Court in *Agricultural Produce Market Committee Arjuni Moregaon and anr. .Vs. Ashok Danaji Hatzode, 2015 (4) Mh.L.J. 79*, wherein the Court, while dealing with the scope of interference in revisional jurisdiction,

held that by invoking such jurisdiction, the Court cannot overturn the finding of facts even if the same are erroneous.

19. This ratio is well recognized. However, equally well settled is the principle of law that when the finding is found to be perverse i.e. contrary to the evidence, the Court, in revisional jurisdiction, is under obligation to set aside the said finding.

20. In the present case, the finding given by the Labour Court is contrary to the evidence, inasmuch as it failed to take into account the statement made by the Conductor and also the mandatory duty of the Conductor under Rule 34 (xxx) of the Rules of 1989. The findings being apparently perverse, the Industrial Court in revisional jurisdiction has rightly overturned the same.

21. It is unfortunate that a precious life has been lost in the accident. It is equally unfortunate to blame the respondent for the accident. One cannot ignore the fact that while taking reverse, the bus driver is dependent wholly on the signal given by the Conductor. He can at the most see the movements on the right rear side of the bus, rest all is not visible to him and, therefore, will act only in terms of the signals given by the Conductor. It is nobody's case that the deceased was standing at the position

visible to the Driver.

22. The Industrial Court, therefore, has rightly held that the charges levied against the respondents were not proved and thus by imposing punishment of dismissal, the MSRTC has indulged into an unfair labour practice under item Nos. (b), (d) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. There is no merit in the petition. The petition is accordingly dismissed. Rule is discharged. No order as to costs.

(Anil L. Pansare, J.)

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