



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 428 of 2025

Divisional Controller,
Maharashtra State Road,
Corporation, Division Office,
Nagpur Road Bhandara.

... Petitioner

- Versus -

Shivshankar Haribhau Hatwar,
Aged about 47 years, Occu : Driver,
R/o Jamb, Tah. Mohadi,
Distt. Bhandara.

... Respondent

with

Writ Petition No. 1974 of 2025

Shivshankar s/o. Haribhau Hatwar,
Aged 53 yrs, Occ : Ex-Driver,
R/o Jamb, Tah. Mohadi,
Dist. Bhandara – 441 914.

... Petitioner

- Versus -

Divisional Controller
Maharashtra State Road Transport
Corporation, Division Office,
Nagpur Road, Bhandara - 441 904.

... Respondent

Mr. R. S. Charpe, Advocate for the petitioner in WP 428/2025 and for
respondent in WP 1974/2025
Mr. S. A. Nerkar, Advocate for the respondent in WP 428/2025 and for
petitioner in WP 1974/2025

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 02-07-2025

Date of pronouncing judgment : 04-07-2025

COMMON JUDGMENT

Heard.

2. Issue Rule, returnable forthwith. Mr. S. A. Nerkar, learned counsel waives service of notice for respondent in Writ Petition No. 428/2025. Mr. R. S. Charpe, learned counsel waives service of notice for the respondent in Writ Petition No. 1974/2025. With consent of learned counsel for the parties, the petitions are taken up for final hearing.

3. The employer – M.S.R.T.C. and employee have challenged the judgment dated 30-1-2024 passed by the Industrial Court, Bhandara in Revision (ULP) No. 1/2023. The Industrial Court partly allowed the revision filed by the employee. The order dated 13-9-2022 passed by the Labour Court, Bhandara in Complaint (ULP) No. 14/2018 was modified. The termination of service of employee with effect from 17-7-2018 was quashed and set aside. The employer was directed to reinstate the employee with 50% of back wages. The effect of modification is that the employee got benefit of 50% back wages, because the Labour Court had also set aside the order of termination and directed employer to reinstate the employee but without back wages.

4. The employer is aggrieved by the judgment passed by both the Courts below. According to employer, the order of termination is valid and legal and both the Courts below committed error of law.

5. As against, the employee is aggrieved by the finding to the extent of granting only 50% back wages. According to him, once the termination is held to be illegal, he is entitled for 100% back wages.

6. Having heard both sides and having gone through the material placed before me, what transpires is that employee was chargesheeted for misconduct, breach of administrative order and for appearing under the influence of liquor before the Enquiry Officer in another enquiry pertaining to an accident.

7. The charge-sheet was accordingly served upon the employee and was given opportunity to defend the charges. The Enquiry Officer found substance in the charges. The finding that employee was under the influence of liquor is supported by medical evidence. In the medical report, the contents of alcohol in the blood were found to be 0.051%. The Enquiry Officer then referred to the previous record of the employee and found that he was punished on twelve occasions. The punishment includes penalty, recovery of amount, withholding of annual increments etc. The Enquiry Officer was

of the view that since the employee appeared in the office under the influence of alcohol and considering his past record, the possibility of he is indulging into similar act cannot be ruled out and the life of passengers will be at stake, accordingly, recommended punishment of termination. The competent authority accepted the recommendation and passed an order of termination, which was challenged by the employee before the Labour Court.

8. The Labour Court found that enquiry conducted against employee was fair, proper and in terms of principles of natural justice. The Labour Court held that evidence on the point of employee being under the influence of liquor was writ large in the form of medical evidence and, therefore, the finding of Enquiry Officer was upheld. The Labour Court, however, while rendering a finding as to whether the Enquiry Officer's decision is perverse, took a view that the punishment of dismissal is disproportionate to the charge proved. In doing so, the Labour Court has mentioned that it has considered the service record. However, the judgment does not disclose that the punishment imposed on previous 12 occasions was considered by the Labour Court. According to Labour Court, the competent authority could have proposed minor punishment. Accordingly, Labour Court held that the finding recorded by the Enquiry Officer is perverse.

9. The Industrial Court took note of the fact that on the date of incident, the employee appeared in connection with another departmental enquiry before Divisional Traffic Officer Mrs. Kalmegh. The reporting officer suspected that he was under the influence of liquor. Mrs. Kalmegh then directed Traffic Inspector to take petitioner to General Hospital, Bhandara for medical examination, followed by a report showing what was suspected was correct. The Industrial Court was of the view that such action amounts to initiation of investigation against the employee.

10. The Industrial Court then took note of the fact that Mrs. Kalmegh has, in the capacity of disciplinary authority, issued charge-sheet and also acted as Enquiry Officer and recommended punishment of dismissal. She has played multiple roles. She was witness to the incident and also acted as judge. According to Industrial Court, her conduct is hit by maxim "*Nemo Debet esse judex in propria causa*" which means no one should be judge in his/her own cause. Accordingly, it was held that the enquiry is vitiated. The Industrial Court then discussed the issue of payment of back wages and held that employee should at least get 50% of back wages.

11. Learned counsel for the employer submits that the trial Court committed serious error of law by declaring the finding of

Enquiry Officer to be perverse. According to him, once the Labour Court was satisfied that opportunity was given to employee to defend the case and once the evidence on the point of employee attending office under the influence of liquor was found to be trustworthy, the Labour Court could not have gone into issue of proportionality of punishment to record the finding that Enquiry Officer's decision was perverse.

12. So far as Industrial Court's findings are concerned, learned counsel submits that merely because the Divisional Traffic Officer referred employee to medical examination cannot be the reason to jump to the conclusion that she has effectively dealt with the case in administrative capacity. The reporting officer suspected that the employee was under influence of liquor and, therefore, the Divisional Traffic Officer referred the employee to medical examination. Such act cannot be termed as an act in cause. He further submits that this plea was never taken by employee in enquiry. Accordingly, the employer has made a request to set aside the order passed by both the Courts below.

13. As against, learned counsel for the employee submits that both the Courts below committed an error of law in not granting 100% back wages. He submits that once the termination is held to be illegal, there was no reason why should the Court not direct the payment of

100% back wages. So far as the charge of attending office under the influence of liquor, the argument is that where the consumption is below 0.30ml, the person cannot be said to be under the influence of liquor.

14. In support, he has referred to the judgment of the Division Bench of this Court in the case of ***Smt. Ranjana wd/o. Anil Solanke Vs. State of Maharashtra and others*** in ***Writ Petition No. 4651/2019***. I have gone through the judgment. The Division Bench was dealing with a case where the petitioner therein was chargesheeted for the offences punishable under Sections 279 and 304A of the Indian Penal Code read with Section 184 and 185 of the Motor Vehicles Act (for short 'M.V. Act'). Section 185 provides for punishment for driving a vehicle under the influence of drugs. The provision itself provides that where the alcohol limit exceeds 30 mg per 100 ml of blood, the person will be guilty of driving the vehicle under the influence of drugs. In this context, the Division Bench referred to various other provisions of the M. V. Act and held that presence of 30 mg or more of alcohol per 100 ml is an essential requirement for an offence under section 185 of the M.V. Act. The finding of Division Bench is in context with the requirement of contents of alcohol to punish a person under Section 185. This judgment, to my mind, cannot be taken aid of to argue that the person

consuming alcohol below 30 ml cannot be said to be a person under the influence of liquor. Here is a case where the employee is chargesheeted for attending office under the influence of alcohol. The evidence on this point was against the employee. The argument, therefore, that the person consuming less than 30 ml of alcohol cannot be said to be under the influence of liquor is rejected.

15. So far as the competent authority acting as judge in her own cause is concerned, learned counsel for employee has referred to the judgment of the Supreme Court in the case of ***A. U. Kureshi Vs. High Court of Gujarat and another [(2009) 11 SCC 84]***. In the said case, the Judicial Officer of Gujarat Judicial Service was served with charge-sheet. The inquiry was conducted. The Officer was dismissed from service. He approached the High Court of Gujarat on judicial side. The proceedings were dismissed by the High Court. Accordingly, he approached the Supreme Court. The plea put forth was that one of the members of disciplinary committee, which dealt with the appellant's appeal, was one of the Judges on the Bench which heard the proceedings on judicial side. It is in this background, the Supreme Court referred to Latin maxim "*Nemo Debet esse judex in propria causa*" viz. no one should act as judge in his/her own cause and set aside the order passed by the High Court. In doing so, the Supreme Court

referred to yet another judgment wherein the Court reiterated the fundamental principles of jurisprudence that no man can be a judge in his own cause. The Supreme Court observed that the issue in such proceedings is not of actual bias but the fact whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision.

16. In my view, for invoking the aforesaid Latin maxim, one will have to show that the person conducting inquiry has effectively dealt with or participated in the decision making process. Here is a case where the Divisional Traffic Officer, in order to verify whether the employee has indeed appeared in the office under the influence of liquor has referred the employee to medical examination. Such an act cannot be said to be an act of effectively dealing with the subject matter of inquiry. There is nothing to show, as cannot be, that she has any role in the report of blood sample submitted by the Doctors. The case here is based on medical evidence. The Divisional Traffic Officer, who later on acted as Enquiry Officer, cannot be said to have acted in the cause. She has not suspected or alleged that the employee was under the influence of alcohol.

17. The Industrial Court, however, has opined that the Divisional Traffic Officer was witness to the incident. This finding

appears to me to be without application of mind. It is nobody's case that the Divisional Controller has either suspected or has witnessed the employee consuming alcohol. It is reporting officer, who suspected that the employee was under the influence of liquor. The Divisional Traffic Officer has just referred him to medical examination. She has, thus, not taken effective part in the cause because she had no control over the outcome of referring employee to medical examination. In fact, the judgment cited by learned counsel for employee itself indicates that to allege the person to have acted as judge in his own cause, he/she should have effectively participated in the earlier proceedings. It is only in such eventuality that one can apprehend bias at the hands of concerned authority.

18. Learned counsel for the employer is, therefore, right in contending that the finding rendered by the Labour Court as also the Industrial Court is contrary to settled principles of law. Learned counsel for the employer is further correct in contending that if at all, the Labour Court was of the view that punishment imposed is shockingly disproportionate, the appropriate remedy was to send back the proceedings before competent authority for imposing punishment. Instead, the Labour Court has set aside the order of dismissal on that count and directed reinstatement. In doing so, though the Labour Court

has mentioned that it has considered service record, it has not really dealt with punishment imposed on employee on previous 12 occasions. Most importantly, the competent authority apprehended risk in continuity with service of the employee, he, being driver of bus and considering past record and the findings in the present inquiry, the possibility of his indulging into such act was not ruled out. I find this apprehension as genuine. The employee, who dares to attend and enter in the chamber of Divisional Traffic Officer under the influence of liquor, can do so while driving as well.

19. The competent authority, therefore, was justified in noting that the possibility of similar such conduct cannot be ruled out and such act will only put passengers' life in risk. Accordingly, employer thought it proper to discontinue service. It is well settled that the authority to decide on the quantum of punishment lies with the disciplinary authority and Court should not interfere with such finding unless there is failure to record reasons or whether the case is of disproportionate punishment. Such is not the case here. The punishment appears to me to be in tune with the charges proved against the employee.

20. Resultantly, writ petition filed by the employer will have to be allowed whereas writ petition filed by the employee will have to be dismissed. Hence, following order.

ORDER

- (i) Writ Petition No. 428/2025 is allowed.
- (ii) Writ Petition No. 1974/2025 is dismissed.
- (iii) Orders passed by Labour Court, Bhandara in Complaint (ULP) No. 14/2018 dated 13-9-2022 and Industrial Court, Bhandara in Revision (ULP) No. 1/2023 dated 30-1-2024 are quashed and set aside. Complaint (ULP) No. 14/2018 is dismissed.
- (iv) Writ petitions are disposed of in above terms. No order as to costs.

(Anil L. Pansare, J.)

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