

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

WRIT PETITION NO.4034 OF 2007

Maharashtra State Road Transport
Corporation

...Petitioner

V/s.

Kiran Babu Miraje

...Respondent

Ms. Pinky M. Bhansali *for the Petitioner.*

Mr. Gouresh Mogre *with Ms. Nikita Mandaniyan and Mr.
Dileep Satale i/b. Mr. Harshad Bhadbhade for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 3 April 2025.

Judgment pronounced on: 9 April 2025.

Judgment:

1) Petitioner-Maharashtra State Road Transport Corporation (**MSRTC**) has filed this Petition challenging the judgment and order dated 11 September 2006 passed by the Member, Industrial Court, Kolhapur in Complaint (ULP) No.48 of 2003. The Industrial Court has set aside the order of the First Appellate Authority as confirmed by the Second Appellate Authority by order dated 11 October 2002 and has remanded the proceedings to the Second Appellate Authority for inflicting

punishment against Respondent for proved misconduct except the penalty of discharge/dismissal/otherwise termination.

2) Briefly stated, facts of the case are that Respondent was working as Driver with Petitioner-MSRTC since 1 January 1978. Disciplinary proceedings were initiated against him by issuance of charge-sheet dated 23 June 1999 alleging that he was found illegally transporting passengers in the Jeep driven by him. In the enquiry, charge was proved and the Respondent was dismissed from service by order dated 1 October 1999. He preferred departmental appeal and the First Appellate Authority partly allowed the appeal on 20 January 2000 and set aside the punishment of dismissal by awarding him re-appointment as a Driver. This resulted in wiping out past service rendered by the Respondent. He joined the services in pursuance of fresh appointment granted by the Appellate Authority and filed appeal before the Second Appellate Authority, which came to be dismissed by order dated 11 October 2002. He filed Complaint (ULP) No.48 of 2003 before the Industrial Court, Kolhapur, challenging the order of Second Appellate Authority. The Industrial Court has allowed the Complaint filed by the Respondent by its judgment and order dated 11 September 2006 by setting aside the order passed by the Second Appellate Authority dated 11 October 2002 and by remanding the proceedings to the Second Appellate Authority for inflicting punishment for proved misconduct except that of discharge/dismissal /otherwise termination. The judgment and order dated

11 September 2006 passed by the Industrial Court is subject matter of challenge in the present Petition.

3) The Petition came to be admitted by order dated 4 July 2007 directing that the Respondent would continue in the employment as a fresh appointee. Respondent continued to work as a fresh appointee during pendency of the present Petition and has retired from service in April 2011. The Petition is called out for final hearing.

4) Ms. Bhansali, the learned counsel appearing for Petitioner would submit that the Industrial Court has grossly erred in interfering with the order passed by the First Appellate Authority directing fresh appointment to the Respondent. That the First Appellate Authority had taken a lenient view in the matter and had issued fresh appointment in his favour. That Respondent was found to have committed serious misconduct of transporting passengers of MSRTC in the Jeep driven by him and collecting fare of Rs. 6/- from each of them. The charge involved corrupt practices and therefore, the penalty of dismissal was in fact appropriate. However, the First Appellate Authority still proceeded to take a lenient view in the matter by offering fresh appointment to him. She would submit that it is permissible for the Petitioner to offer fresh appointment to a dismissed employee of MSRTC. She would rely upon judgment delivered by this Court in ***Maharashtra State Road***

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She would submit that the Industrial Court has grossly erred in directing infliction of substituted penalty for proof of grave misconduct of misappropriation. She would therefore pray for setting aside of the order passed by the Industrial Court.

5) The Petition is opposed by Mr. Mogre, the learned counsel appearing for the Respondent. He would submit that grant of fresh appointment is not specified as penalty under Rules of MSRTC. That therefore the Industrial Court has rightly set aside the order passed by the First Appellate Authority. That it is impermissible to inflict penalty, which is not provided for in the Rules. In support, he would rely upon judgment of Apex Court in ***State Bank of India and Ors. V/s. T.J. Paul***². He would submit that the Respondent was in service since 1978 and the impugned order passed by the First Appellate Authority would have had the effect of wiping out of 21 long years of service rendered by the Respondent. He would submit that the Industrial Court has rightly appreciated the entire material available on record and there is no perversity in the findings recorded by it for this Court to interfere in exercise of jurisdiction under Article 227 of the Constitution of India. He would pray for dismissal of the Petition.

6) Rival contentions of the parties now fall for my consideration.

¹ Writ Petition No.2719 of 2006, decided on 5 September 2024.

² (1999) 4 SCC 759

7) Respondent faced serious charge of transporting 6 passengers in the Jeep driven by him on 14 June 1999. The Jeep driven by him was checked at Village -Levale and it was found that 6 passengers were travelling therein and that the Respondent had collected fare of Rs.6/- each from the said passengers. Thus, the passengers, who would have otherwise travelled in the bus of MSRTC by paying fare, were illegally transported by the Respondent by pocketing Rs.36/- towards amount collected from them.

8) The Industrial Court has not interfered in the finding of guilt. It appears that finding of guilt was not seriously challenged before the Industrial Court by the Respondent. His main thrust was on punishment of re-appointment given by the First Appellate Authority. The Industrial Court has therefore not interfered with the finding of guilt. Its entire order deals with correctness of penalty imposed on the Respondent.

9) The next issue for consideration is whether the First Appellate Authority was empowered to offer re-appointment as a fresh appointee to the Respondent, who was dismissed from service by the Appellate Authority. The issue is no more *res integra* and is covered by judgment of this Court in ***Yamanappa Huvappa Jadhav*** (supra):

- 5) Ms. Bhansali would submit that Petitioner-MSRTC is entitled to grant re-appointment to its employee depending on facts and circumstances of the present case. She would criticize the Industrial Court in interfering in the order dated 18 October

1995 on the ground of impermissibility for the second Appellate Authority to grant re-appointment to the Respondent. **In my view, grant of re-appointment to the employee concerned, who has been dismissed from service, is entirely the matter of discretion of the employer. It cannot be stated that the employer is without authority to offer re-employment to the employee, who has already been dismissed from service considering the facts and circumstance of each individual case. It cannot be stated as a matter of absolute proposition of law that in no case, Petitioner-MSRTC is authorised to offer fresh appointment or re-appointment to its employee who has already been dismissed from service. It depends on facts and circumstances of each case.**

(emphasis added)

10) Thus, this Court has already taken a view that grant of fresh appointment to an employee, who has been dismissed from service, is entirely the matter of discretion of the employer and that it cannot be accepted as an abstract proposition that in no case the employer can offer re-appointment to its employee, who has been dismissed from service.

11) Ms. Bhansali has contended that Respondent accepted the order of fresh appointment, joined service and thereafter turned around and filed appeal before the Second Appellate Authority and complained of unfair labour practice. She has relied upon judgment of this Court in ***Maharashtra State Road Transport Corporation, Bombay V/s. Prakash Tulshiram Pardeshi***³ in which it is held as under:

But in the facts of the present case, it needs emphasis that the order of the Appellate Authority properly construed, was an offer for a fresh appointment which was duly accepted by the Respondent. If the Respondent believed that the Appellate Authority had no authority to impose such a direction upon him, he could have challenged the order in its entirety. Having taken the benefit of the order, the

³ Writ Petition No.1858 of 2003, decided on 22 April 2008.

Respondent was estopped from challenging the order by which he was given fresh appointment. The Appellate Authority while justifying its own finding, confirmed the order of dismissal. The Respondent was, however, offered re-employment on humanitarian grounds, particularly in the light of the fact that he accepted his mistake and stated that he would not commit such a mistake in future. The interference of the Labour Court in the proceedings, was therefore, clearly not warranted. The principle that estoppel must apply in a situation such as this is consistent with the judgment of the Supreme Court in the State of Punjab vs. Krishan Niwas, 1997 1 CLR 855. The same view has been taken by the Division Bench of the Gujarat High court in Union of India vs. N. M. Dhobi, 2006 I CLR 587.

12) In *Yamanappa Huvappa Jadhav* (supra) this Court upheld the order of the Industrial Court setting aside fresh appointment not on the ground that the Appellate Authority was without jurisdiction to direct re-appointment but because punishment of dismissal was found to be disproportionate to the misconduct of absence of only 25 days. This is clear from the following findings in paragraph 9 of the judgment:

9. Perusal of the Order passed by the Appellate Authority would indicate that it has set aside the dismissal order dated 23 November 1994 and has thereafter ordered re-appointment of the Respondent in service. Furthermore in *Prakash Tulshiram Pardeshi* (supra), the Respondent therein faced serious charge of misappropriation whereas in the present case, the Respondent suffered the charge of remaining absent for 25 days. **In my view therefore, the punishment of dismissal from service was otherwise not commensurate with gravity of misconduct alleged and proved. Therefore, the Order passed by the Appellate Authority directing re-appointment was required to be interfered not because the Appellate Authority could not have done so, but only because the punishment of dismissal was not proportionate to the misconduct of absence of only 25 days.**

(emphasis supplied)

13) In the present case however, Respondent faced serious charge of misappropriation of Rs.36/- by driving 6 passengers in his Jeep, who would have otherwise purchased bus tickets by undertaking journey in MSRTC Bus. Therefore, the punishment of dismissal was actually not disproportionate to the proved misconduct. Despite this, the Appellate Authority showed leniency in favour of the Respondent and granted him fresh appointment. As held above, grant of fresh appointment is not really as a measure of penalty but as a matter of discretion vested in the First Appellate Authority, who is higher in rank than the appointing authority of Respondent. Therefore, grant of fresh appointment cannot really be linked with the punishment of dismissal earlier imposed on the Respondent.

14) Even otherwise the Respondent accepted the re-appointment offered to him without any demur. His case would therefore be covered by the principles enunciated by the judgment in ***Prakash Tulshiram Pardeshi*** (supra).

15) Another gross error committed by the Industrial Court was to direct imposition of punishment except discharge/dismissal/otherwise termination of service of the Respondent. If this direction is seen in the context of provisions of Discipline and Appeal Procedure of MSRTC, punishment of either reduction to lower pay, reversion, stoppage of promotion, withholding of increment or recovery from pay would become

imposable. It is inconceivable that an employee of MSRTC, who is held guilty of unauthorisedly transporting passengers by collecting fare from them, can be let off with imposition of insignificant penalty of withholding of increment, reduction of pay or stoppage of promotion. The Industrial Court has not interfered with finding of guilt and therefore it was erroneous on its part to direct imposition of penalty otherwise than discharge or dismissal. This is a fit case where the Industrial Court ought not to have interfered with award of fresh appointment to the Respondent despite holding him guilty of serious misconduct of transporting ST passengers in his Jeep by collecting fare from them. The Respondent is retained in service *albeit* as a fresh appointee. Grant of fresh appointment to him w.e.f. 20 January 2000 has enabled him to earn salary and allowances till his retirement. MSRTC otherwise does not have pension scheme at par with the State Government. He would still earn retirement benefits on the basis of the services rendered by him after his re-appointment.

16) The principle here is that the employee cannot plead mercy before the Appellate Authority, get back job as a fresh appointee and then turn around and challenge the fresh appointment by branding the same as punishment, incapable of being imposed under the MSRTC Discipline and Appeal Procedure. The Appellate Authority may take special circumstances of a case and decide to offer fresh appointment to an employee. Such action on the part of the Appellate Authority

cannot be termed as imposition of reduced penalty. Grant of alternate appointment is not in exercise of disciplinary powers but in exercise of inherent and discretionary power of the Appellate Authority to show mercy and appoint a dismissed employee as a fresh entrant in service.

17) In **Anil Vaijnath Abrad Vs. Divisional Traffic Superintendent, MSRTC**⁴ coordinate bench of this Court has enunciated twin principles of impermissibility to challenge the reappointment after joining service and lack of jurisdiction of Industrial Court to interfere in the order of reappointment. This Court relied on judgment of the Apex Court in **State of Punjab and Ors. v. Krishan Niwas**⁵, and held as under:

16. I find that the Respondent dismissed the Petitioner from service on 12.08.2000 by way of punishment. Thereafter, it passed the following order:

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“..... Taking into consideration all merits and demerits of the case we have decided to give him one chance to redeem himself in the services of the Corporation and show improvement in his attitude only on humanitarian grounds and as such, we set aside the orders issued by the earlier authorities and order as under:—He should be re-appointed as a fresh Art. A.”

17. It is in these circumstances that I conclude that the order of re-appointment cannot be termed as an order of punishment in the face of the fact that the punishment of dismissal was imposed and the service of the Petitioner had been brought to an end.

18. The Apex Court in the case of State of Punjab (supra) has concluded in paragraphs 2 to 5 as under:—

“2. This appeal, by special leave, arises from the judgment of the Punjab & Haryana High Court made on March 7, 1996 in Second Appeal No. 2662/95.

⁴ (2016) 3 BomCR 860

⁵ (1997) 9 SCC 31

3. The admitted facts are that the respondent was charged for an offence under Section 302 I.P.C. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 I.P.C. was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for 1-1/2 years. After undergoing the imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated March 1, 1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back-wages. The respondent accepted it and joined duty on June 5, 1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The Trial Court dismissed the suit. On appeal; the Addl. District Judge reversed the judgment of the trial Court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.

4. Learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on June 5, 1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil Court would not have gone into the merits and decided the matter against the appellants.

5. Accordingly, the appeal is allowed. The orders of the High Court and the appellate Court stand set aside and that of the trial Court stands confirmed. No costs."

(Emphasis is supplied).

19. In the light of the ratio laid down by the Apex Court in the case of the State of Punjab(supra), the Petitioner would, therefore, be precluded from questioning the fairness of his fresh appointment once he has accepted it without any protest or murmur and has joined duties. If he was aggrieved with the order of fresh appointment and imposition of punishment of dismissal from service, he could have questioned his order of dismissal before the Labour Court. The Industrial Court did not have jurisdiction to dealt with the order of dismissal in the light of the powers vested in it.

20. The powers of the Labour Court and the Industrial Court are defined in Sections 4, 5, 6 and 7 of the MRTU & PULP Act, 1971, which read as under:

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“4. Industrial Court

- (1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.
- (2) The Industrial Court shall consist of not less than three members, one of whom shall be the President.
- (3) Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

- (4) Every member of the Industrial Court shall be a person who is or has been a Judge or a High Court or is eligible for being appointed a Judge of such Court:

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

5. Duties of Industrial Court.

It shall be the duty of the Industrial Court:—

- (a) to decide an application by a union for grant of recognition to it;
- (b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;

- (c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;
- (d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;
- (e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;
- (f) to decide references made to it on any point of law either by any civil or criminal court and
- (g) to decide appeals under Section 42.

6 Labour Court

The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts;

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

7 Duties of Labour Court

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item I of Schedule IV and to try offences punishable under this Act.”

21. As such, even if it is presumed that the order of the Appellate Authority granting re-appointment/fresh appointment is to be set aside, the Petitioner would be relegated back to the earlier order which is an order of dismissal. At best, the Industrial Court, if were to allow the complaint, could have set aside the order of the Appellate Authority thereby, relegating the Petitioner to the order passed by the first Appellate Authority confirming the order of dismissal. In any case, if the order of fresh appointment is to be set aside, the Petitioner will have no option, but to challenge the order of dismissal which is a stage prior to the passing of the order by the second Appellate Authority.

22. In the light of the above and the law laid down by the Apex Court in the case of State of Punjab (supra), the Petitioner could not have questioned his fresh appointment after having accepted it and joined duties without any protest and without reserving a right to challenge the orders of the second Appellate Authority, the first Appellate Authority and the order of dismissal passed by the competent disciplinary authority and that too before the Industrial Court.

18) Therefore the Industrial Court could not have interfered in the order of fresh appointment granted by the first Appellate Authority.

19) Reliance by Mr. Mogre on ***T.J. Paul*** (supra) does not cut any ice. In that case, the Respondent therein was found to have committed minor misconduct as per rules of the Bank, which would have entailed penalties of warning, adverse remark or stoppage of increment. However, the Petitioner-Bank proceeded to impose penalty of removal from service, which was not one of the penalties enumerated in para 22(vii) of Bank of Cochin Service Code. Thus, despite being held guilty of minor misconduct, major penalty of removal was imposed. It is in the light of fact of that case that the Apex Court has set aside major penalty of removal. The judgment, in my view, has no application to the facts of the case.

20) Considering the overall conspectus of the case, I am of the view that impugned order passed by the Industrial Court is indefensible and liable to be set aside.

21) Petition accordingly succeeds. Judgment dated 11 September 2006 passed by the Member, Industrial Court, Kolhapur, in Complaint (ULP) No.48 of 2023 is set aside.

22) Petition is allowed in above terms. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]