



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8696 OF 2024

Parmeshwar Machindra Pawar

VERSUS

The Divisional Traffic Superintendent Maharashtra State
Road Transport Corporation And Another

- Mr. P. P. Shahane, Advocate for the Petitioner
- Mr. A. B. Dhongade, Advocate for the Respondents

CORAM : R. M. JOSHI, J

DATE : MARCH 17, 2025

PER COURT :

1. Learned Counsel for Respondents files reply.

The same is taken on record.

2. Petitioner is the driver who was employed with State Transport Corporation. He joined services in the year 2011. On 05.03.2021 he along with co-driver was called upon to drive a goods vehicle of Corporation. While on the way to the destination, he was intercepted by a police constable near Pravara Sangam. Constable found that the Petitioner was under the influence of liquor and was even unable to walk. He, therefore, referred the Petitioner for medical examination. He was claimed to be examined by medical officer who submitted

report to the effect that the Petitioner was under the influence of liquor. Pursuant thereto, charge-sheet came to be issued against the Petitioner by the Corporation. Inquiry was conducted. Inquiry Officer held Petitioner to be guilty of charges including the charge of consuming liquor while on duty. On the basis of the report of the inquiry officer, Petitioner was dismissed from services.

3. He, therefore, filed Complaint ULP No. 02/2023 before the Labour Court challenging the order of dismissal. Learned Labour Court framed preliminary issue with regard to fairness of the inquiry and correctness of the findings of inquiry officer. Though learned Labour Court held that the inquiry is proper, but the findings recorded by the inquiry officer are held to be perverse. Against this order dated 17.04.2023, Revision Application came to be filed before Industrial Court being No. 21/2023. Learned Industrial Court reversed the findings recorded by the learned Labour Court with regard to the correctness of the findings of the inquiry officer. Hence, this Petition.

4. Learned Counsel for the Petitioner submits that the learned Industrial Court has committed error in reversing the findings recorded by the learned Labour Court. According to him, though charge-sheet was issued, the charges were vague in nature and without examining the police constable who had intercepted the Petitioner or medical officer who has conducted the alleged medical examination, charges could not have been held to be proved before the inquiry officer. It is his submission that in any case in absence of blood/urine tests being carried out, it cannot be held conclusively that the Petitioner had consumed liquor on the fateful day. It is his further submission that the Labour Court has rightly taken into consideration the evidence led before the inquiry officer, more particularly, the report of the medical officer. It is his submission that the report is not conclusive in order to hold that the Petitioner was under the influence of liquor at the relevant time. It is his further submission that in view of the law settled by the Hon'ble Supreme Court, the proof of consumption of liquor can be ascertained only on the basis of medical

tests i.e., urine and blood tests. To support the said submissions, he placed reliance on following judgments:

- i. Munna Lal vs. Union of India and Ors, (2010) 1 SCC 399,
- ii. Bachubhai Hassanali Karyani vs. State of Maharashtra, (1971) 3 SCC 930,
- iii. Dashrath Singh vs. State of U.P. and Ors, 2022 (6) ADJ 486,
- iv. Sangram Yadav vs. State of U.P. and Ors, 2022 (4) ADJ 211,
- v. Narendra Dutta Rai vs. Union of India, 2018 (5) CHN (CAL) 208.

5. Learned Counsel for Respondents/Corporation supported the impugned order.

6. There cannot be dispute made with regard to the fact that in the departmental enquiry the employer is not required to prove the charge/misconduct beyond reasonable doubt and the proof thereof would be on preponderance of probabilities. Before taking into consideration the judgment cited supra by the learned Counsel for Petitioner, it is necessary to consider certain factual aspects which are undisputed herein this case.

7. At the outset, it needs to be recorded that this is not a case of victimization. It is not case of employee that for any particular reason he is sought to be victimized by the employer. Perusal of the record indicates that the Petitioner has never taken exception to the medical report submitted during the inquiry. In fact in his reply to the charge-sheet he has accepted the fact that he was intercepted by the police constable and thereafter he was referred for the medical examination. He also confirms the fact about the medical examination being conducted by the doctor. Thus, the Petitioner does not dispute the fact that on the fateful day he was on duty and was send for medical examination to ascertain whether he was in drunken state or not.

8. As far as the medical report is concerned, leave apart Petitioner challenging the said report, in fact he relies upon the same not only in the enquiry but also before Labour Court. The cross-examination of the witness of the Management conducted in departmental enquiry clearly indicates so. Even before the learned Labour Court it was sought to be argued that on the

basis of said report it can be held that the Petitioner was not under the influence of liquor. In view of the admitted facts by the employee, practically nothing was left for the employer to prove except to show on the basis of medical report that employee was under influence of liquor while on duty. Thus, there is material different between the facts which were involved in the judgments cited supra. In those cases, the report of the medical officer was not admitted by the employee concerned and hence, it was held that there is no proof of misconduct. These judgments, therefore, do not come to aid of Petitioner/Employee.

9. Now question remains for consideration is as to whether the learned Labour Court was correct in appreciating the certificate issued by the medical officer to hold that the Petitioner was not under the influence of liquor. Perusal of the said certificate clearly shows that except for the findings on dilated pupils, the other findings indicate that the Petitioner was smelling liquor. His gait was not stable. His speech was incoherent. Finally the medical officer has clearly opined that the petitioner was under the

influence of liquor. Once such finding is recorded, and when the said report itself is not challenged, it was not proper on the part of the Labour Court to hold otherwise. Learned Industrial Court in exercise of his powers has rightly appreciated the same and reversed the findings recorded by the Trial Court.

10. It is pertinent to note that the Petitioner is driver. If there is evidence on record to indicate that he was under the influence of liquor while an driver on duty, one cannot wait that under the influence of liquor, he should commit accident and then only he can be said to have committed misconduct. Once it is admitted by the Petitioner that while on driving duty he was taken to the hospital for medical examination and that he himself places reliance on the report of the medical officer, nothing further was left for the Corporation to prove in the department inquiry. The interference caused by the Revisional Court in the findings recorded by the Labour Court is just and proper.

11. In view of above discussion, for want of any

perversity in the findings recorded by the Industrial Court, there is no merit in the Petition. In the result, Petitions stands dismissed.

(R. M. JOSHI, J.)