

Maharashtra State Road Transport ... Respondent
Corporation, Ratnagiri

Ms. Pinky M. Bhansali *with Ms. Dharini Jain, for the Respondent.*

DATE : 27TH MARCH 2025.

1. The Petitioner challenges the judgment and order dated 17th April 2006 passed by the Industrial Court, Kolhapur partly allowing the Revision Application (U.L.P) No. 190 of 2005 filed by Respondent and setting aside the directions issued by the Labour Court for payment of full backwages. The Industrial Court has confirmed the order of the learned Labour Court directing reinstatement in service with continuity. The petition is filed to the limited extent of denial of backwages.

2. I have heard Ms. Patil, learned counsel appearing for the
Petitioner and Ms. Bhansali, learned counsel appearing for the

Respondent.

3. It appears that disciplinary enquiry was conducted against the Petitioner alleging unauthorised absence from 11th June 1991 to 5th July 1991. The Petitioner was working on a post of Driver and apparently failed to attend duties from 11th June 1991 without giving any intimation and without applying for leave. As admitted in Paragraph 3 of the petition, the Petitioner had proceeded to his native place on 10th June 1991. His defence before the Labour and Industrial Courts was that he had given intimations about his absence by way of three telegrams which were apparently sent during his absence period. The defence of the Petitioner has been accepted both by the Labour and Industrial Courts. It is held by both Courts that charge of unauthorised absence could not be established by the Respondent-Corporation. The Labour Court accordingly, directed reinstatement with full backwages and continuity. The Industrial Court has confirmed the order passed by the Labour Court to the extent of reinstatement and continuity in service. The direction for payment of full backwages is however set aside by the Industrial Court.

4. There is no dispute to the position that in pursuance of the order passed by the Labour and Industrial Courts, the Petitioner came to be reinstated in service on 2nd June 2006. He attained the age of superannuation in the year 2014 and has accordingly retired.

5. The only issue is whether the Industrial Court has committed any error in reversing the decision of the Labour Court granting full backwages from the date of termination till reinstatement. It appears that neither in the Statement of Claim nor in the Affidavit of

Evidence, the Petitioner made a statement that he was not gainfully employed during the intervening period. For claiming backwages, a burden was on the shoulders of the Petitioner to prove that there was no gainful employment during the intervening period. Thus there is neither any pleading nor evidence showing absence of gainful employment. In my view, therefore, the Industrial Court has rightly set aside the order passed by the Labour Court for payment of full backwages during the intervening period.

6. Ms. Patil would submit that once the termination is held to be bad in law, award of backwages should be normal consequence. She would also submit that since the Petitioner is ultimately held to be not guilty and since the Respondent-Corporation has foisted a false charge against him, the Industrial Court ought to have upheld the decision of the Labour Court awarding full backwages. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of *'Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.'*¹, in which the Hon'ble Apex Court has summerized the propositions in Paragraph No. 33 of the judgment as under:

“33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

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iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages”.

7. As observed above, the Petitioner has failed to discharge the burden of pleading and proving absence of gainful employment. However, even if the factor of absence of pleading and evidence about gainful employment is to momentarily ignored, it is difficult to hold that the employer had foisted a false charge on the Petitioner so as to justify award of full backwages as held by the Apex Court in **Deepali Gundu Surwase** (Supra). The factum of Petitioner's absence during the period from 11th June 1991 to 5th July 1991 is not really in dispute. Therefore, it cannot be contended that a false charge was levelled against him. The

Petitioner was working on the post of Driver and went missing from duties for about 25 long days. Though the plea of sickness was raised, the Petitioner has also admitted that he had proceeded to his native place on 10th June 1991. If he was really sick, it is difficult to fathom as to why and how he is proceeded to his native place. I do not desire to delve deeper into this aspect as the Respondent-MSRTC has not challenged the findings of the Labour and the Industrial court in the present Petition qua non-establishment of the charges.

8. I therefore proceed on an assumption that the Respondent MSRTC could not justify the action of termination on the allegation of unauthorised absence. However, the fact that the Petitioner remained absent from duties cannot really be denied. He was working on the post of Driver. Failure on the part of the Driver to report for duty without giving prior intimation puts the entire operations of the Respondent-MSRTC in jeopardy. Therefore, though the period of absence is not too long, the same has to be necessarily construed in the light of the nature of duties that the Petitioner was expected to discharge. Since period of absence is not disputed, it cannot be contended that a false charge was foisted on him. The charge was correct, however the Labour Court and the Industrial Court appear to have accepted the justification provided by the Petitioner for his absence by issuing three telegrams.

9. Considering the above circumstances, it cannot be contended that payment of 100% backwages must be normal rule

in the present case. The Petitioner has also not discharged the burden of pleading and proving absence of gainful employment during the intervening period.

10. Considering these two aspects, I am of the view that no interference is warranted in the impugned order passed by the Industrial Court.

11. However, one aspect needs to be considered. The directions for reinstatement was issued by the Labour Court on 15th September 2005 and the Petitioner was reinstated in service on 2nd June 2006. Though the Industrial Court has set aside the direction for payment of backwages, the same would not mean that the Respondent–MSRTC was at a license not to implement the order of the Labour Court. Since it has delayed implementation of the order of the Labour Court, in my view, wages would payable from 16th September 2005 till the Petitioner was actually reinstated on 2nd June 2006. He was wrongfully kept away from duty despite passing of order by the Labour Court on 15th September 2005 for about 9 long months upto 12th June 2006. Therefore, the Petitioner would be entitled to wages for the period from period 15th September 2005 till 1st June 2006. Accordingly, I proceeded to pass the following order:

ORDER

- i) The order passed by the Industrial Court denying backwages to the Petitioner is upheld.

ii) The Respondent-MSRTC shall however pay full wages and allowances to the Petitioner for a period from 15th September 2005 to 1st June 2006. The arrears of salary and allowances during that period shall be paid to the Petitioner within a period of eight weeks.

iii) Except the above clarification, the order passed by the Industrial Court shall remained unaltered.

12. The Writ Petition is accordingly **disposed** of. The Rule is discharged. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)