IN THE SUPREME COURT OF INDIACIVIL
APPELLATE JURISDICTION

CIVIL APPEAL NO.7403 OF 2021

Maharashtra State Road Transport Corporation ..Appellant (S)Versus

Dilip Uttam Jayabhay ..Respondent (S)

J U D G M E N T

1. Feeling aggrieved and dissatisfied with the impugnedjudgment and order dated 23.01.2020 passed by the High Court of Judicature at Bombay in Writ Petition No.8401 of 2003, by which the High Court has dismissed the said writ petition preferred by the appellant – Maharashtra State Road Transport Corporation (hereinafter referred to as "MSRTC") in which it challenged the order passed by the

Industrial Court in Revision Application (ULP) No.13 of 2002, directing reinstatement of respondent without back wages but with the continuity of service, original writ petitioner – MSRTC has preferred the present appeal.

2. The respondent herein was serving as a driver and plying passenger buses. That on 23.10.1992 when he was driving the bus, it met with an accident with a jeep coming from the opposite direction. It appears that instead of taking the bus to the left side, he took the bus to the extreme right which was the wrong side and as a result, the jeep and the bus collided. The accident resulted in death of four passengers on the spot and six passengers were seriously injured. The jeep was completely damaged with its radiator and engine board broken and damaged and the inside of the jeep was completely crushed. The impact of thecollision was so high that the jeep was pushed back byabout 25 feet. The bumper of the bus was also crushed.The driver of the jeep also sustained injuries. The respondent was subjected to disciplinary enquiry. On conclusion of enquiry he was dismissed from service.

He was also prosecuted for the offence under Section 279 of IPC. However, he came to be acquitted. (his acquittal shallbe dealt with herein below). The respondent challenged the order of dismissal before the Labour Court. The Labour Court upheld the order of dismissal. In a revision application the Industrial Tribunal considering the acquittal of the respondent in criminal proceedings and observing that the drivers of both the vehicles were negligent (contributory negligence), the Industrial Tribunal exercised powers under item No.1(g) of ScheduleIV of the Maharashtra

Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. ("MRTU" and "PULP Act, 1971" for short), and held that the order of dismissalis disproportionate to the misconduct proved. Before the Industrial Tribunal the respondent/workman did not press for the back wages. The Industrial Tribunal directed his reinstatement without back wages but with continuity of service.

3. Feeling aggrieved and dissatisfied with the order dated 31.07.2003 passed by the Industrial Tribunal ordering reinstatement without back wages but with continuity of service, the appellant preferred writ petition before the High Court. By the impugned judgment and order the High Court has not only dismissed the writ petition preferred by the appellant, but has also directed appellant to pay to the respondent back wages with effect from 01.11.2003 to 31.05.2018 i.e. which is the date of his superannuation.The High Court has also directed that the respondent shall also be entitled to retiral benefits on the basis of continuity of service with effect from date of his dismissal and till his superannuation.

4. Feeling aggrieved and dissatisfied with the impugnedjudgment and order passed by the High Court, dismissing the writ petition and confirming the order passed by the Industrial Tribunal setting aside the order of dismissal and ordering reinstatement with continuity of service and back wages, the MSRTC has preferred the present appeal.

5. Ms. Mayuri Raghuvanshi, learned counsel appearing on behalf of the appellant – MSRTC has vehemently submitted

that in the facts and circumstances of the case, the Industrial Court committed a grave error in interfering with the order of dismissal passed by the disciplinary authority on the ground that the same is shockingly disproportionateto the misconduct proved.

5.1 It is submitted that both, the High Court as well as theIndustrial Court have not at all considered and/or appreciated the difference between the disciplinary enquiryand the criminal proceedings.

5.2 It is submitted that the High Court as well as the Industrial Court had erred in relying upon the acquittal of respondentin criminal case. It is submitted that the Industrial Court and the High Court have failed to appreciate that the acquittal has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields andhave different objectives. Reliance is placed on the

decisions of this Court in cases of **Samar Bahadur Singh Vs. State of U.P. & Ors., (2011) 9 SCC 94** and **Union of**

India & Ors. Vs. Sitaram Mishra & Anr., (2019) 20 SCC 588.

6. Making the above submissions, it is prayed to dismiss the present appeal.

7. We have heard the learned counsel appearing on behalf of the respective parties at length.

8. At the outset, it is required to be noted that in the departmental proceedings the misconduct alleged against the respondent – driver of driving the vehicle rashly and negligently due to which the accident occurred in which four persons died has been proved. Thereafter, the disciplinary authority passed an order of dismissal, dismissing the respondent – workman from service. The Labour Court did not interfere with the order of dismissal by giving cogent reasons and after reappreciating the entire evidence on record including the order of acquittal passed by the criminal court. However, the Industrial Court though did not interfere with the findings recorded

by the disciplinary authority on the misconduct proved, interfered with the order of dismissal solely on the ground that punishment of dismissal is disproportionate to themisconduct proved and the same can be said to be to be unfair labour practice as per item No.1(g) of ScheduleIV ofthe MRTU & PULP Act, 1971. The same is not interfered with by the High Court.

8.1 Therefore, the short question which is posed for the consideration of this Court is whether in the facts and circumstances of the case the punishment

of dismissal can be said to be an unfair labour practice on the ground that the same was disproportionate to the misconduct proved and therefore the Industrial Court was justified in interfering with the order of dismissal and ordering reinstatement with continuity of service.

8.2 Having gone through the findings recorded by the enquiryofficer in the departmental enquiry and the judgment andorder passed by the labour court as well as the IndustrialCourt and even the judgment and order of acquittal passed by the criminal court, it emerges that when the respondent

was driving the vehicle it met with an accident with the jeep coming from the opposite side and in the said accident four persons died. From the material on record it emerges that the impact of the accident with the jeep coming from the opposite side was such that the jeep was pushed back

25 feet. From the aforesaid facts it can be said that the respondent – workman was driving the vehicle in such a great speed and rashly due to which the accident hadoccurred in which four persons died. Even while acquitting the accused – respondent – driver who was facing the trial under Sections 279 and 304(a) of IPC Criminal Court observed that the prosecution failed to prove that the incident occurred due to rash and negligent driving of the accused – respondent herein only and none else. Therefore, at the best even if it is assumed that even driver of the jeep was also negligent, it can be said to be a case of contributory negligence. That does not mean that the respondent – workman was not at all negligent. Hence, it does not absolve him of the misconduct.

8.3 Much stress has been given by the Industrial Court on the acquittal of the respondent by the criminal court. However,as such the Labour Court had in extenso considered the order of acquittal passed by the criminal court and did not agree with the submissions made on behalf of the respondent – workman that as he was acquitted by thecriminal court he cannot be held guilty in the disciplinary proceedings.

8.4 Even from the judgment and order passed by the criminal court it appears that the criminal court acquitted the respondent based on the hostility of the witnesses; the evidence led by the interested witnesses; lacuna in examination of the investigating officer; panch for the spot panchnama of the incident, etc. Therefore, criminal court held that the prosecution has failed to prove the case against the respondent beyond reasonable doubt. On the contrary in the departmental proceedings the misconduct of driving the vehicle rashly and negligently which caused accident and due to which four persons died has been established and proved. As per the cardinal principle of law

an acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different objectives. Therefore, the Industrial Court has erred in giving much stress on the acquittal of the respondent by the criminal court. Even otherwise it is required to be noted that the Industrial Court has not interfered with the

findings recorded by the disciplinary authority holding charge and misconduct proved in the departmental enquiry, and has interfered with the punishment of dismissal solely on the ground that same is shockingly disproportionate and therefore can be said to be an unfair labour practice as per clause No.1(g) of ScheduleIV of the MRTU & PULP Act, 1971.

8.5 Now so far as the order passed by the Industrial Courtordering reinstatement with continuity of service by invoking clause No.1(g) of ScheduleIV of the MRTU & PULP Act, 1971 is concerned, as per clause No. 1(g) only in a case where it is found that dismissal of an employee is for misconduct of a minor or technical character, without

having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment. Clause No.1 of ScheduleIV of the MRTU & PULP Act, 1971 reads as under:

"Schedule IV

1. To discharge or dismiss employees

(a) by way of victimisation;

(b) not in good faith, but in the colourable exerciseof the employer's rights;

(c) by falsely implicating an employee in a criminalcase on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absencewithout leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as toamount to a shockingly disproportionate punishment."

Applying clause No.1(g) of ScheduleIV of the MRTU & PULP Act, 1971, to the present case it cannot be said that the dismissal of the respondent was for misconduct of a minor or technical character, without having any regard to

the nature of the misconduct. The respondent – workman has been held to be guilty for a particular charge and particular misconduct. Even the past record of service of the respondent has not been considered by the Industrial Court. As per case of the appellant – MSRTC the respondent – workman was in service for three years and during three years' service tenure he was punished four times. Therefore, it cannot be said that the order of dismissal was without having any regard to the past recordof the service of the respondent. Therefore, in the facts and circumstances of the case, the Industrial Court wrongly invoked clause No.1(g) of ScheduleIV of the MRTU & PULP Act, 1971.

9. Even otherwise in the facts of the case when in the departmental enquiry, it has been specifically found that due to rash and negligent driving on the part of the driver – respondent, the accident took place in which four persons died, when the punishment of dismissal is imposed it cannot be said to be shockingly disproportionate punishment. In the departmental proceedings every aspect

has been considered. At the cost of repetition, it is observed that even the Industrial Court has not interfered with the findings recorded by the enquiry officer in the departmental proceedings. Therefore, in the facts and circumstance of the case, the Industrial Court committed a grave error and has exceeded in its jurisdiction while interfering with the order of dismissal passed by the disciplinary authority, which was not interfered by the Labour Court.

10. It is also required to be noted that before the Industrial Court the respondent – workman – driver admitted that after the order of dismissal he has been gainfully employed. Therefore also the reinstatement in service with continuityof service was not warranted.

11. Even the directions issued by the High Court in para 8 inthe impugned judgment and order directing the appellant to pay wages to the respondent – workman for the period from 01.11.2003 to 31.05.2018 also could not have been passed by the High Court in a writ petition filed by the appellant. It was not the petition filed by the workman –

respondent. Therefore, even otherwise the directions issued in para 8 of the impugned judgment and order cannot be sustained as the same is beyond the scope and ambit ofthe controversy before the High Court.

12. In view of the above and for the reasons stated above, the present Appeal Succeeds. The judgment and order passed by the Industrial Court in Revision Application (ULP) No.13 of 2002 and the impugned judgment and order passed bythe High Court in Writ Petition No.8401 of 2003 are hereby quashed and set aside and the judgment and Award passed by the Labour Court in Complaint (ULP) No.96 of 1993 is hereby ordered to be restored. Consequently, the order of dismissal passed by the disciplinary authority dismissing the respondent – workman from service is hereby upheld. The present appeal is allowed to the aforesaid extent. There shall be no order as to costs.

New Delhi, January 03, 2022

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