

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6292 OF 2023

Anil Parasharam Salokhe

.. Petitioner

Versus

The Maharashtra State Road Transport, Corporation .. Respondent

.....

- Mr. Akshay Deshmukh a/w Mr. Sanket Kadam i/by Mr. Nitin Patil, Advocates for Petitioner.
- Mr. Yashodeep Deshmukh a/w Ms. Vaidehi Deshmukh, Advocates for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 23, 2025

P. C.:

1. Heard.

2. At the outset Mr. Deshmukh informs the Court that final order dated 10.05.2017 passed by the Labour Court has been inadvertently left out in the prayer clause and therefore he would persuade the Court to allow Petitioner to make necessary corrections. Considering the Petition and the facts in the present case as also the admitted fact that outcome of challenge is the order dated 10.05.2017 amendment is permitted to be carried out forthwith in the presence of Court itself. Re-verification stands dispensed with. Petition is taken up for final hearing forthwith.

3. Present Petition impugns judgment dated 01.10.2019 appended at page Exhibit – E at page No.95 of the Petition passed in Revision proceedings by the learned Industrial Court.

4. On 11.12.2023, after hearing Mr.Patil following order was passed:-

“1. Heard Mr. Patil, learned Advocate for Petitioner.

2. Petitioner is the original complainant who had filed Complaint (ULP) No.54 of 2011. He serving as a “Conductor” with the Respondent – Corporation since 27.12.1996 and according to the learned Advocate he had an unblemished record until the present incident happened. He was charge-sheeted on 25.06.2009 by Respondent – Corporation, inquiry was conducted and dismissed from service on 06.08.2010. Departmental Appeal was preferred by him which was rejected on 30.09.2011. Thereafter complaint of unfair labour practice was filed by Petitioner claiming reinstatement with continuity of service and full backwages.

3. Record indicates that preliminary issues were decided by the learned Labour Court and it was held that the enquiry conducted against the Petitioner was fair and proper and the findings of the Enquiry Officer were not perverse. Petitioner being aggrieved filed Revision Application (ULP) No.16 of 2017 before the learned Industrial Court, Sangli. By judgment dated 01.10.2019, learned Industrial Court upheld and confirmed the order of the learned Labour Court and dismissed the Application.

4. At the outset, Mr. Patil has drawn my attention to the controversy involved in the present Petition. He would submit that indictment and dismissal of the Petitioner has happened due to an incident which occurred on 03.06.2009. He would submit that the only allegation against the Petitioner was that he had collected monies from one passenger to the tune of Rs.18/- and not issued ticket to the said passenger.

5. Record and evidence reveal that the lady passenger was travelling alongwith a co-passenger i.e. her mother who was a senior citizen on the said date. Her evidence has been recorded and she has stated that she gave Rs.27/- to the

Petitioner - Conductor for issuance of valid ticket. However, Petitioner issued one ticket of Rs.9/- i.e. in respect of her co-passenger who was a senior citizen and in so far as the ticket of Rs.18/- is concerned it was not issued to her. The distance of the journey was 26 kms. and within 5 kms. of the journey having started and the tickets were issued by the Petitioner, there was a flying squad who entered the bus and checked the tickets issued to the passengers. At that time, the lady passenger revealed to the flying squad/checking staff that she did not have any valid ticket on her, but she had paid Rs.18/- towards her ticket to the Petitioner.

6. *On the basis of the above facts, allegation of misappropriation of the funds of the Corporation was levied against the Petitioner, enquiry took place resultantly leading to dismissal of the Petitioner.*

7. *At the outset, Mr. Patil has drawn my attention to page No.25 of the Writ Petition which is the cash memo form required to be filled in by the concerned Conductor i.e. the Petitioner in the present case for the relevant date. He would submit that there is no indication on the said cash memo form of any misappropriation of amounts received from the passengers on the said date who had commenced and travelled in the said bus. He would submit that if that be the case then on the basis of the said cash memo form a deficit of Rs.18/- should be seen prima facie and would have to be so calculated. He would submit that the total amount receivable after issuance of the tickets by the Petitioner as stated in the cash memo form is Rs.6,768/- whereas the actual amount deposited on the basis of the receipt of monies by the Petitioner with the Corporation was Rs.6,777/- i.e. Rs.9/- extra excess was infact deposited by the Petitioner with the Respondent – Corporation.*

8. *Keeping this cash memo form in mind, he has then drawn my attention to page Nos.27 and 28 of the Petition wherein it is seen that the photocopy of the tickets punched on the said date have been produced. From the said photocopy, it is evident that the tickets have been punched by the Petitioner. It has also been admitted by the Petitioner that the tickets of Rs.18/- though punched were not physically given to the lady passenger on the said date. He has also drawn my attention to the waybill which is page Nos.29 and 30 of the Petition which in respect of the count for all the tickets which were punched for issue and the receivable amounts deposited with the Respondent - Corporation.*

9. *Mr. Patil would fairly submit that the error which occurred on the part of the Petitioner was not only accepted by the Petitioner to the extent of not physically giving the tickets to the lady passenger to the extent of Rs.18/- as there were several reasons therefor. He would submit that the raid and checking of the flying squad/checking staff took place within 5 to 6 kms. of commencement of the journey and at that time the bus was over crowded. Next he would submit that the documents which are presented at page Nos.24 to 30 of the Petition clearly show that the Petitioner had no excess money in his pocket nor any of the documents produced show any tampering made thereon with respect to the tickets issued by the Petitioner / monies collected by him.*

10. *After considering the submissions made by Mr. Patil and the aforementioned documents referred to and relied upon by the Petitioner, an arguable case has been made out for issuance of notice.*

11. *Hence, issue notice to the Respondent Humdast permitted. Corporation.*

12. *In addition to Court notice, Petitioner is permitted to serve a copy of the Petition and this order on the Respondent and inform it about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.*

13. *Respondent is directed to file their Affidavit-in-Reply on or before the next date. Copy of this order shall be served on Respondent by the Advocate for Petitioner.*

14. *Considering the facts of the present case, on the next adjourned date this Petition shall be heard and disposed of finally at the stage of admission.*

15. *Stand over to 03rd January, 2024.*

5. Today in response to the said order before the reply is given by Mr. Deshmukh, learned Advocate for Petitioner would seek to make two submissions. He would submit that as noted by the Court about past credentials of the Petitioner the same are not true and in all

fairness there have been certain derelictions in the past which are the part of record to which my attention is drawn. Next he would submit that Petitioner before court is 53 years old today and has a very strong case on merits considering the fact that even though Petitioner has recorded his evidence, the Corporation has failed to record evidence of independent witnesses to the incident considering that the said incident has occurred in an overcrowded moving bus in the presence of the Ticket Checking Squad.

6. *PER CONTRA*, Mr. Deshmukh, learned Advocate appearing for the Respondent Corporation would at the outset persuade the Court to consider the fact that Part I award in respect of conduct and enquiry held by the Corporation has been held to be fair by both the Courts below and therefore the only avenue open for argument to the Petitioner before the Court would be to argue the disproportionality of the punishment awarded by the learned Labour Court which has been upheld in Revision by the Industrial Court. That apart he would submit that challenge the order dated 10.05.2017 passed by the learned Labour Court in Revision is in the very narrow compass inasmuch unless it is shown that the judgment dated 10.05.2017 is perverse and contrary to the evidence on record. He would submit that the judgment has been passed by the Labour Court after considering the entirety of the evidence on record and cannot be

faulted with, hence only to the extent of disproportionality of punishments, the Petitioner may argue his case.

7. It is seen that Petitioner before me was employed and appointed as Conductor in the year 1996 and apart from some minor punishments to his discredit during the entire length of his service tenure of more than 15 years is clean and unblemished. The incident in question has been delineated in the previous order and what is crucial to be noted is the fact that the tally of number of seats occupied in the bus, tickets issued by him and the waybill prepared on the basis of tickets issued has been found to be matched correct on the basis of documentary evidence placed on record. Hence the only part of the incident in question which indicts role of the Petitioner, *inter alia*, pertains to Petitioner not having issued the full ticket to the passenger in question for which the complaint is lodged. However evidence and cross-examination of the Petitioner and the witnesses *prima facie* show that though it was alleged by the complainant that ticket was not issued by Petitioner and it is only when Ticket Checking Squad entered the bus that the Petitioner attempted to issue the ticket to her, the same needs to align with the documentary evidence of the tickets issued, tickets punched, money collected and record maintained. Admittedly the evidence on record shows that it was a crowded bus and that apart if the the full ticket which is alleged not to

have been issued to the complainant was infact punched by the Petitioner and when he was in the process of giving it over to her the Ticket Checking Squad intervened at which point of time the complainant informed the Ticket Checking Squad that Petitioner failed to issue the full ticket to her. When such an incident happened in a crowded bus, it was incumbent upon the Corporation to lead evidence of any independent witness to counter the Complaint filed against Petitioner. That is not done.

8. The evidence which is placed on record is in the nature of cash cheque form giving the all serial numbers of all tickets which were in the custody of the Petitioner which are issued by him and which were punched by him alongwith computation of the amount which was deposited by him as per the said form. Said form is appended at page No.25 and it does not show any excess amount or discrepancy whatsoever with respect to the amount of Rs.18/- having been retained by the Petitioner.

9. Next the contentious tickets which were issued by the Petitioner to the complainant are also part of the evidence. Xerox copies of the said tickets have been placed on record at page No.27 and 28 which *prima facie* show that the said tickets were infact punched by the Petitioner. The waybill appended at page No.29 onwards *prima facie* gives the entire tally of the serial numbers of the

tickets which were issued and punched by the Petitioner and the amounts collected and therefore the version of complainant contained in her complaint appended at page No.24 is not supported by the aforementioned evidence. The complaint has stated that it is only when the Ticket Checking Squad entered the bus that the Petitioner issued the ticket to the complainant. However, the same is not supported by any independent evidence led by the Corporation or even on behalf of the complainant. The evidence of Mr. Salokhe the Petitioner before me *prima facie* gives the entire description of the number of seats occupied in the bus, the number of tickets issued by him and amounts collected by him which are in consonance with the aforesaid way bill i.e. the documentary evidence which has been placed on record by the Corporation and *prima facie* there does not seem to be any ambiguity with the same. This leaves the issue pertaining to the complaint filed by complainant with respect to issuance of tickets to her. It is seen that the complainant was infact interjected by the Ticket Checking Squad and asked for ticket and she failed to show her ticket to them and it is at this point of time she put blame on the Petitioner which led to the Ticket Checking Squad directing the complainant to give her written complaint which led to the incident and cause of action. This is borne out from her complaint on record. However the same is contrary to the evidence of the

Corporation which states that according to the Complainant when the Ticket Checking Squad entered the bus, the Petitioner at that point of time handed over the ticket to her.

10. It is seen that enquiry was conducted within one day and *prima facie* principles of natural justice were not followed. In a crowded bus when such an enquiry is undertaken or conducted, it was the duty of the enquiry officer to ensure that witness statements were recorded in order to corroborate the allegations against the Petitioner as to what exactly transpired in the bus. Non consideration of the same and not recording any independent witness statement of any of the witnesses present in the bus *prima facie* would come to the assistance of the Petitioner before me. In that view of the matter and having considered the material placed before the Court, I am of the opinion that the punishment awarded to the Petitioner is *prima facie* disproportionate to the alleged incident in question which leaves some room for doubt since the dichotomy in the evidence of the Corporation and the Complainant exists.

11. In view of aforesaid observations and findings and the observations delineated in the previous order which is reproduced hereinabove, punishment of dismissal awarded to Petitioner in the facts and circumstances of the present case is disproportionate and the same is reduced to reinstatement however without backwages.

12. Needless to state that Petitioner would not be entitled to any of the service benefits for the period from the date of termination till the date of reinstatement.

13. Petitioner is directed to be reinstated within a period of one week from the date of uploading of this order.

14. Order dated 01.10.2019 passed in Revision alongwith the order dated 10.05.2017 passed by learned Labour Court is accordingly moulded by this Court in the above terms.

15. Writ Petition is partly allowed in the above terms and disposed.

[MILIND N. JADHAV, J.]

ER. Rajput

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signed by
RAVINDRA
MOHAN
AMBERKAR
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