

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

WRIT PETITION NO.3912 OF 2002

Maharashtra State Road Transport Corporation

having its office at Vahatuk Bhavan,
Dr. A. Nair Marg, Bellasis Road,
Bombay Central, Bombay – 400 008.

...Petitioner

V/S

Dattatraya Kisanrao Zalke

R/o. 817, Shaniwar Peth, Satara.

...Respondent

Mr. P.M. Bhansali with Ms. Dharini Jain *for the Petitioner.*

Mr. Vishal M. Dhamal i/b Mr. Mohan N. Dhamal *for Respondent.*

**CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 27 MARCH 2025.
PRONOUNCED ON : 02 APRIL 2025.**

J U D G M E N T :

1. Maharashtra State Road Transport Corporation (**MSRTC**) has filed this Petition challenging judgment and order dated 2 November 2001 passed by Member, Industrial Court, Satara, allowing Revision Application (ULP) No.10 of 2000 and setting aside the judgment and order dated 25 October 1999 passed by Judge, Labour Court, Satara, in Complaint (ULP) No.95 of 1995.

The Labour Court had dismissed the Complaint challenging order of dismissal of the Respondent. The Industrial Court has reversed the order passed by the Labour Court and has directed reinstatement of the Respondent with continuity of service, but without backwages.

2. Briefly stated, facts of the case are that Respondent was appointed as a Conductor in the services of Petitioner- MSRTC, since 16 August 1982 and was made permanent on 16 August 1991. On 17 November 1994 he was deployed on City Bus No.3692 plying from Deogaon to Rajwada within Satara City. The bus was checked by the checking team and it is the case of Petitioner- MSRTC that one lady passenger had paid Rs.1.75 for purchase of ticket at the boarding point to the Respondent who had failed to issue her ticket. Four more passengers had paid Rs.9.25 towards fare to the Respondent who had not issued them tickets. Another group three passengers had paid Rs.5.25 to the Respondent and were not issued any tickets. It is alleged that out of 24 passengers in the bus, tickets were not issued to eight passengers though amount of fare was collected from them. It was further alleged that Respondent was detected with excess cash of Rs.22/-. This is how allegation of misappropriation of amount of Rs. 38.25 was levelled against the Respondent. Chargesheet was issued to him under clauses 7C and 12B of Schedule-A of Discipline and Appeal Procedure. After holding enquiry, punishment of dismissal from service was imposed on the Respondent by order dated 21 July 1995 with effect from 22 July 1995.

3. Respondent filed Complaint (ULP) No.95 of 1995 before Labour Court, Satara. Before the Labour Court, Respondent admitted fairness in the enquiry but contended that the findings of the Enquiry Officer were perverse. The Labour Court accordingly considered the evidence recorded in the enquiry proceedings and held that the findings of the Enquiry Officer were not perverse. The Labour Court therefore proceeded to dismiss the Complaint by judgment and order dated 25 October 1999.

4. Respondent filed Revision Application (ULP) No.10 of 2000 before Industrial Court, Satara, challenging order of Labour Court dated 25 October 1999. The Industrial Court proceeded to allow the Revision preferred by the Respondent and set aside the order passed by the Labour Court. Respondent was directed to be reinstated in service with continuity of service, but without backwages. Petitioner-MSRTC is aggrieved by order dated 2 November 2001 passed by Industrial Court and has filed the present Petition.

5. The Petition came to be admitted by order dated 31 July 2002 and the order passed by the Industrial Court came to be stayed. Respondent filed Letters Patents Appeal No.372 of 2002 (LPA) challenging order dated 31 July 2002 passed by the learned Single Judge of this Court. The LPA came to be dismissed for default by order dated 10 September 2007. Respondent filed Civil Application No.2474 of 2011 for payment

of last drawn wages under Section 17B of the Industrial Disputes Act, 1947 (**ID Act**) which came to be dismissed by order dated 10 July 2013.

6. The Petition is called out for final hearing.

7. Ms. Bhansali, the learned counsel appearing for Petitioner-MSRTC would submit that the Industrial Court has grossly erred in setting aside the well-reasoned judgment and order passed by the Labour Court. She would submit that once the enquiry was held to be fair and proper, the Labour Court was entitled to consider findings of the Enquiry Officer in the light of evidence appearing on record. That Respondent faced grave charge of misappropriating amount of Rs.38.25 which misconduct is erroneously treated by Industrial Court as a misconduct of minor and technical character. She would submit that Respondent is found to have indulged in corrupt practices and the misconduct is grave in nature which clearly warranted punishment of dismissal from service. That the Industrial Court has erred in holding that the punishment of dismissal was shockingly disproportionate. That past record of Respondent becomes irrelevant once he is found guilty of grave misconduct.

8. Ms. Bhansali would further submit that one of the witnesses examined by the Respondent himself deposed before the Labour Court that ticket was not issued despite payment of fare to the Respondent. That even if non-issuance of ticket to one passenger after collecting fare is proved, the employer is justified

in imposing the punishment of dismissal. That hearsay evidence is acceptable in domestic enquiry. That therefore evidence of checker, who has recorded statements of passengers is admissible in evidence. She would therefore submit that sufficient evidence was available on record before the Enquiry Officer for holding Respondent guilty of misconduct.

9. Ms. Bhansali would further submit that the Industrial Court has erred in holding that the Labour Court has acted as an Appellate Authority by re-appreciating the evidence. She would submit that the evidence before the Labour Court was led by Respondent and therefore the Labour Court cannot be faulted for taking into consideration the said evidence. That even otherwise, the evidence on record before the Enquiry Officer was sufficient. That the Industrial Court has erred in holding that finding drawn by the Enquiry Officer could not be held as findings. She would submit that the Enquiry Officer has recorded cogent findings in his report after taking into consideration the evidence on record. She would therefore submit that the order passed by the Industrial Court is thus clearly unsustainable and liable to be set aside.

10. The Petition is opposed by Mr. Dhamal, the learned counsel appearing for Respondent. He would submit that the Industrial Court has correctly set aside erroneous order passed by the Labour Court. That the Industrial Court has rightly appreciated the position that the Enquiry Officer did not record any findings in his report and that the Labour Court had not even taken

pains of considering the nature of findings recorded by the Enquiry Officer for holding the charge as established. That instead of confining its consideration to the correctness of findings recorded by Enquiry Officer, the Labour Court had erroneously undertaken the exercise of re-appreciation of evidence and thereby the Labour Court committed gross jurisdictional error. That Respondent is implicated in false allegations, which was borne out after examination of witnesses/passengers in the inquiry by Respondent. That all passengers, except one, falsified the theory of the Respondent about non-issuance of tickets despite acceptance of fare amount. In respect of one passenger who deposed in the inquiry about non-issuance of ticket, was the one who could not be issued ticket on account of heavy rush in the bus. That Respondent was functioning as Conductor in the city bus having stops at short distance and it was impossible that tickets were instantly issued to every passenger who boarded the bus. That Respondent was in the process of issuing ticket to that one passenger and before issuance of ticket, the checking team drew erroneous inference of pocketing of fare amount by the Respondent. He would submit that the case does not involve misappropriation but mere delay in issuance of ticket to one passenger from whom fare was allegedly accepted. That therefore the Industrial Court has rightly held the punishment of dismissal to be shockingly disproportionate to the proved misconduct. That past record of Respondent is unblemished. That the Enquiry Officer had erroneously relied on alleged statements of the witnesses whose statements were procured as per the desire of the checker. That

ultimately most of the witnesses did not stand by the alleged statement before the Labour Court. That the passengers were deliberately not called in the enquiry out of fear of being exposed and it was Respondent who finally called in the inquiry and each one of them, except one, denied the theory of non-issuance of ticket despite payment of fare. He would therefore pray for dismissal of the Petition.

11. Rival contentions of parties now fall for my consideration.

12. Respondent faced twin charges of failure to issue tickets to passengers despite acceptance of fare and being detected with excess cash of Rs.22/-. Charge-sheet dated 21 November 1994 was issued alleging misconduct under clauses 7(c) and 12(b) of the Schedule-‘A’ of Discipline and Appeal Procedure of MSRTC. Under clause 7(c), the misconduct is *'failure to issue a ticket to a passenger by a Conductor after recovery of fare'*. The misconduct under clause 12(b) relates to *'fraud, dishonesty or misappropriation in connection with the business or property of the Corporation'*. Respondent was suspended by order dated 19 November 1994. In the charge-sheet dated 21 November 1994 it was alleged that the bus in which Respondent was deployed as Conductor on 17 November 1994 was checked at Aristocrat and was found that -

- (i) one lady passenger Dhruvada Bajirao Bhosale was travelling from Degaon to Aristocrat and paid Rs.1.75 to the Respondent immediately after boarding the bus till checking of the bus, Respondent had failed to issue her ticket.

(ii) that passenger Shantaram Pawar was travelling from Degaon to Degaon Patta without ticket alongwith three other passengers Baba Rama Salunkhe, B.B. Yadav and Pushpa B. Yadav from Degaon to Rajwada without ticket. The said passengers had paid Rs.9.25 to Respondent at Degaon but Respondent failed to issue them tickets till the bus was checked,

(iii) that passengers Dattatray Ganpati Shedge, Vishnu Bapurao Bhosale and Pandurang Ganpati Khandjode were found to be travelling from Cooperfoundry to Powai Naka without ticket though they had paid amount of Rs.5.25 to the Respondent who had failed to issue them tickets till checking of the bus.

13. Additionally, it was also alleged that Respondent was detected with excess cash of Rs.22/-. Respondent denied the charges by reply dated 26 November 1994 taking a defence that he was in the process of issuance of tickets and that the Checker threatened him and the passengers and recorded their statements. He also took a defence that the distance from Degaon to Aristocrat (where bus was checked) was hardly 1½ to 2 k.m. and that there was rush in the bus. Inquiry was conducted on account of denial of charges by the Respondent. Before the Enquiry Officer, statements of the passengers recorded by the Checker were relied upon. In the enquiry the Inspector/Checker was examined. It appears that at the instance of the Respondent, the passengers were examined in the enquiry and most of the passengers denied having paid the amount of the fare to the Respondent. However, one witness deposed before the Enquiry Officer that despite payment of the fare, the ticket was not issued by the Respondent.

14. The Enquiry Officer submitted his report holding that the Respondent had actually admitted misappropriation immediately after checking of the bus and had also signed the statements of the passengers. The report of the Enquiry Officer is not very elaborate and does not discuss the evidence of passengers examined at the instance of the Respondent. It would be apposite to reproduce the relevant findings of the Enquiry Officer in his report.

"सदर अपराध प्रकरणाचा विचार करता खालील गोष्टी स्पष्ट होतात- सदर अपराध प्रकरणातील कागदपत्र अहवालसादरकर्ते यांचा समक्ष सुनावणीतील खुलासा अहवालसादरकर्ते यांचा उलट तपासणीतील खुलासा वाहकाची प्रश्नोत्तरे, प्रवाशांचे वाहकाचे घटनास्थळीचे जबाब या सर्वांवर विचार करता खालील गोष्टी स्पष्ट होतात.

बसचा मार्ग देगांव ते राजवाडा असून सदर बसमध्ये एकूण ८ प्रवाशी विनातिकिट आढळले. त्या सर्वांचे प्रवासभाडे वाहकाने घेतले आहे. सर्व प्रवाशी एकाच गुपचे नसून वेगवेगळ्या गुपचे आहेत. बस सुटतेवेळीच देगांव या ठिकाणी बसलेल्या प्रवाशांना पैसे घेऊन तिकिटे दिली नाहीत. तसेच कुपरफॉन्डी येथे बसलेल्या ३ प्रवाशांनाही वाहकाने तिकिटे दिली नव्हती. ५ प्रवाशांना देगांवपासून गाडी तपासपर्यंत तिकिट न देणे यामध्ये वाहकाचा अपहाराचा हेतू स्पष्ट दिसून येतो. त्याला हिंवा त्यांच्या प्रतिनिधींना अहवाल खोटा असल्याचे किंवा पैसे घेऊन तिकिट न देणेबद्दल नीट खुलासा करता आला नाही. त्यांचेवर ७क व १२ब सिद्ध होत आहे. यामध्ये वाहकाची अपहार प्रवृत्ती दिसते. राप.रकम रु.२२/- ने जादा आढळली आहे. अशा वाहकास राप. महामंडळाच्या सेवेत ठेवणे उचित वाटत नाही. त्यांना राप. महामंडळाच्या सेवेतून बडतर्फ (डिसमिस) का कारण नये म्हणून कारण दाखावापस देण्यात यावे."

15. The Enquiry Officer's report thus did not consider the evidence of passengers, who had denied correctness of statements recorded by the Inspector/Checker. The Industrial Court has rightly held that the Enquiry Officer had not applied his mind to the evidence on record and had failed to discuss the evidence, which was adduced by the Respondent.

16. Though it is correct that the Enquiry Officer ought to have discussed the entire evidence on record in his report at the time

of recording the finding of guilt, the issue is whether failure on the part of the Enquiry Officer to do so would render the finding of the guilt as vitiated? There is discrepancy in the statements given by passengers at the time of checking of the bus and statements made by them during the course of evidence before the Enquiry Officer. However, one witness has stood by the statement recorded by the Inspector/Checker. Even before Enquiry Officer, the said passenger confirmed the position that he was not issued ticket despite being paid fare to the Respondent. It would be necessary to consider the evidence of that passenger P.G. Khandjode:

प्र. दि. 17/11/94 रोजी कोटून कोठे पर्यन्त प्रवास करीत होता?

उ. कुपरफौन्ड्री ते पोवड नाका पर्यन्त प्रवास करीत होतो.

प्र. 17/11/94 चे जबाबात वाहकास प्रत्येकी १.७५ प्रमाणे पैसे दिले वाहकाने बस तपासे पर्यन्त तिकीट दिले नाही असा उल्लेख: केला आहे तो बरोबर आहे का?

उ. होय बरोबर आहे.

प्र. आपण तिकीट का घेऊ शकला नाही?

उ. तिकीट द्या असे म्हणत असता ते देतो देतो असे म्हणाले.”

17. Thus one of the passengers, examined by Respondent himself, deposed before the inquiry officer that despite payment of fare and demanding the ticket, Respondent avoided to issue the same. Therefore, even if Respondent was to be exonerated in respect of allegation of non-issuance of tickets to other passengers, finding of guilt with regard to two elements of charge are required to be upheld viz. (i) non-issuance of ticket to

one passenger despite collection of fare, and (ii) detection of Rs.22/- excess in the cash. Therefore, mere disowning of statements by other passengers would not come to the rescue of the Respondent, where finding of guilt pertaining to the above two elements of charges can be sustained.

18. Even if the charge of non-issuance of ticket to one passenger despite collection of fare is found to be proved, the same would constitute grave misconduct. The charge of being detected with Rs.22/- excess is also of grave nature. The said charge of detection of excess cash is required to be considered in the light of the allegation of non-issuance of tickets to several passengers despite collection of fare from them. In my view therefore, Respondent cannot be exonerated completely in the light of evidence of Checker about detection of excess cash and of one passenger about failure to issue ticket despite collection of fare.

19. The Industrial Court had grossly erred in holding that misconduct was of minor and technical in nature. The Industrial Court has recorded following findings on the issue of gravity of misconduct:

“The revision petitioner has claimed reinstatement with continuity of service and full back-wages and it is argued on behalf of the revision petitioner that the misconduct committed by the revision petitioner is of a minor and technical character. The punishment of the dismissal is a shockingly disproportionate punishment. The past report of the conductor is an unblemished. After considering the misconduct, I am also of the view that the punishment of the dismissal is of a shockingly disproportionate punishment, but at the same time the conductor will not be entitled for the back-wages, because for the technical ground the revision petitioner requires to

be reinstated. Under such circumstances the denial of the back-wages will be a proper punishment to the revision petitioner for the technical misconduct, committed by the revision petitioner.”

20. In my view, the above findings recorded by the Industrial Court on the issue of gravity of misconduct are clearly unsustainable. In fact, the Industrial Court has contradicted itself by holding that Petitioner-MSRTC has failed to prove misconduct in the Departmental Enquiry and further recording a finding of punishment being shockingly disproportionate. If the misconduct was not established, there was no question of punishing the Respondent and therefore it was unnecessary to go into issue of gravity of misconduct. Leaving aside the apparent contradiction in the approach of the Industrial Court, I proceed to examine whether the findings recorded on the issue of gravity of misconduct by the Industrial Court are sustainable, considering the position that two elements of charge, as discussed above, are found to be proved against the Respondent.

21. Non-issuance of ticket by Conductor to a passenger after collecting fare from him constitutes a misconduct under clause 7(c) of Schedule-A to Discipline and Appeal Procedure of MSRTC. Under Proviso to Rule 7 to the Discipline and Appeal Procedure, punishment of discharge or dismissal from service is required to be imposed, if misconduct under Items 4, 7(a) to (j), 12(a) and (b), 39 and 42 of Schedule-A to the Discipline and Appeal Procedure is established:

“Provided that the ‘punishment for any of the acts of misconduct mentioned at Items 4, 7(a) to (j), 12(a) and (b), 39, 42 of the Schedule ‘A’ shall be either discharge or dismissal from services of the

Corporation. While awarding punishment for the default under these types of misconducts, the Competent Authority shall ensure that the guilt of the employee charged is conclusively proved on the basis of available evidence and the specific instructions issued from time to time by the Administration are scrupulously followed.”

22. In the present case, the charge of non-issuance of ticket despite collection of fare to one passenger is conclusively established on the basis of evidence led by the said passenger, though he is examined by the Respondent. Such act of non-issuance of ticket despite collection of fare, coupled with detection of Rs.22/- excess would also amount to misappropriation within the meaning of Item 12(b) of the Schedule-A to the Discipline and Appeal Procedure. Since misconduct under 7(c) and 12(b) are already classified as grave misconducts worthy of imposition of punishment of discharge or dismissal from services, the Industrial Tribunal has erred in treating the said misconduct as minor and of technical nature. The rules framed by Petitioner-MSRTC mandate imposition of punishment of discharge or dismissal from service against Conductor who is found guilty of misconduct under Item 7(c). Additionally, Respondent is also found guilty of misrepresentation under Item 12(b). Therefore, the Industrial Court could not have held that the punishment of dismissal was shockingly disproportionate.

23. Even independent of the proviso to Rule 7 of Discipline and Appeal Procedure of MSRTC, the misconduct on the part of Conductor in pocketing the amount of fare by not issuing ticket to a passenger otherwise constitutes a grave misconduct capable

of infliction of major penalty of dismissal from service. The combined effect of proof of charge of non-issuance of ticket to passenger despite collection of fare and detection of Rs.22/- excess would clearly amount to misappropriation on the part of a Conductor. Such misconduct can, by no stretch of imagination, be treated as a minor misconduct or misconduct of technical nature as erroneously held by the Industrial Court. Once misappropriation is proved, the amount of misappropriation becomes irrelevant. Here it would be apposite to refer the judgment of the Apex Court in ***Janatha Bazar (South Kanera Central Co-operative Wholesale Stores Limited) & Ors. vs. Secretary, Sahakari Noukarara Sangh & Ors.,¹*** in which it is held that the quantum of amount of misappropriation is irrelevant factor and that once employee is found to have indulged in misconduct of misappropriation, dismissal from service is the only punishment available. The Apex Court also held that in case of proved misappropriation, there is no question of considering past record. The Apex Court held in paragraphs 3, 6 and 8 as under:

“3. The question involved in these appeals is - whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondent workmen with 25% back wages in spite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages.

1 (2000) 7 SCC 517

6. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, maybe for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari. (1996) 2 SCC 714 : 1996 SCC (L&S) 539 : (1996) 33 ATC 238) In U.P. SRTC vs Basudeo Chaudhary (1997) 11 SCC 370 : 1998 SCC (L&S) 155, this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs.65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs 5.35 per head and also by making entry in the waybill as having received the amount of Rs 2.35, which figure was subsequently altered to Rs 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corpn. Ltd. v. Kala Singh, (1997) 6 SCC 159 : 1997 SCC (L&S) 1434, this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp. 161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.

8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases. “

24. In *Managing Director, North East Karnataka Road Transport Corporation vs. K. Murthi*², the Apex Court dealt

² 2006 (12) SCC 570

with case of bus conductor carrying passengers without tickets.

The Apex Court held in paragraphs 8 and 9 as under:

“8. The learned counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this Court, one in *Regional Manager, Rajasthan SRTC v. Ghanshyam Sharma*, (2002) 10 SCC 330 : 2003 SCC (L&S) 714 which was also a case of bus conductor carrying passengers without issuing tickets. This Court, in the above case, held that carrying the passengers without tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. This Court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgment in *Karnataka SRTC v. B.S. Hullikatti*, (2001) 2 SCC 574 : 2001 SCC (L&S) 469. In the said judgment, this Court has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a rate less than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed that in cases like the present, orders of dismissal should not be set aside. The learned counsel for the appellant also cited *Divisional Controller, N.E.K.R.T.C. v. H. Amaresh*, (2006) 6 SCC 187 : 2006 SCC (L&S) 1290. In this case, this Court was considering the case of misappropriation of a small amount of State Road Transport Corporation's fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the Corporation. This Court also held that punishment of dismissal from service awarded by the disciplinary authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any employer unless there exists a statutory provision in this behalf. This Court also observed that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

9. In the instant case, the position held by the employee (conductor) is one of faith and trust. A conductor holds the post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The respondent's conduct in not collecting the requisite fare at the designated place from persons who had travelled were in violation of various regulations contained in

the provisions of the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971.”

25. Considering the sound exposition of law in the above judgments, in my view, the misconduct of failure to issue ticket to even one passenger despite recovery of fare would constitute grave misconduct. The Industrial Court has grossly erred in holding that the misconduct committed by the Respondent is minor and technical in nature. It is well settled position of law that Courts and Tribunals cannot interfere in the quantum of penalty unless the punishment is found to be shockingly disproportionate to the misconduct proved. Since the proved misconduct is of grave nature, there was no warrant for interference in the punishment by invoking the principle of proportionality.

26. Considering the overall conspectus of the case, I am of the view that the Industrial Court has grossly erred in reversing the order passed by the Labour Court. Though not all, two elements of charge are clearly proved against Respondent and the same constitutes grave misconduct justifying punishment of dismissal from service. The impugned judgment and order passed by the Industrial Court is thus indefensible and liable to be set aside.

27. The Petition succeeds and I proceed to pass the following order:

Judgment and order dated 2 November 2001 passed by Member, Industrial Court, Satara in Revision Application

(ULP) No.10 of 2000 is set aside and judgment and order dated 25 October 1999 passed by Judge, Labour Court, Satara in Complaint (ULP) No.95 of 1995 is confirmed.

28. Writ Petition is **allowed** in above terms. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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by SUDARSHAN
RAJALINGAM
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