A MAHARASHTRA STATE ROAD TRANSPORT CORPORATION

v.

DILIP UTTAM JAYABHAY

(Civil Appeal No. 7403 of 2021)

B JANUARY 03, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Maharashtra Recognition of trade unions and prevention of unfair labour practices Act 1971: Departmental proceedings – Misconduct proved against respondent-driver of driving the vehicle rashly and negligently due to which the accident occurred in which four persons died – Disciplinary authority passed order of dismissal from service – Labour Court did not interfere with the order of dismissal by giving cogent reasons and after re-appreciating 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 disciplinary authority on misconduct proved, interfered with order of dismissal solely on the ground that punishment of dismissal was disproportionate to misconduct proved and the same was unfair labour practice as per item No.1(g) of Schedule-IV of the Act of 1971 – The same was not interfered with by the High Court – On appeal, held: The findings of enquiry officer and order passed by Labour Court and Industrial Court showed that respondent-workman was driving the vehicle in such a great speed and rashly due to which the accident had occurred in which four persons died – Even while acquitting respondent-driver who was facing the trial under ss.279 and 304(a) of IPC, Criminal Court observed that prosecution had failed to prove that the incident occurred due to rash and negligent driving of the respondent only and none else – Therefore, even if it is assumed that 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 did not absolve him of the misconduct – 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 erred

in giving much stress on the acquittal of the respondent by the criminal court – Applying clause No.1(g) of Schedule-IV of the Act, 1971, to instant 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 – Even the past record of service of the respondent was not considered by the Industrial Court – As per case of the appellant, 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 record of the service of the respondent – Therefore, in facts and circumstances of the case, the Industrial Court wrongly invoked clause No.1(g) of Schedule-IV of the Act, 1971, and wrongly interfered with the order of dismissal.

Allowing the appeal, the Court

HELD: 1. The findings recorded by the enquiry officer in the departmental enquiry and the judgment and order passed by the labour court as well as the Industrial Court and even the judgment and order of acquittal passed by the criminal court show 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 had occurred in which four persons died. Even while acquitting the 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. [Para 10.2][156-E-H; 157-A]

2.1 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 the criminal court he cannot be held guilty in the disciplinary proceedings. 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 Schedule-IV of the MRTU & PULP Act, 1971. [Paras 10.3 10.4][157-B-G]

2.2 Applying clause No.1(g) of Schedule-IV 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 record of the service of the respondent. Therefore, in the facts and circumstances of the case, the Industrial Court wrongly invoked clause No.1(g) of Schedule-IV of the MRTU & PULP Act, 1971. [Para 10.5][158-E-H]

3. 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. 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. [Para 11][159-A-C]

4. 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 continuity of service was not warranted. Even the directions issued by the High Court 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 of the controversy before the High Court. [Paras 12, 13][159-C-E]

Samar Bahadur Singh v. State of U.P. & Ors. **(2011) 9 SCC 94 : [2011] 11 SCR 136;** *Union of India & Ors. v. Sitaram Mishra & Anr.* **(2019) 20 SCC 588 – referred to.**

A **Case Law Reference**

[2011] 11 SCR 136	**referred to**	**Para 5.2**
(2019) 20 SCC 588	**referred to**	**Para 5.2**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.7403 of
B 2021.

From the Judgment and Order dated 23.01.2020 of the High Court of Judicature at Bombay in Writ Petition No.8401 of 2003.

Ms. Mayuri Raghuvanshi, Vyom Raghuvanshi, Ms. Purvat Wali, Advs. for the Appellant.

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Nishanth Patil, Ms. Malvika Kala, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

D 1. Feeling aggrieved and dissatisfied with the impugned judgment 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
E 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
F 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
G damaged and the inside of the jeep was completely crushed. The impact of the collision was so high that the jeep was pushed back by about 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
H was also prosecuted for the offence under Section 279 of IPC. However,

he came to be acquitted. (his acquittal shall be 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 Schedule-IV 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 dismissal is 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 impugned judgment 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 disproportionate to the misconduct proved.

5.1 It is submitted that both, the High Court as well as the Industrial Court have not at all considered and/or appreciated the difference between the disciplinary enquiry and 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 respondent in 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 and have 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**.

5.3 It is further submitted that in fact the Labour Court rightly held that acquittal in the criminal case would not come to the rescue of the respondent as the acquittal in the criminal case is on the failure of the prosecution to examine investigating officer, panch for spot panchnama, etc., and to prove their case beyond doubt. It is submitted that on the other hand in the departmental proceedings misconduct has been proved. It is therefore submitted that the Industrial Court and the High Court ought not to have given undue importance to the acquittal of the respondent in the criminal case.

5.4 It is further submitted that even otherwise in the facts and circumstances of the case when in the vehicle accident four persons died due to the negligence on the part of the respondent in driving the vehicle carelessly and negligently and during his three years' tenure he was punished four times earlier, it cannot be said that the punishment of dismissal was shockingly disproportionate. It is submitted that in the facts and circumstances of the case, the case would not fall under item No.1(g) of Schedule-IV of the MRTU and PULP Act, 1971.

5.5 It is further submitted that even the Industrial Court specifically observed in the order that the misconduct is not of a minor or technical character. It is further submitted that the Industrial Court also observed that there is no victimization and the action of the MSRTC cannot be said to be not in good faith. The Industrial Court also observed that the MSRTC has neither falsely implicated the complainant – respondent nor has it dismissed the respondent for patently false reasons and therefore respondent failed to prove the alleged unfair labour practice as per the MRTU and PULP Act, 1971. It is submitted that however the Industrial Court has interfered with the order of punishment/dismissal imposed by the disciplinary authority invoking clause 1(g) of Schedule-IV of MRTU and PULP Act, 1971.

5.6 It is further submitted that even the respondent admitted that he was gainfully employed after his dismissal. Therefore, the order of reinstatement was not warranted at all.

5.7 It is further submitted by the learned counsel appearing on behalf of the appellant that even otherwise the directions issued by the High Court in the impugned judgment and order in para 8 directing the appellant – MSRTC to pay to the respondent back wages with effect from 1st November, 2003 to 31st May, 2018, could not have been passed in a petition filed by the appellant – MSRTC. It is submitted therefore that such an order is as such beyond the scope of the writ petition before the High Court.

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

7. Shri Nishanth Patil, learned counsel appearing on behalf of the respondent has supported the judgment and order passed by the Industrial Court and confirmed by the High Court.

7.1 It is submitted that in the facts and circumstances of the case when the Industrial Court found the order of dismissal disproportionate to the misconduct proved, the same can be said to be an unfair labour practice as per item No. 1(g) of Schedule-IV of the MRTU & PULP Act, 1971. Thus the Industrial Court rightly interfered with the order of dismissal and the same is rightly confirmed by the High Court.

7.2 It is contended that in the present case as such it was not the fault on the part of the respondent – driver. That the jeep driver coming from the opposite side was on the wrong side of the road and the respondent tried to avoid the accident. It is submitted that the criminal court found that even the jeep driver was also negligent and considering the fact the criminal court acquitted the respondent – driver, the judgment and order passed by the Industrial Court, ordering reinstatement without back wages but with continuity of service does not warrant any interference. It is submitted therefore that the High Court rightly did not interfere with the judgment and order passed by the Industrial Court ordering reinstatement without back wages.

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

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

A 10. 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 B with the order of dismissal by giving cogent reasons and after re-appreciating 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 C the ground that punishment of dismissal is disproportionate to the misconduct proved and the same can be said to be to be unfair labour practice as per item No.1(g) of Schedule-IV of the MRTU & PULP Act, 1971. The same is not interfered with by the High Court.

10.1 Therefore, the short question which is posed for the D 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. E

10.2 Having gone through the findings recorded by the enquiry officer in the departmental enquiry and the judgment and order passed by the labour court as well as the Industrial Court 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 F 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 G speed and rashly due to which the accident had occurred 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 H

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.

10.3 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 the criminal court he cannot be held guilty in the disciplinary proceedings.

10.4 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 Schedule-IV of the MRTU & PULP Act, 1971.

10.5 Now so far as the order passed by the Industrial Court ordering reinstatement with continuity of service by invoking clause No.1(g) of Schedule-IV 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

A disproportionate punishment. Clause No.1 of Schedule-IV of the MRTU & PULP Act, 1971 reads as under:-

"Schedule IV

1. To discharge or dismiss employees-

B (a) by way of victimisation;

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

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

C (d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice

D 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

E of the employee, so as to amount to a shockingly disproportionate punishment."

Applying clause No.1(g) of Schedule-IV 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

F 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,

G it cannot be said that the order of dismissal was without having any regard to the past record of the service of the respondent. Therefore, in the facts and circumstances of the case, the Industrial Court wrongly invoked clause No.1(g) of Schedule-IV of the MRTU & PULP Act, 1971.

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11. 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.

12. 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 continuity of service was not warranted.

13. Even the directions issued by the High Court in para 8 in the 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 of the controversy before the High Court.

14. 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 by the 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.

Devika Gujral Appeal allowed.