

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2009
(Arising out of SLP(C) No. 5594/2008)

Subhash

...Appellant

Versus

The Divisional Controller,
Maharashtra State Road Transport
Corporation & Anr.

...Respondents

JUDGEMENT

R.M. Lodha, J.

Leave granted.

2. Whether the departmental appellate authority was justified in ordering fresh appointment to the appellant while setting aside the order of dismissal from service or it ought to have ordered reinstatement with continuity of service and full back wages? This is the question that falls to be determined in this appeal by special leave.

3. Subhash Kondiba Sontakke – the appellant – came to be employed as driver in 1980 with Maharashtra State Road Transport Corporation (for short, 'Corporation'). He was made permanent in 1985. On September 28, 2000, the appellant was on duty on Beed-Dharur route. While driving bus (MH-20-D-4332) on that route on that day, it is alleged that the bus ramped on the railing of the bridge near Chinchavan village due to rash and negligent driving of the appellant and that resulted in damage to the bus. The Transport Officer, Beed, held an enquiry into the accident and after receipt of the report, the disciplinary authority issued charge-sheet to the appellant on November 20, 2000. The disciplinary authority also appointed Inquiry Officer to enquire into the charge(s) against the appellant.

4. The appellant responded to the charge-sheet and denied the allegations made therein. His defence was that the accident occurred due to mechanical failure and breakage of rear spring.

5. The Inquiry Officer, after conclusion of the enquiry, held that charges were proved against the appellant. The disciplinary authority, upon receipt of the enquiry report, issued notice to the appellant to show cause as to why he should not be dismissed from service and after getting the response from the appellant, vide order dated April 16, 2001, dismissed the appellant from service.

6. The appellant challenged the order of dismissal by filing departmental appeal before the First Appellate Authority. The First Appellate Authority decided the appeal on May 21, 2001 whereby he set aside the order dismissing the appellant from service and directed that the appellant be appointed afresh without any monetary benefits for the past service.

7. The appellant, consequent upon the order of the First Appellate Authority, joined his duties on June 4, 2001 reserving his right to challenge that order denying him reinstatement with continuity of service and back wages.

8. On June 16, 2001, the appellant preferred appeal before 2nd Appellate Authority. The departmental 2nd appeal was dismissed on March 20, 2002.

9. The appellant then filed a complaint under Section 28 r/w item nos. 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'Act, 1971') before the Industrial Court, Aurangabad. The said complaint was dismissed by Industrial Court on October 15, 2005, inter alia, holding that the order of First Appellate Authority warranted no interference.

10. The appellant challenged the order of the Industrial Court in a writ petition before the High Court of Judicature at Bombay, Bench at Aurangabad. The Single Judge did not find any merit in the writ petition and dismissed the same on October 15, 2007.

11. That there was negligence on the part of the appellant in driving the bus on September 28, 2000 on Beed-Dharur route and as a result of which the bus ramped on the railing of the bridge resulting in damage to the bus is not in

dispute. Thus, the appellant's misconduct to that extent is amply established. As a matter of fact, there is no challenge to the said finding on behalf of the appellant. It also appears from the impugned order that during his service tenure of about 21 years, the appellant has been punished twice. However, the fact of the matter is that the First Appellate Authority, after noticing that in the accident none of the passengers was injured and considering the past record of the appellant held that it was appropriate to set aside the order of dismissal from service. He, accordingly, set aside the order of dismissal and ordered that fresh appointment be given to the appellant but without giving any benefit for the past service. It is the later part of this order that requires little modification by us. In our judgment, looking to all relevant aspects and to render substantial justice, it is appropriate that the order of the First Appellate Authority directing fresh appointment of the appellant be modified by ordering his reinstatement with continuity of service but without back wages. This would be commensurate with the delinquency of the appellant. In the interest of justice and fair play, denial of back wages for the entire period from the date of dismissal until

his rejoining the duties would be proper punishment.

12. The appeal is, accordingly, allowed in part to the extent indicated above. The order of the First Appellate Authority dated May 21, 2001 is modified and it is observed that appellant would be treated to have been reinstated with continuity in service but without back wages. The parties will bear their own costs.

.....J
(Tarun Chatterjee)

.....J
(R. M. Lodha)

New Delhi
September 17, 2009.