

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

WRIT PETITION NO. 9892 OF 2024

Assistant Managing Director,
Pune Mahanagar Parivahan Mahamandal Ltd.

....*Petitioner*

: *Versus* :

Mr. Sikandar Aziz Maner

....*Respondent*

Mr. Rohit Sakhadeo, *for the Petitioner.*

Ms. Poonam Pal *i/by. Mr. Sachin Hande, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 17 April 2025.

P.C. :

1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, the petition is taken up for hearing and disposal.

2) The petition challenges judgment and order dated 3 July 2024 passed by the Industrial Court, Pune in Revision Application (ULP) No.34/2024, by which the Industrial Court has allowed the Revision and has stayed the order of dismissal dated 6 June 2024 till decision of the Revision Application (ULP) No. 21/2024.

3) Facts of the case, in brief, are that the Respondent has faced departmental enquiry in the form of chargesheet dated 18 November 2019 for the charge of issuing blank tickets to the passengers on the

pretext of printing error in the E-Ticket Machine and pocketing the fare paid by the passengers. After the charge was held to be proved, show cause notice was issued to the Respondent proposing to impose the penalty of dismissal from service. The Respondent challenged the show cause notice by filing Complaint (ULP) No. 146/2019 before the Labour Court. The Labour Court refused to stay the show cause notice and the order of the Labour Court came to be questioned by the Respondent by filing Revision Application (ULP) No.5/2022. By order dated 15 February 2022, the Industrial Court granted interim relief in favour of the Respondent restraining the Petitioner-employer from acting on show cause notice till final disposal of Complaint (ULP) No.146/2019. The Petitioner-employer assailed the order dated 15 February 2022 passed by the Industrial Court in Writ Petition No. 6834/2022. It appears that by the time Writ Petition No.6834/2022 came up for hearing, the Judge Labour Court passed order dated 8 March 2023 on preliminary issues and declared that the enquiry conducted against the Respondent was fair and proper and that the findings of the Enquiry Officer were not perverse. This Court took note of the said development and accordingly held that nothing survived to be adjudicated in Complaint (ULP) No.146/2019 as the Respondent had not challenged the order on the preliminary issue dated 8 March 2023. This Court therefore opined that what needed to be decided was only the issue of legality and proportionality of punishment based on the report of the Enquiry Officer and reply filed by the Respondent. This Court accordingly disposed of Writ Petition No.6834/2022 by order dated 25 July 2023, paragraph Nos. 8 to 12 thereof read thus:

8. In the circumstances, the petition stands allowed.

9. The impugned order passed by the learned Member, Industrial Court, stands quashed and set aside.

10. The petitioner-employer is at liberty to pass an appropriate order in accordance with the Rules.

11. Since the interim protection is in operation, in the event an adverse order is passed against the respondent-workman, the same shall not be given effect to, for the period of one week from the said order.

12. Complaint (ULP) No.146 of 20211 also stand disposed.

4) In pursuance of the order passed by this Court on 25 July 2023, the Petitioner-employer passed order dated 8 January 2024 dismissing the Respondent from service. However, the Petitioner-employer committed a mistake in not giving effect to the order of dismissal after a period of one week as directed by this Court in para-11 of the order dated 25 July 2023. On account of this mistake committed by the Petitioner-employer, Respondent filed Complaint (ULP) No.5/2024 and sought relief against the order of dismissal. The prayer for interim relief was rejected by the Labour Court by order dated 6 February 2024, which was challenged by the Respondent by filing Revision Application (ULP) No.21/2024 before the Industrial Court. By interim order dated 6 May 2024, the Industrial Court stayed the order of dismissal dated 8 January 2024. Consequently, the Respondent was reinstated in service by order dated 17 May 2024 w.e.f. 18 May 2024. The Petitioner-employer was advised to pass a fresh order of punishment on 6 June 2024 by cancelling the earlier dismissal order dated 8 January 2024. The Petitioner-employer did so. It cancelled the earlier dismissal order of 8 January 2024 and passed a fresh punishment order on 6 June 2024 once again dismissing the Respondent from service. This time, the Petitioner-employer corrected its mistake and followed the directives in para-11 in the order passed by this Court on 25 July 2023 and gave effect to the punishment of dismissal w.e.f. 14 June 2024 (*after one week*).

5) The Respondent challenged the fresh dismissal order dated 6 June 2024 by filing fresh Complaint (ULP) No.33/2024 and prayed for interim stay on dismissal order. The prayer for interim stay was however rejected by the Labour Court by order dated 14 June 2024, which became subject matter of challenge in Revision Application (ULP) No.34/2024 filed by the Respondent before the Industrial Court, Pune. By impugned order dated 3 July 2024, the Industrial Court has stayed the fresh dismissal order dated 6 June 2024 till decision of earlier Revision Application (ULP) No.21/2024.

6) I have heard Mr. Sakhdeo, the learned counsel appearing for the Respondent-employee and Ms. Pal, the learned counsel appearing for the Respondent-employee.

7) The findings recorded by the Industrial Court while passing impugned order dated 3 July 2024 are as under :

10. It appears from the office order of the respondent dated 06.06.2024, wherein it is stated that there was technical defect in the order of dismissal dated 08.01.2024 and hence said order is canceled and the complainant was asked to resume duties from 18.05.2024. It is also stated in said order dated 6.6.2024 that the complainant is dismissed from service from 06.06.2024 and as per order of Hon'ble High Court the said order of dismissal take effect after one week on 14.06.2024. However, it is quite apparent that order dated 08.01.2024 of dismissal issued by the respondent to the complainant was stayed by the Industrial Court in Revision Application (ULP) No. 21/2024 vide ad-interim order dated 06.05.2024 after hearing both the parties. It means that the order dated 08.01.2024 of dismissal is under challenge before the Industrial Court and the matter is sub-judice before the Court. Even then the respondent out and out without intimation and without permission of Industrial Court canceled the order of dismissal dated 08.01.2024 when it is sub-judice before the Industrial Court and there is no permission or order of the Industrial Court to cancel the order of dismissal dated 08.01.2024. It means that as per order of the Industrial Court, the order of dismissal dated 08.01.2024 is in existence as under challenge before the Court. Therefore, in such circumstances, passing of another order of dismissal dated 06.06.2024 when earlier order of dismissal dated 08.01.2024 is in existence amounts to illegality. So, prima facie the order of dismissal dated 06.06.2024 issued by

the respondent by canceling the order dated 08.01.2024 without any order of Court and without intimation to Court is illegal.

11. It appears that the learned Labour Court has not considered all the legal aspects and the fact that the order dated 08.01.2024 is under challenge and pending in Revision Application (ULP) No. 21/2024 and wrongly considered the order of dismissal dated 06.06.2024 while rejecting the application for interim relief. It is, therefore, necessary to interfere with the order of the learned Labour Court. I, therefore, answered Point No.1 for determination in the affirmative.

8) Thus, the only reason why the Industrial Court has proceeded to stay the fresh dismissal order dated 6 June 2024 is the conduct on the part of the Petitioner-employer in violating the order dated 25 July 2023 passed by this Court by not giving effect to the earlier dismissal order dated 8 January 2024 after a period of one week as directed in para-11 of the order dated 25 July 2023. However, what is missed by the learned Member of the Industrial Court is that the Petitioner-employer has corrected its mistake by withdrawing the order dated 8 January 2024. It has passed a fresh punishment order dated 6 June 2024 and gave effect to the same from 14 June 2024 i.e. after one week.

9) What is found to be objectionable by the learned Member of the Industrial Court is the fact that the earlier dismissal order dated 8 January 2024 was stayed by the Industrial Court in Revision Application (ULP) No.21/2024. The Industrial Court has felt that the Petitioner-employer ought to have taken permission of the Industrial Court before passing fresh dismissal order dated 6 June 2024.

10) In my view, the mistake once committed by the Petitioner-employer in not giving effect to the earlier dismissal order dated 8 January 2024 after period of one week cannot hound the Petitioner forever. The Petitioner-employer has corrected its mistake by

withdrawing its order dated 8 January 2024 and by passing fresh punishment order dated 6 June 2024. While imposing fresh punishment on 6 June 2024, the Petitioner-employer followed the directives issued by this Court in para-11 of the order dated 8 January 2024, and gave effect to the fresh punishment order after a period of one week.

11) What ought to have been appreciated by the learned Member of the Industrial Court is the nature of misconduct that is committed by the Respondent-employee rather on concentrating on technical aspects of mistake on the part of the Petitioner-employer in passing the earlier dismissal order dated 8 January 2024. In the present case, Respondent has faced the charge of pocketing the fare collected from the passengers by issuing them blank tickets under the pretext of printing error in the E-Ticket Machine. The charge is held to be proved in the enquiry and the punishment of dismissal is premised on such proved misconduct. The enquiry is already held to be fair and proper and the findings of the enquiry officer are held to be not perverse by the Labour Court. In such circumstances, it was not appropriate on the part of the Industrial Court to stay the punishment order during pendency of the earlier Revision Application (ULP) No. 21/2024. As a matter of fact, the earlier Revision Application (ULP) No.21/2024 has been rendered infructuous. In that Revision Application, order dated 6 February 2024 passed by the Labour Court refusing to stay the order dated 8 January 2024 was under challenge. Now order dated 8 January 2024 itself is not in existence as the same has been withdrawn by the Petitioner-employer. In that view of the matter, Revision Application (ULP) No.21/2024 has been rendered infructuous. There is nothing to be decided by the Industrial Court in Revision Application (ULP) No.21/2024. In my view, therefore the Industrial Court has committed a

grave error in staying the dismissal order dated 6 June 2024 during pendency of the Revision Application (ULP) No.21/2024.

12) Even otherwise, this is not a case where the punishment of dismissal could have been stayed either by the Labour Court or by the Industrial Court. In the event the dismissal is found to be illegal, the Labour Court is vested with necessary jurisdiction to award reinstatement, continuity and backwages to the Respondent. The enquiry is already held to be fair and legal by order dated 8 March 2023. Findings of enquiry officer are not perverse. Whether the punishment of dismissal from service is commensurate with the misconduct of pocketing the fare collected from the passengers by the Respondent is something which the Labour Court would decide in the pending complaint of unfair labour practice. Therefore, it is too premature for the Industrial Court to stay the dismissal order before the Labour Court decides the issue of proportionality and legality of punishment. In my view, therefore the impugned order dated 3 July 2024 passed by the Industrial Court is indefensible and liable to be set aside.

13) The petition accordingly succeeds and I proceed to pass the following order:

- (i) Order dated 3 July 2024 passed by the Member, Industrial Court, Pune in Revision Application (ULP) No.34/2024 is set aside.
- (ii) The Industrial Court shall pass a formal order of disposal of Revision Application (ULP) No.21/2024.
- (iii) The Labour Court shall decide Complaint (ULP) No.33/2024 uninfluenced by any observations made in the present order.

14) The petition is **allowed** in above terms. Rule is made absolute. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2025.04.22
14:23:42
+0530

[SANDEEP V. MARNE, J.]