IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8566 OF 2006

Mr. Ananda Ramchandar Salunkhe
Age 47, Occ. Unemployed
Kavalapur, Taluka : Miraj,
District : Sangli. …. *Petitioner*

-Versus-

Maharashtra State Road Transport Corpn.
Sangli Division, Sangli (through its
Divisional Traffic Superintendent …. *Respondent*

Ms. Seema Sarnaik, Senior Advocate *i/b Mr. Anant Vadgaonkar, for the Petitioner.*

Ms. Pinky M. Bhansali *with Ms. Dharni Jain, for the Respondent-MSRTC.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 30 January 2025.
Pronounced On : 11 February 2025.

JUDGMENT :

1) Petitioner, an ex-conductor of Maharashtra State Road Transport Corporation has filed this petition challenging the judgment and order dated 8 March 2001 passed by the Labour Court, Sangli dismissing Complaint (ULP) No.51/1998, in which he had challenged the order of his dismissal from service dated 10 March 1998. The order of the Labour Court has been confirmed by the Industrial Court, Sangli by dismissing Petitioner's Revision Application (ULP) No.49/2004 vide

judgment and order dated 11 August 2006, which is also subject matter of challenge in the present petition.

2) Petitioner was appointed as Conductor in Maharashtra State Road Transport Corporation (MSRTC) in the year 1989 on daily wages. He was confirmed in service in the year 1995. On 14 July 1996, he was deputed to work as Conductor in the bus No. 1059 of MSRTC on Sangli to Jat route. The bus was checked at Kavathe Mahankal bus station by the checking squad consisting of three checking officers. Based on the report submitted by the checking squad, chargesheet was issued to the Petitioner on 5 August 1996 alleging two charges viz. (i) that one passenger was detected without ticket from whom the Petitioner had already collected the fare and (ii) Petitioner was detected with excess of Rs.30.25/-. Based on the said charges, enquiry was conducted in which the concerned passenger apparently did not remain present. MSRTC however examined one of the members of the checking squad in the enquiry. The witness was cross-examined by the Petitioner based on the evidence recorded in the enquiry. The Enquiry Officer submitted report submitting that the charges levelled against the Petitioner were proved and after considering his past misconduct, he proposed imposition of penalty of dismissal from service. Accordingly, Petitioner was served with show cause notice dated 21 February 1998 proposing to impose the penalty of dismissal from service. Petitioner has submitted his reply to the show cause notice on 26 February 1998. The Disciplinary Authority thereafter proceeded to pass order dated 10 March 1998 imposing the penalty of dismissal from service on the Petitioner.

3) Petitioner filed Complaint (ULP) No. 51/1998 before the Labour Court, Sangli challenging its dismissal order. In that complaint, the Labour Court passed interim order dated 14 September 1998 directing MSRTC to reinstate him during pendency of the complaint. MSRTC preferred Revision Application (ULP) No. 249/1998 before the Industrial Court, Solapur challenging the interim order dated 14 September 1998. The Revision Application was however dismissed on 21 December 1998. MSRTC thereafter filed Writ Petition No. 1806/1999 in this Court challenging the orders of the Labour and Industrial Courts. This Court recorded consent of both the parties by order dated 6 July 2000 and set aside the interim order of the Labour Court as confirmed by the Industrial Court and directed the Labour Court to decide the Complaint (ULP) No. 51/1998 expeditiously within a period of 6 months.

4) The Labour Court thereafter passed order dated 22 November 2000 answering the preliminary issue relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer against the Petitioner by holding that the enquiry was fair and proper and that there was no perversity in the findings of the Enquiry Officer. Petitioner challenged order dated 22 November 2000 on preliminary issue before the Industrial Court, Kolhapur by filing Revision Application (ULP) No. 211/2000, which came to be dismissed by order dated 16 January 2001. Petitioner approached this Court by filing Writ Petition No. 829/2001, which came to be dismissed by order dated 14 February 2001. This Court however observed that all contentions raised by the Petitioner in the petition about fairness in the enquiry and

perversity in the findings were left open to be decided if Petitioner still felt aggrieved by the final order of the Labour and Industrial Courts. The Labour Court thereafter proceeded to decide the remaining issues by its final judgment and order dated 8 March 2001 and dismissed Petitioner's complaint. Petitioner applied for review of the final judgment and order dated 8 March 2001 by filing Misc. (ULP) No.3/2001, which came to be dismissed by the Labour Court by order dated 1 July 2004. Petitioner thereafter filed Revision Application (ULP) No.49/2004 in Industrial Court, Sangli, which came to be dismissed by judgment and order dated 11 August 2006. Petitioner has accordingly filed the present petition being aggrieved by the orders passed by the Labour and Industrial Courts. By order dated 23 January 2007, this Court admitted the petition. The petition is called out for final hearing.

5) Ms. Sarnaik, the learned senior advocate appearing for the Petitioner would submit that the Labour Court has erred in dismissing Petitioner's complaint without appreciating the fact that there is absolutely no evidence on record to hold him guilty of the charges. She would submit that MSRTC did not examine the concerned passenger in the enquiry and in absence of his deposition, it was impossible to hold the charge of the said passenger paying the fare to the Petitioner and the Petitioner not issuing ticket to him. That only the concerned passenger was the best person to lead evidence in support of the allegation of payment of fare and failure on the part of the Petitioner to issue ticket. She would submit that since MSRTC failed to examine the passenger, Petitioner initially filed Petitioner's Affidavit in the Labour Court and examined him as a witness before the Labour Court, who

gave evidence that Petitioner had issued ticket to him and had also refunded the remaining change amount to him. She would submit that the evidence led by the passenger before the Labour Court conclusively disproves the first charge levelled against the Petitioner. Ms. Sarnaik would submit that this Court had specifically kept open the issue of fairness in the enquiry while disposing off Writ Petition No. 1806/1999 and that therefore the Petitioner was entitled to lead evidence before the Labour Court.

6) Ms. Sarnaik would further submit that there is inherent defect in the enquiry and the dismissal order since the same authority issued chargesheet and conducted enquiry and issued show cause notice and passed dismissal order. That it is impermissible for the same person to perform different roles in the domestic enquiry and on that count, the findings recorded in the enquiry as well as the dismissal order are vitiated. In support, she would rely upon judgment of this Court in ***Maharashtra State Road Transport Corporation, Wardha Versus. Rajendra Mohanlal Chhangani***[1].

7) Ms. Sarnaik would further submit that there is gross violation of principles of natural justice during the course of conduct of enquiry. That Petitioner was not provided with copy of the way-bill. That upon subsequent perusal of the way-bill, it is transpired that both the charges of failure to issue ticket to the passenger as well as detection of excess cash is clearly disproved. She would take me through the concerned way-bill to demonstrate as to how both the charges are

[1] Writ Petition No. 6653/2019 decided on 22 October 2019 (Bench at Nagpur).

clearly disproved. Ms. Sarnaik would accordingly submit that the finding of guilt recorded in the enquiry was erroneously upheld by the Labour and the Industrial Courts, whose findings are clearly perverse and liable to be set aside. She would accordingly pray for setting aside the dismissal order of the Petitioner.

8) The petition is opposed by Ms. Bhansali, the learned counsel appearing for MSRTC. She would submit that the Labour and Industrial Courts have concurrently upheld the order of dismissal of Petitioner from service. She would submit that the findings with regard to fairness in the enquiry and perversity in the findings have also attained finality on account of dismissal of Writ Petition No. 1806/1999 on 6 July 2000. That therefore it was impermissible for the Petitioner to lead any evidence in addition to the one appearing before the Enquiry Officer. That MSRTC earnestly attempted to examine the passenger in the enquiry by issuing him notice. That the passenger however refused to participate in the enquiry. That the checker who was part of the checking squad has been examined in the enquiry, who has given evidence about all the events occurring at the time of checking the bus. That the witness has proved the check report reflecting that the Petitioner had misconducted in not issuing ticket to the passenger despite collecting the fare as well as possessing excess cash. She would submit that there are inconsistencies in the version of the passenger in his various statements recorded at different times and that therefore it is otherwise dangerous to rely upon such inconsistent evidence of the passenger. She would submit that the charges levelled against the Petitioner are of serious nature amounting to corruption and since the

charges are concurrently proved at three levels of Enquiry Officer, Labour Court and Industrial Court, this Court would be loathe in interfering in the said findings by undertaking the exercise of re-appreciation of evidence. She would submit that the past service record of the Petitioner was riddled with misconduct on as many as on eight different occasions. That therefore there is no warrant for interference in the orders passed by the Labour and the Industrial Courts. She would pray for dismissal of the Petition.

9) Rival contentions of the parties now fall for my consideration.

10) Petitioner faced two charges in the domestic enquiry initiated against him vide chargesheet dated 5 August 1996. The charges emanate out of the Inspection Report of the checking squad which checked Petitioner's bus on 14 July 1996. The bus of the Petitioner was checked at Kavathe Mahankal bus station and the checking squad found that one passenger was without ticket. The without ticket passenger, Rangrao Bapurao Kulkarni was travelling from Sangli to Kavathe Mahankal and informed the checking squad that he had handed over note of Rs.50/- to the Petitioner for purchase of the ticket from Sangli to Kavathe Mahankal and that the Petitioner returned to him the amount of Rs.37.75/-, but did not issue ticket till the bus reached Kavathe Mahankal. The checking squad therefore collected unpunched ticket No. 467088 of Rs.12.25/- for excess amount. The checking squad thereafter counted the cash of the Petitioner and compared the same with the tickets sold by him and it was found that

Rs.30.25/- was detected excess with the Petitioner which the checking team deposited in the S.T. Account by issuing a receipt. Accordingly, two charges were levelled against the Petitioner of (i) failure to issue ticket to the passenger-Rangrao Bapurao Kulkarni despite collecting fare from him and (ii) detection of Rs.30.25/- excess in S.T. cash. It appears that the checking squad recorded Petitioner's statement on 14 July 1994 in which he stated that he inadvertently did not issue ticket to the passenger due to rush of passengers in the bus. So far as excess cash is concerned, he gave explanation of dealing mistake on account of several passengers presenting the notes of Rs.100/- and Rs.50/- and non-availability of change to return the balance amounts. It appears that the checking squad also recorded statement of the passenger-Rangrao Bapurao Kulkarni on 14 July 1996 in which he emphatically stated that he had paid amount of Rs.50/- to the Petitioner after boarding the bus and that the Petitioner had returned amount of Rs.37.75/- to him, but did not issue him ticket till the bus reached Kavathe Mahankal.

11) In the domestic enquiry, it appears that MSRTC attempted to examine Rangrao Bapurao Kulkarni by issuing him notice dated 13 March 1997, copy of which has been placed on record by the Petitioner alongwith his compilation. However, it appears that the passenger remained absent for enquiry on 19 March 1997. In the inquiry, Shri. P.S. Deshmukh, Traffic Inspector who headed the checking squad on 14 July 1996 was examined. Mr. Deshmukh led evidence about the check report prepared by him, as well as the factum of one ticketless passenger being detected in the bus in addition to detection of

Rs.30.25/- excess with the passenger. Mr. Deshmukh has been cross-examined by the Petitioner.

12) Thus, this is not a case involving total absence of evidence as the person checking the bus on the relevant date has been examined in the enquiry. Ms. Sarnaik has contended that the finding of guilt is vitiated on account of failure to examine the passenger-Rangrao Bapurao Kulkarni. The law in this regard appears to be well settled by the judgment of the Apex Court in ***State of Haryana Versus. Rattan Singh***[2]**.** In the case before the Apex Court, the Respondent therein functioned as a Conductor on the bus of State Transport Undertaking. The bus was inspected by the Inspector who detected that several persons in the bus had alighted without tickets and 11 additional passengers in the bus were found without tickets. After conduct of the domestic enquiry, services of the Respondent were terminated which was subject to challenge in Civil Court. The Trial Court set aside the termination on the ground of non-examination of 11 passengers who were found ticketless in the enquiry in the bus. The Appellate Court confirmed the order of the Trial Court and the High Court dismissed the Second Appeal. When the proceedings reached the Apex Court, it held that the strict and sophisticated rules of evidence under the Indian Evidence Act do not apply to domestic enquiries and all materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The Apex Court accordingly held that that there was 'some evidence' in the form of deposition of Inspector of the Flying Squad, which was

[2] (1977) 2 SCC 491

sufficient to sustain the findings of guilt. The Apex Court held in para-4 as under :

> 4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. **There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.** It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. **However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded.** The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. **We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent.** Therefore, we are unable to hold that the order is invalid on that ground.
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> *(emphasis and underlining supplied)*

13) In my view, the facts and circumstances of the present case are almost similar to the one involved in ***Rattan Singh*** (supra). The only difference, which in fact goes against the Petitioner, is that the relevant rules applicable in the case of ***Rattan Singh*** required mandatory

recording of statements of the passengers which was not done in that case. In the present case, the Inspector has recorded the statement of passenger-Rangrao Bapurao Kulkarni. Following the law expounded by the Apex Court in ***Rattan Singh***, I am unable to hold that non-examination of the passenger would vitiate the finding of guilt. I have followed the dictum of the Apex Court judgment in ***Rattan Singh*** in ***MSRTC Versus. Mr. Raghu Deu Mongal***[3] which also involved similar facts where MSRTC had examined only the Inspector of Flying Squad and not the passenger. Relying on the judgment in ***Rattan Singh*** this Court held in paras-5 and 6 as under :

> 5. In my view, the Checker who checked the bus has been examined in the enquiry. He has given evidence about checking the bus and interception by him of one ticketless passenger in the bus. Therefore, allegation of permitting a ticketless passenger to travel in the bus is clearly proved by direct evidence of the Checker. So far as payment of fare of Rs.3/- by the passenger to Respondent is concerned, the evidence of the Checker is hearsay. However, the Checker did record statement of the passenger and produced the same in the enquiry. He led evidence of recording of the statement. In domestic enquiries, hearsay evidence is not allergic as held by the Apex Court in ***State of Haryana vs. Rattan Singh***, 1977 (2) SCC 492 in which it is held in paragraph 4 as under:
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> x x x
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> 6. Respondent was given an opportunity to cross-examine the Checker during the course of enquiry. It transpired during the course of enquiry that there were only five passengers in the bus, out of whom one was without ticket. Therefore, this is not a case where Respondent was unable to issue ticket on account of rush in the bus. It has also come in evidence that the distance between the point at which the passenger boarded the bus and the point at which bus was checked was 6.4 k.m. Thus, Respondent had sufficient time to issue ticket to the passenger. Considering the nature of evidence available on record, the charge of permitting ticketless passenger to travel as well as misappropriation of amount of Rs.3/- is clearly established.

[3] Writ Petition No. 6808/2004 decided on 9 October 2024.

14) Ms. Sarnaik would then rely upon evidence of the passenger-Shri. Kulkarni recorded before the Labour Court. Firstly, I have some serious reservations about permissibility to lead evidence of the passenger by the Petitioner directly before the Labour Court. Admittedly, the passenger did not participate in the enquiry and his deposition was not available for enquiry officer to record his findings. The findings of the Enquiry officer were held to be not perverse by the Labour Court while answering the preliminary issues vide order dated 22 November 2000 and the said findings attained finality on account of dismissal of Revision (ULP) No.211/2002 by Industrial Court on 16 January 2001 and dismissal of Writ Petition No. 829/2001 by this Court vide order dated 14 February 2001. Ms. Sarnaik has relied upon order of this Court dated 14 January 2001 in support of her submission that the point of fairness in the enquiry and perversity in the findings was left open by this Court and that therefore the Petitioner was entitled to lead evidence. It would be apposite to reproduce the order passed by this Court on 14 February 2001 in Writ Petition No. 829/2001 which reads thus :

> The Petitioner has approached this Court against the finding of the Courts below as to (a) whether the enquiry was conducted in terms of the standing orders, regulations and principles of natural justice and fair play and (b) in so far as perversity of findings. The two courts below have held against the Petitioner. The Courts below have yet to decide as to whether the punishment imposed is proportionate or disproportionate or any order that the courts below may think fit and proper. Considering that to my mind, this would not be a proper stage to interfere with the orders of the court below. Suffice it to say that all the contentions raised by the Petitioner in the present petition in so far as fairness of the enquiry and perversity of the findings are concerned, are left open to be raised in the event Petitioner is still aggrieved by the orders that may hereafter be passed by the Courts below.
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> With the above observations, Writ Petition is dismissed.

In the circumstances of the case, there shall be no order as to costs.
Authorities concerned to act on the ordinary copy of this order duly authenticated by the P.A.
P.A. to give ordinary copy of this order to the parties concerned.
Certified copy expedited.

15) Thus, Writ Petition No. 829/2001 came to be dismissed by this Court by not interfering in the findings of the Labour and the Industrial Court. All that this Court directed is that in the event of the Labour Court dismissing the complaint and the Industrial Court upholding the dismissal, Petitioner would be in a position to argue the point of fairness in the enquiry and perversity in the findings before this Court. This is clear from the observations of this Court that '*In the event Petitioner is still aggrieved by the order that may hereafter be passed by the Courts below*'. Thus the points of fairness in the enquiry and perversity in the findings can be reargued before this Court while challenging the final orders passed by the Labour and the Industrial Court. It therefore becomes difficult to believe that Petitioner was at liberty to lead additional evidence directly before the Labour Court to disprove the charges levelled against him.

16) However, even if the technical issue of permissibility to lead evidence of Shri. Kulkarni is to be momentarily ignored, in my view, the evidence of the passenger led before the Labour Court does not make the case of the Petitioner any better. The passenger Shri. Kulkarni gave three different versions at 3 different times. His statement was recorded on 14 July 1996 in which he emphatically stated in his statement that Petitioner did not issue him ticket till the bus reached Kavathe Mahankal. Petitioner produced Affidavit of Shri.

Kulkarni sworn on 23 July 1998 before the Labour Court wherein he changed his version and submitted that Petitioner had issued him ticket, which was kept by him in his diary. He further stated in the Affidavit that since ticket was not found in his pocket, he was confused and scared and therefore he made a wrong statement on 14 July 1996. When examination-in-chief of the passenger Shri. Kulkarni was recorded before the Labour Court on 7 November 2000, he did not stand by his changed version of keeping the ticket in his diary and his inability to trace the same in his pocket. This time, he stated before the Labour Court that Petitioner issued him ticket and refunded the remaining amount. He did not state anything about any error in the statement given by him to the checking squad and while he attributed the confusion and fear for giving erroneous statement to the checker in the Affidavit dated 23 July 1998, this time he sought to accuse the checker for making him give the statement on 14 July 1996. In his deposition recorded before the Labour Court in which he stated that '*at that time as per say of the checker I had given a statement to checkers which is now shown to me*'. In the cross-examination, the passenger-Shri. Kulkarni however stated that he had shown some ticket to the checkers and the checkers informed him that the said tickets were not of the relevant journey and thereafter he checked other S.T tickets. It would be apposite to produce the evidence of Shri. Kulkarni recorded before the Labour Court which is as under :

> In July-1996 I was proceeding from Sangli to K.Mahankal in S.T.Bus, Immediately when Bus left the S.T.Stand I had given Rs. 50=00 one Currency note to Complainant and bus fare was Rs. 12=25Ps. Complainant had issued me a ticket and also refunded me a remaining amount. & at K. Mahankal S.T.Stand checkers had checked

> said Bus **and one of the Checker had taken my Bus ticket** & at that time as per say of the checker I had given a statement to checkers which is now shown to me. I have filed a Affidavit dt. 23-7-98 in this complaint and its content are correct.
> Cross Exam. By Shri.A.N.Kulkarni, S.T. Law Officer :- For my business purpose on that day I had gone from Sangli to K. Mahankal & in said Bus. & I was going to K.Mahankal 7,8 times in a year. The said checkers have told me that the tickets which I was showing to them were not of my said journey, then I have checked other S.T. tickets but they were not with me. I donot now whether the said other old tickets were taken by the checkers from me. It is not true to say that Complainant had not issued me my journey tickets. It is not true to say that I am deposing falsely at the instance of the Complainant as I am having thick relations with him. It is true that for recording said my incorrect statement by checkers I have not complained to any Respondent's officers. It is true that in my Affidavit I have not mentioned that my earlier statement recorded by checkers is not correct. It is true that inspite of service of Notice to me in the enquiry of the Complainants I have not appeared as a witness.
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> *(emphasis and underlining added)*

17) Thus, the passenger-Shri. Kulkarni has given following three versions at three different times:

Signed statement on the date of incident (14-07-1996)	Affidavit dated 23-07-1998	Deposition before Labour Court on 07-11-2000
Petitioner did not issue him ticket despite acceptance of fare.	Petitioner issued ticket to him and he had kept it in his diary and since he could not find the ticket in his pocket, he got confused and gave erroneous statement to checker about Petitioner not issuing him ticket.	Petitioner issued him ticket and he gave it to the checker. He gave statement as directed by the checker.

18) Thus, even while attempting to wriggle out of his admission, the passenger is inconsistent in his story.

19) It must also be noted that the Petitioner has not alleged any bias against the checker-Shri. P.S. Deshmukh, who had given

evidence before the Enquiry Officer about the passenger Shri. Kulkarni not being detected with the ticket. By applying the test of preponderance of probabilities, in my view the charge of collecting the fare from Shri. Kulkarni and not issuing him the ticket appears to be well supported by the evidence on record before the inquiry officer.

20) In the present case, the Petitioner is already detected with excess cash of Rs.30.25/- and one of the passengers had made a statement before the checking squad that he was not issued ticket after accepting Rs.12.25/- towards the fare. The said passenger was to travel between Sangli to Kavathe Mahankal and despite arrival of the bus till his destination, he was not issued ticket. The theory of rush of passengers cannot be accepted in the light of the fact that only about 20 passengers were found in the bus when the same was checked at Kavathe Mahankal.

21) Ms. Sarnaik has made strenuous attempts to convince me that both the allegations of non-issuance of the ticket to Shri. Kulkarni and excess cash of Rs.30.25/- are disproved on the basis of the Waybill. While doing so, she expected me to undertake the exercise of tallying the amount of tickets issued by the Petitioner as reflected in the way bill with the cash found with him. This exercise has been first undertaken by the Respondent-employer before issuance of the chargesheet. This exercise was once again carried out before the Enquiry Officer. Petitioner has not been able to convince Labour and Industrial Courts about the entries in the waybills disproving the misconduct alleged against him. In exercise of extraordinary jurisdiction under Article 227

of the Constitution of India, this Court is not expected to carry out such exercise once again. So far as the first charge is concerned, the same appears to be based on oral evidence of the Inspector of the Checking squad. The said charge is duly proved based on the oral evidence. The entries in the waybill cannot disprove the said charge. I am therefore unable to trace any patent error in the findings recorded by the Labour and the Industrial Courts about proof of both the charges levelled against the Petitioner.

22) Ms. Sarnaik has relied upon judgment of this Court in *MSRTC, Wardha Versus. Rajendra Mohanlal Chhangani* (supra) in support of her contention that same officer cannot issue chargesheet, act as enquiry officer and punish the employee. This Court has held in paras-3, 4 and 5 as under:

> 3. Shri Wankhede, learned counsel for the petitioner strenuously contended that both the Court's below have not applied their mind to the position on record, apart from which, they could not have entertained the plea regarding the enquiry being vitiated on account of the same person acting as Enquiry Officer as well as Presiding Officer as observed by the learned Labour Court, for the reasons that the Rules as framed in this regard and specifically Rule 18 of the Discipline and Appeal Procedure as framed by the MSRTC, permitted the same. He further contended that the misconduct on part of the respondent was on the face of the record and therefore, it was not necessary for the petitioner to examine any witness in that regard. He therefore, prayed for setting aside the order passed by the Labour Court as well as the Industrial Court.
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> 4. Having perused the record and considering the arguments as advanced by learned counsel for the petitioner I, find that the order on pre-point passed by the learned Labour Court dated 11.09.2012, holding that the enquiry was vitiated on account of the fact that the entire process of inquiry including issuing show cause notice, issuing the charge-sheet, the conduct of the departmental enquiry, the report or conclusion of the departmental inquiry and lastly show cause notice of punishment are done by one and the same person, whereby, the competent authority had acted in multiple roles while

conducting inquiry against the complainant is clearly sustainable in law, as there is no warrant for such a procedure. The reliance placed by learned counsel Mr. Wankhede on Rule 18 of the Discipline and Appeal Procedure of MSRTC, does not help him in any manner, as it does not permit, what has been done by the inquiry officer in the present matter, as found by the learned Labour Court in paras 7 and 8 of its order on pre-point dated 11.09.2012, which read as under:-

> "No doubt, the procedure followed by the enquiry officer on face appears to be proper but, the most fatal thing that has came to my notice is that all the process of enquiry including issuing show cause notice, issuing the chargesheet, the conduction of the departmental enquiry, the report or conclusion of the departmental enquiry, and lastly the show cause notice of punishment are done by one and the same person. It is therefore, clear that the competent authority has acted into multiple roles while conducting the enquiry against the complainant."
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> "It is therefore, though the proper procedure was followed during the course of departmental enquiry, but the fact remains that all the roles are discharged by one and the same person. This fact itself goes to the root of the enquiry and turn it into unfair, illegal unwarranted."

5. It is material to note that the above position is not being denied by the petitioner, rather on the other hand, the same is being sought to be justified on the basis of Rule 18 referred to above, which itself does not contemplate such a procedure being permissible. Thus, no fault can be found with the order on pre-point as passed by the learned Labour Court.

23) However, perusal of Rule 18 of the Discipline & Appeal Procedure formulated by MSRTC would indicate that the Appointing Authority is competent not only to initiate department proceedings but also hold an enquiry and award punishment. Rule 18 of the Discipline & Appeal Procedure provides thus :

> 18. As a general rule, the Appointing Authority or any authority higher than the Appointing Authority is competent to initiate departmental proceedings and to hold enquiry against the employee concerned and to award punishment. The Appointing Authority or any higher authority than the Appointing Authority or the Competent Authority prescribed in Clause 19 may appoint an Enquiry Officer to conduct an enquiry and on the recommendation of the Enquiry Officer/ the Appointing Authority or the higher authority than the

> Appointing Authority or the Competent Authority prescribed in Clause 19 of this procedure may award punishment or otherwise to give a decision within six months as far as possible prescribed in Clause 19 as the case maybe, may decide the case, as far as possible within six months.

24) Even otherwise, I do not see any defect in the disciplinary authority performing the dual role of punishing authority as well as enquiring authority. Though usually the disciplinary authorities prefer delegating the power of conducting enquiry to enquiry officers, there is nothing in law that prevents or bars the disciplinary authority from himself conducting the enquiry. Therefore, the judgment in ***MSRTC, Wardha Versus. Rajendra Mohanlal Chhangani*** cannot be read in support of an absolute proposition that in any case, the competent disciplinary authority is barred conducting the inquiry himself. Also, I have distinguished the said judgment in ***Sandip Vasant Bhole Versus. Divisional Traffic Superintendent***[4] in which it is held as under :

> 8. I have already dealt with the similar case in ***Namdeo Tukaram Mokashe v. Maharashtra State Road Transport Corporation***, through its Divisional Controller, Writ Petition No. 11502 of 2022 decided on 22-11-2022, in which it is held as under:
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> > 7. Mr. Shahane has placed on record copy of the Discipline and Appeal Rules formulated by the respondent-Corporation. Rule 18 provides that the appointing authority or authority above him is competent to initiate disciplinary enquiry, to conduct enquiry and to impose punishment. Thus, the Rules specifically permit the disciplinary authority to conduct enquiry against an employee. Therefore, no error is committed by the disciplinary authority by acting as an Enquiry Officer in the present case. Even otherwise, there is settled law that the disciplinary authority may delegate the power to hold disciplinary enquiry to an Enquiry Officer. However, this does not mean that the disciplinary authority cannot himself act as an Enquiry Officer. So far as the disciplinary authority acting in the capacity of Presenting Officer is concerned, no serious

[4] 2022 SCCOnline 6320

> infirmity can be said to have been committed. No grievance was raised by petitioner during the course of enquiry in that regard. No prejudice is caused to him by that action.
> 8. Coming to the issue of competency of disciplinary authority, Mr. Shahane has sought to raise this issue for the first time before this Court after I called upon him to produce copy of the Discipline and Appeal Rulesfor examining whether the disciplinary authority could act as an Enquiry Officer After noticing provisions of Rule 18 Mr. Shahane sought to press into service the submissions that in the respondent-Corporation, the Divisional Controller is an appointing authority whereas the proceedings have been initiated by the Divisional Traffic Officer. He would therefore contend that the Divisional Traffic Officer was not competent to conduct the disciplinary enquiry against petitioner.
> 9. I have perused the statement of the claim filed by petitioner before the Labour Court and find that no contention with regard to the competency of disciplinary authority was raised therein. If petitioner was to make out the case of incompetency of the disciplinary authority to initiate disciplinary proceedings, he ought to have made specific averments in the statement of claim and demonstrate before the Labour Court as to how the Divisional Controller had appointed him and not the Divisional Traffic Officer. Neither any pleading was raised much less in evidence led. Petitioner therefore, cannot be permitted to raise the issue of competency of disciplinary authority directly before this Court in the present case. The contention is therefore rejected.

> 9. What remains now is to deal with the judgment cited by Mr. Shinde in Maharashtra State Road Transport Corporation, Wardha v. Rajendra Mohanlal Chhangani (supra). The decision is rendered in the facts of that case. Furthermore, Rule 18 specifically permits the Disciplinary Authority to himself conduct disciplinary enquiry. Therefore, reliance of Mr. Shinde on the judgment of this Court in Maharashtra State Road Transport Corporation, Wardha v. Rajendra Mohanlal Chhangani (supra) would be of no avail.

25) Considering the overall conspectus of the case, I am of the view that the Petitioner is unable to point out any patent error in the findings of facts recorded by the Labour and the Industrial Court for this Court to interfere in the same in exercise of jurisdiction under

Article 227 of the Constitution of India. Petitioner faced grave charge of misappropriating the monies of the Corporation by pocketing the fare. His past service record is also riddled with as many as eight punishments. I am therefore not inclined to interfere in the impugned orders passed by the Labour and the Industrial Courts. Writ Petition is devoid of merits. It is accordingly **dismissed** without any order as to costs. Rule is discharged.

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE, J.]