

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4402 OF 2024

Datta Shankar Shinde

.....*Petitioner*

: Versus :

1. The General Manager,
The BEST Undertaking
2. Presiding Officer,
Industrial Tribunal

....*Respondents*

Mr. Sushan N. Mhatre, *for the Petitioner.*

Mr. P.M. Palshilkar *with Ms. Heena Shaikh i/b. M.V. Kini & Coi., for the Respondents.*

Petitioner-Mr. Datta Shankar Shinde present.

CORAM : SANDEEP V. MARNE, J.

DATED : 17 SEPTEMBER 2025.

P.C :

1) The petition challenges the judgment and order dated 14 September 2022 passed by the Learned Member, Industrial Court, Mumbai dismissing Revision Application (ULP) No.60/2021 and confirming the order on preliminary issues dated 20 November 2019 and final judgment and order dated 17 November 2021 passed by the Labour Court in Complaint (ULP) No.40/2019.

2) Petitioner was working as a Bus Conductor in Magathane Bus Depot in Traffic Department of Respondent-BEST. He came to be dismissed from service on 7 December 2018 after the charge levelled against him in the chargesheet dated 6 January 2018 of absenteeism was held to be proved. The enquiry was held to be fair and proper and findings of the Enquiry Officer were held to be not perverse by the Labour Court by order dated 20 November 2019. Thereafter, the complaint came to be dismissed by the Labour Court by judgment and order dated 17 November 2021. The Industrial Court has confirmed both the orders passed by the Labour Court.

3) I have heard Mr. Mhatre, the learned counsel appearing for the Petitioner who is nominated by High Court Legal Services Authority. I have also heard Mr. Palshikar, the learned counsel appearing for the Respondent-BEST.

4) Mr. Mhatre, at the outset, would invite my attention to the Circular dated 14 August 2025 issued by the Traffic Department introducing reinstatement policy for Bus Conductors/Bus Drivers dismissed on charge of remaining unauthorisedly absent. The reinstatement policy introduced vide Circular dated 14 August 2025 provides for reinstatement of Bus Drivers/Bus Conductors who have preferred departmental appeals against the order of dismissal. Only those Bus Conductors/Bus Drivers are to be reinstated who are below the age of 55 years and had completed minimum service of five years. It appears that Petitioner fulfills all conditions prescribed in Circular dated 14 August 2025, except filing of any departmental appeal against the dismissal order. It appears that Petitioner had directly approached Labour Court challenging the dismissal order without filing departmental appeal.

5) In my view, the benefit of Circular dated 14 August 2025 cannot be denied to the Petitioner only because he did not file departmental appeal. The spirit behind issuing the said circular is that Drivers and Conductors who have not indulged in serious misconduct and are dismissed only on account of absenteeism, are given an opportunity to serve the Respondent-BEST. Even otherwise, the penalty of dismissal was not warranted for absence of 22 days. Though Petitioner was a chronic case of indiscipline, in my view an opportunity deserves to be granted to him. However while directing reinstatement, I am not inclined to grant backwages to the Petitioner. I am also not inclined to grant benefit of continuity so as not to put financial burden on BEST which is already facing financial crunch. However for limited purpose of determining his retirement benefits, the entire period of his service from the date of appointment needs to be counted as continuous. Even the circular dated 14 August 2025 does not contemplate fresh appointment but envisages 'reinstatement'.

6) In view of the above, I proceed to pass the following order :

- (i) The judgment and order dated 14 September 2022 passed by the Learned Member, Industrial Court, Mumbai in Revision Application (ULP) No.60/2021 and final judgment and order dated 17 November 2021 passed by the Labour Court in Complaint (ULP) No.40/2019 shall stand modified to the extent that the Petitioner shall be reinstated in service within a period of 8 weeks without any backwages.

- (ii) The intervening period from the date of dismissal till reinstatement shall be computed only for the purpose of retirement benefits, including for gratuity.
 - (iii) Petitioner shall be subjected to medical fitness test and be reinstated in service subject to clearing of medical fitness test.
- 7) With the above directions, the petition is **partly allowed and disposed of.**

[SANDEEP V. MARNE, J.]