

Neeta Sawant

WP-2607 OF 2016

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2607 OF 2016

The Municipal Corporation of Greater
Mumbai, through its Bombay Electric
Supply and Transport Undertaking

...Petitioner

V/s.

1. Mr. Vidat Ashok Sonawane
2. BEST Jagrut Kamgar Sanghatana

...Respondent

Mr. Mahesh Shukla with Ms. Heena Shaikh and Mr. Siddhikesh Shinde i.b.
M.V. Kini & Co., for the Petitioner.

Mr. Ketan Dhavle for Respondent No.1.

CORAM: SANDEEP V. MARNE, J.

Judgment Resd. on : 17 July 2026.

Judgment Pron. On : 28 July 2026.

JUDGMENT :

1) By this Petition, the Petitioner- Bombay Electric Supply and Transport (**BEST**), have challenged judgment and order dated 15

September 2015 passed by the learned Member Industrial Court, Mumbai in Revision Application (ULP) No. 138 of 2014. The Industrial Court has set aside the judgment and order dated 2 August 2014 passed by the Labour Court in Complaint (ULP) No. 142 of 2013 and has allowed the complaint directing the Petitioner to reinstate Respondent No.1 from the date of termination with continuity of service and all other benefits with 50% backwages.

2) Petitioner-BEST is a Transport Undertaking of Municipal Corporation of Greater Mumbai established under the provisions of Mumbai Municipal Corporation Act, 1888. Petitioner is engaged in the business of supply of electricity and maintenance of public transport system through its undertaking BEST, in and around the area of Mumbai City. At the relevant time, Petitioner used to operate bus services on 507 routes by plying 3888 buses. With a view to maintain a schedule, Petitioner had introduced a scheme of engaging drivers and conductors on daily basis from 1 June 1972. Petitioner also introduced a badli scheme under which certain number of badli drivers and conductors are empanelled and their services are utilised in the event of non-availability of regular Drivers or Conductors. Under the Scheme, badli Drivers and Conductors were required to report at the respective depots at a fixed time and were assigned duties in accordance with exigencies of work. If regular Drivers and Conductors were available, the badli Drivers and Conductors were not assigned any work. However, in the event of retention of badli Drivers and Conductors for more than 2 hours, they were being paid retainer allowance. In order to ensure that the badli Drivers and Conductors report to duties diligently and discharge their

duties in efficient and sincere manner, Petitioner had introduced a system of assigning demerit points by Department Circular dated 27 June 1975. The Circular provided for assigning demerit points *inter-alia* in relation to punctuality. The Scheme provided that a badli Driver receiving 8 demerit points was to be given a warning to improve his performance and upon assignment of 20 demerit points, the name of the badli Driver or Conductor was to be struck off from the badli list.

3) Respondent No.1 was initially engaged as a daily Bus Driver w.e.f.15 March 2010 and his services were utilised as and when required. Thereafter, he was empanelled as a badli Bus Driver w.e.f. 17 June 2011. According to the Petitioner, Respondent No.1 remained absent from duties during August 2011 to 23 November 2011 and accordingly, 8 demerit points were assigned to him. He was issued a warning dated 24 November 2011. According to the Petitioner, the first Respondent failed to improve his punctuality and had earned 25 demerit points upto 28 February 2012. In terms of Circular dated 27 June 1975, the Petitioner struck off the name of Respondent No.1 from the badli register vide Memorandum dated 28 February 2012. Respondent No.1 filed Complaint (ULP) No. 142 of 2013 before the Labour Court, Mumbai challenging the Memorandum dated 28 February 2012 and seeking reinstatement in service with full backwages and continuity. Respondent No.1 also filed application for condonation of delay in the Complaint. In the Compliant BEST Jagrut Kamgar Sanghatana (**Union**) was Complainant No.1 and the badli Driver Shri. Vidat Ashok Sonawane was Complainant No.2. Petitioner opposed the delay condonation application by filing reply. By order dated 17 July 2013, the delay in filing the Complaint was condoned.

Petitioner thereafter filed Written Statement opposing the Complaint. Respondents filed application for amendment of the Complaint for incorporation of averments relating to completion of 240 days of service and a claim for permanency. The application for amendment was allowed by order dated 4 October 2013. Petitioner filed additional Written Statement. The Labour Court framed issues on 13 November 2013. Respondent examined Secretary of the Union-Suhas Nalawade as their witness. Petitioner objected to examination of the Secretary instead of leading evidence of Respondent No.1. After Petitioner's objection was sustained, Respondent No.1 filed affidavit of evidence. Respondents thereafter filed application seeking leave to produce more documents. After production of documents, Petitioner cross-examined Respondent No.1. The Labour Court thereafter proceeded to decide Complaint (ULP) No. 142 of 2013 and by judgment and order dated 2 August 2014, has dismissed the same. Respondent No.1 filed Revision Application (ULP) No. 138 of 2014 before the Industrial Court. The Industrial Court has allowed the Revision by judgment and order dated 15 September 2015. While setting aside the judgment and order of the Labour Court, the Industrial Court has allowed the Complaint preferred by the Respondents and has directed Petitioner to reinstate Respondent No.1 in service with continuity and 50% backwages from the date of termination till the date of reinstatement. Aggrieved by judgment and order dated 15 September 2015, the Petitioner has filed the present Petition.

4) By order dated 7 February 2017, this Court admitted the Petition and has unconditionally stayed the implementation of the order of the Industrial Court. The Petition is called out for final hearing.

5) Mr. Shukla, the learned counsel appearing for the Petitioner submits that the Industrial Court has grossly erred in reversing well considered decision of the Labour Court. That Respondent No.1 was engaged merely as a badli driver and did not have any right to claim assignment of duties. That his engagement was only to take care of exigencies of service to man the buses in absence of regular drivers. That assignment of duties to Respondent No.1 was contingent on non-availability of regular driver. That the Petitioner-employer is entitled to assess the performance of badli drivers and conductors by operating the system of assigning demerit points. That Departmental Circular dated 27 June 1975 clearly provided for striking off the name of badli driver on accumulation of 20 demerit points.

6) Mr. Shukla further submits that the Industrial Court has erroneously relied on Standing Order No.20 for the purpose of holding that the Respondent could not be terminated without conducting enquiry as envisaged in Standing Order Nos.20 and 23. That the Industrial Court failed to appreciate that the case did not involve termination of services of Respondent No.1 who was never in service of the Petitioner. That Petitioner has merely struck off his name from the panel of badli drivers. That therefore there is no question of application of Standing Orders Nos.20 or 23. He also relies upon Standing Order No.26 in support of his contention that the Petitioner was otherwise entitled to terminate the services of badli employee with less than 2 years of service by issuance of 24 hours written notice. That Respondent No.1 had not completed 2 years of service as badli driver and his name is rightly struck off from the panel of badli drivers. Mr. Shukla further

submits that Respondent No.1 was otherwise not in continuous service of the Petitioner and he did not demonstrate completion of 240 days of service in 12 months preceding the date of his removal from the panel. That once engagement as badli driver is accepted, all the terms and conditions for engagement as badli driver would automatically get attracted to Respondent No.1. That there is no question of Certified Standing Orders having an overriding effect on the policy adopted by the Petitioner in respect of badli employees. Alternatively, Mr. Shukla submits that there is no warrant for award of 50% backwages as the Industrial Court has not indicated any basis for awarding 50% backwages. He submits that the Industrial Court clearly overstepped the limited scope of jurisdiction under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) and has completely acted like an Appellate Court.

7) Mr. Shukla relies on judgment of the Apex Court in **Prakash Cotton Mills Pvt. Ltd. Versus. Rashtriya Mills Mazdoor Sangh**¹ in support of his contention that badli employees cannot be treated as regular employees and that they do not have guaranteed right of employment. He also relies on Division Bench judgment of this Court in **Shivdhari Kalu Singh Versus. Ruby Mills Ltd.**² in support of his contention that even compensation cannot be awarded to badli worker. Mr. Shukla would pray for setting aside the order passed by the Industrial Court.

1 (1986) 3 SCC 588

2 2008 SCC Online Bom 1430

8) Mr. Dhavle the learned counsel appearing for the Respondents opposes the Petition. He submits that the Industrial Court has correctly appreciated the facts of the present case where Respondent No.1 is terminated on the alleged misconduct of absence from service. That if misconduct of absence is alleged, it was incumbent on the Petitioners to conduct enquiry under Standing Order No.23. That termination of Respondent No.1 is one of the punishments enumerated in Standing Order No.21. That the Industrial Court has rightly appreciated the position that Standing Order No.26 comes into play only after conduct of enquiry under Standing Order No.23. That the so-called policy decision introduced vide 1975 circular cannot override the effect of provisions of Certified Standing Orders. He relies on judgment of the Apex Court in Union of India & Ors Versus. K. Suri Babu³ in support of his contention that the Certified Standing Orders have a statutory mandate and would prevail over all other policy circulars issued by the employer. He submits that under the Certified Standing Orders, the definition of the term 'employee' includes even a 'badli'. That therefore Standing Orders No.21 and 23 would apply with full force even to badli driver. He relies on Circular dated 15 February 1983 issued by BEST under which it was directed to discontinue the system of removal of badli employees without conducting enquiry. Mr. Dhavle submits that the Industrial Court has correctly set aside the erroneous decision of the Labour Court and has rightly directed reinstatement with 50% backwages. He prays for dismissal of the Petition.

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

10) The case involves the issue as to whether the services of a Badli Driver can be dispensed with without conducting inquiry envisaged under the Standing Order. Also involved is the issue whether the Standing Order No. 26 providing for termination of badli employees with 24 hours of notice applies on a standalone basis or whether the same applies only after conducting full-fledged inquiry envisaged under Standing Order Nos. 20, 21 and 23.

11) It is the case of the Petitioner-BEST that the case involves mere striking off the name of Respondent No.1 from the panel of Badli Drivers vide Memorandum dated 28 February 2012. The Memorandum reads thus:

श्री. विधात अशोक सोनावणे बदली बसचालक/बसवाहक क्र. ०६६३७८ यांना याद्वारे असे कळविण्यात येते की, त्यांना दिलेल्या दिनांक २८/११/२०११ या ज्ञापन क्रमांक DM (GKD) 1198/11 च्या द्वारे "सक्त ताकीद" देऊन सुद्धा त्यांना दिलेल्या ज्ञापनच्या दिवसापासून त्यांच्या हजेरीत/कामात सुधारणा आढळून आलेली नाही.

तेव्हा त्यांचे नाव बदली करारातील शर्ती व अटीनुसार, बदली पटावरून दिनांक २८/२/२०२२ पासून कमी करण्यात येत आहे.

12) Petitioner was initially engaged as Driver on daily wage basis w.e.f. 15 March 2010. His name was brought on the panel of Badli Bus Driver w.e.f 17 June 2011. The concept of maintaining a panel of Badli Drivers and Conductors by the Petitioner-Transport Undertaking stems out of its unique need when the bus operations get affected due to sudden absence of drivers or conductors. Non-availability of Drivers or

Conductors to operate the buses at the planned routes and at the scheduled times virtually renders cancellation of the bus service leading to inconvenience to the passengers and resulting in losses to the Undertaking. Therefore, Petitioner introduced the scheme of maintaining Badli Drivers and Conductors in each Depot so that they can be utilised on the buses where regular Bus Drivers and Conductors were not available. The system of maintaining a panel of Badli Drivers was apparently introduced vide Scheme issued in 1972.

13) The term '*badli*' in relation to employment of workers/employees in Marathi language means someone who is asked to work in place of another worker. In English it means 'substitute'. Thus a badli employee essentially means someone who is engaged in a leave vacancy. When a regular employee goes on leave, the employer asks another person to work at his place during leave period. The vacancy created on account of leave of a permanent employee is to be temporarily manned by a badli employee. Under the Scheme introduced by the BEST, the term '*badli*' is defined as under:

बदली: कायम/परिक्षाधीन बस चालक आणि बस वाहक यांच्या जागी स्थिती विशेषानुसार संबंधित चालक व वाहक अनुपस्थितीत किंवा अन्य कारणांमुळे उपलब्ध नसले, अशा वेळी उपक्रमाची वाहने (बस गाडी) किंवा अन्य कोणत्याही प्रकारचे मोटर वाहतूक वाहन चालविण्यासाठी रोजंदारीवरील नोकरीत घेतलेली आणि जिचे नाव बदली रजिस्टरमध्ये नोंदविलेले आहे अशा व्यक्ती म्हणजे बदली.

14) Thus under the Scheme of BEST, a Badli Driver or Conductor means a person who is temporality engaged on daily wages basis for manning the buses when regular/ probational Driver or Conductor is not available due to absence or any other reason. Under the Scheme of BEST,

Badli Driver or Conductor was to be paid wages depending on the engagement for number of hours in a day. However, in a case where no duty was available for Badli Driver/Conductor, there was system of payment of retainer allowance if they were required to wait for more than 2 hours. The relevant provision in the Scheme is as under:

४) रिटेनर भत्ता : नेमून दिलेल्या आगारात विहित वेळी उपस्थित राहिल्यास आणि कामाच्या वाटणीसाठी दोन तासापेक्षा जास्त वेळ थांबावे लागल्यास, कनिष्ठ बदली वाहक/कनिष्ठ बदली बस चालक म्हणून काम करण्यासाठी बदली रजिस्टरवर नाव नोंदविण्यात येणाऱ्या व्यक्तीला प्रत्येक दिवसाला खालील दराने रिटर्न भत्ता दिला जाईल.

तपशील	बदली कनिष्ठ बस वाहक	बदली कनिष्ठ बस चालक
प्रथम वर्षाकरिता	रु.२०/-	रु.२५/-
एक वर्षाच्या कालावधीनंतर त्यांना नियमित आधारावर सामावून न घेतल्यास	रु.५०/-	रु.६०/-

बदली रजिस्टरमध्ये नोंद करून घेतलेल्या व्यक्तीला, दोन तासांच्या प्रतीक्षा अवधीच्या संपत्तीला किंवा त्या अगोदर पूर्ण दिवसांचे काम देण्यात आल्यास त्याला रिटर्न भत्ता मिळणार नाही.

15) Thus, a Badli Bus Driver, who does not get assigned any work (because of availability of regular/permanent Drivers) gets paid Rs. 25/60 per day as retainer charges. Thus Badli Drivers and Conductors need to be present each day in the assigned Depot and wait for assignment of duties. The Depot Manager, after assessing the presence of regular Drivers and Conductors and the need for utilization of badli employees, takes a call as to whether the badli employees are to be engaged for work on the buses on that day or not. In order to ensure that the badli employees keep reporting at the Depots every day, they are paid retainer charges as an incentive. The Scheme thus envisages a position where there can be no engagement/employment to a Badli Driver on a

particular day. The fact that there was system for payment of retainer allowance due to non-availability of work to Badli Drivers/Conductors would make it abundantly clear that there was no guarantee for assignment of duty to them.

16) The rights and entitlements of badli employees is dealt with by the Apex Court in ***Prakash Cotton Mills Pvt. Ltd.*** in which it is held in paras-15 and 16 as under:

15. The next question that remains to be considered is whether the Industrial Court is justified in directing payment of compensation to some of the Badli workmen. It is not in dispute that Badli workmen get work only in the absence, temporary or otherwise, of regular employees, and that they do not have any guaranteed right of employment. Their names are not borne on the muster rolls of the establishment concerned. Indeed, a Badli workman has no right to claim employment in place of any absentee employee. In any particular case, if there be some jobs to be performed and the employee concerned is absent, the Company may take in a Badli workman for the purpose. Badli workmen are really casual employees without any right to be employed. It has been rightly submitted by the learned Counsel for the appellant that the Badli employees could not be said to have been deprived of any work to which they had no right and, consequently, they are not entitled to any compensation for the closure. Indeed, the Industrial Court has itself observed that to allow the claim of Badli workmen would be tantamount to penalising the appellant. In spite of the said observation, the Industrial Court directed payment of compensation to the Badli workmen in place of certain categories of regular employees. We fail to understand how the Industrial Court can direct payment of compensation to the Badli workmen when, admittedly, such Badli workmen, as noticed already, have no right to be employed. It may be that the Company may not have to pay closure compensation to the three categories of employees, as mentioned by the Industrial Court, but that does not mean that the Company has to pay compensation to the Badli workmen in place of these categories of employees. In this connection, we may refer to Section 25C of the Industrial Disputes Act, 1947 which excludes a Badli workman or a casual workman from the benefit of compensation in the case of layoff.

16. In the circumstances, although we uphold the order of the Industrial Court for payment of compensation to the regular employees of the appellant at the rate fixed by it, we are unable to subscribe to the view that the compensation which would have been payable to the three categories of employees, should be paid to the Badli workmen. In other words, we hold that Badli workmen have no right to claim compensation on account of closure.

17) Similarly, in *Shivdhari Kalu Singh* the Division Bench of this Court has held in para-11 of the judgment as under:

11. This itself shows that the appellant himself admitted that he was appointed by the respondents as a badli workmen. In any case, badli workmen get work only in the absence of temporary or otherwise, of a regular employee and they do not have any guaranteed right of employment. Considering these facts and considering the concurrent finding of the two lower Courts and the learned Single Judge of this Hon'ble Court there is no substance in the present appeal. Appeal stands dismissed with no order as to costs.

18) Thus, a Badli Driver/Conductor do not have any guaranteed right of employment. Their names are not included in the muster rolls of the establishment. Even though a Badli Driver/Conductor could be engaged in the absence of regular Drivers/Conductors, he/she cannot claim assignment of work as a matter of right. Badli workers are ultimately a form of casual employees having no right to insist on assignment of work.

19) Since the Petitioner-Undertaking operates one of the largest fleet of municipal transport service in the country, it evolved a system of assessing performance of Badli Drivers and Conductors by assigning them demerit points. By Circular dated 27 June 1975, Petitioner decided to allocate demerit points for badlis. Under the Circular, most of the

demerit points are to be assigned for attendance record. To illustrate, one demerit point could be assigned for each days' of absence and for absence of more than 6 days, 4 demerit points could be assigned. For absence other than medical grounds, 2 demerit points were required to be assigned for one day. The Circular dated 27 June 1975 further provided that upon accumulation of 5 demerit points, a warning letter in Form No.1 was to be issued for Badli Drivers. Once the accumulated points exceeded over 20, the Petitioner was entitled to strike off the name from the panel of Badli Drivers. In the present case, Respondent No.1 remained absent from time to time and was issued warning in Form No.1 on 24 November 2011 by which time, he had earned 8 demerit points. However, it appears that Respondent No.1 failed to improve his attendance and punctuality and went on earning further demerit points. In the next 3 months, his total demerit points were 25. Accordingly, his name was removed from the panel of Badli Drivers vide Memorandum dated 28 February 2012.

20) As observed above, the Labour Court had dismissed the complaint of unfair labour practice filed by the Respondents by relying on judgments of the Apex Court in ***Prakash Cotton Mills Pvt. Ltd.*** and of this Court in ***Shivdhari Kalu Singh***. Regarding his absence, the Labour Court has made following observations:

14) Moreover it is submitted by the complainant that he remained absent from duties as his wife Met with an accident on 31/4/2011 and she was admitted till 3/5/2011. He also produced the medical papers to support his contention. **However as per respondent the complainant no.2 remained absent from August- 2011 till 23/11/2011 and therefore 8 demerit points were assigned to him.** The said period is

not a period of hospitalization or subsequent dates. The said absentee is after 7 months from the date of accident. Moreover, as per documentary evidence of respondent that **even thereafter the complainant remained absent in the month December -2011 and February- 2012**. Complainant no.2 not accounted any reason for the said absence. Moreover, in order to claim that complainant no.2 was permanent employee. He has to prove that he has worked for 240 days within one year preceding his termination.

21) Thus Respondent No. 1 was absent from August 2011 till 23 November 2011. Again during December 2011 and February 2012, he remained absent. As observed above, he was merely a Badli Driver with no promise of employment. As a Badli Driver he was required to report for duties every day at the Depot and wait for deployment. While the Badli Drivers were provided the incentive in the form of retainer allowance (in case of non-assignment of duties), the Petitioner-BEST had not left the attendance at the whims of Badli Drivers. Non-attendance by requisite number of Badli Drivers or Conductors was also affecting the operation of large bus fleet. Therefore, to imbibe a sense of discipline amongst the Badli Drivers, the Petitioner had implemented the Scheme of awarding demerit points to them. Any Badli Driver not reporting for duties at the Depot was to be construed as non-interested party for working as Badli Driver. His name therefore could be removed from the panel so that someone else interested in working as Badli Driver can be included in the panel. No right was created in favour of any person to permanently remain on the panel as a Badli Driver.

22) Respondent No. 1 set up a case before the Labour Court that he had attained the status of permanency. This was apparently to get out of consequences of the Circular dated 27 June 1975. Firstly, the concept

of conferment of permanency on persons included on the panel of Badli Drivers does not apply. As observed above, the empanelled persons does not have right of assignment of duty. He could be made to wait for assignment of duties for 2 hours and then asked to go home on payment of the retainer allowance. Regardless of this position, the Labour Court did conduct factual inquiry into the aspect of completion of 240 days of service. It held that Respondent No.1 did not lead evidence to prove completion of 240 days of service. The Labour Court therefore concluded that he remained as a Badli Driver and terms and conditions of the Circular dated 27 June 1975 applied to him. This is how the Labour Court refused to hold that Respondent No.1 had attained the status of permanent employee.

23) So far as the Certified Standing Orders are concerned, the Labour Court held that the scheme for removal of name of Badli Driver under Circular dated 27 June 1975 was in accordance with Certified Standing Order No.26, which provides for termination of a Badli Driver by issuance of 24 hours' notice. This is how the complaint filed by the Respondents was dismissed by the Labour Court.

24) The Industrial Court has however relied on the Certified Standing Order Nos. 20, 21 and 23 and it has held that it was incumbent for the Petitioner to hold departmental enquiry before terminating the services of Respondent No.1. It has held that the departmental Circular of 1975 cannot override the Certified Standing Orders.

25) I accordingly proceed to consider the relevant provisions of the Certified Standing Orders. Under definition of the term '*employee*' in Standing Order No.3(i), employee includes a badli, which reads thus :

(i) "Employee" means any person employed in the Undertaking and includes clerks, workmen, apprentices, trade learners and Badlis;

26) Therefore, there is no dispute to the position that Standing Orders do apply even to badlis. The term '*badli*' is defined in Standing Order No.4(v) as under:

"Badli" means a person whose services are engaged on daily basis in place of permanent or probationary bus or tram drivers and bus and tram conductors, as the case may be, to man the Undertaking's vehicles (omnibus, tram or trolley bus or any other type of motor transport vehicle) during the absence or otherwise of the said drivers and conductors and whose name is entered in the 'badli' register.

27) Standing Order No.20 enumerates the acts which constitute misconduct on the part of an employee. Habitual absence without leave or absence without leave for 15 consecutive days or overstaying sanctioned leave without sufficient grounds or proper explanation amounts to misconduct under Standing Order No. 20. Under Standing Order No.21, various punishments are enumerated which can be imposed against delinquent employee. It is seen that termination or removal of name of a Badli Driver from panel of badlis is not treated as a misconduct. On the other hand, Standing Order No.26 deals with termination of services of employees of the undertaking and provides thus:

26(1) Service with the Undertaking will be terminated as follows:

Notice, if given by the Undertaking, shall be signed by the Competent Authority:

Provided-

(i) that the reason for such termination of employment shall be given in writing to the employee concerned except in cases where by doing so the management will render themselves liable to civil or criminal action;

(ii) that such termination of employment shall be subject within fourteen days of the receipt of such notice, to an appeal to the General Manager;

(iii) that no individual notices shall be necessary in cases of general retrenchment, closing down, strike or lock-out;

*(iv) Save that in cases covered by Leave Regulations II, no notice shall be necessary in the case of an employee who absents himself from work without permission for a continuous period of more than one month and such an employee shall be deemed to have abandoned his employment.

I. Permanent Employees :-

@ By one calendar month's written notice or pay including allowances admissible, in lieu thereof given by the Undertaking or by one calendar month's notice given by the employee.

@II. *Probationers, Temporary Employees, Apprentices, Badli and Trade Learners of less than two years service :

By 24 hour's written notice on either side;

Provided that notice given by an employee who is under suspension pending enquiry and/or is reported to have committed serious acts of misconducts viz. (1) riotous or disorderly conduct or any other act of violence: and (ii) act which constitutes an offence involving moral turpitude shall have no effect unless it is specifically accepted by the General Manager or any other officer duly authorised by him and notified.

(2) If the General Manager or any other officer duly authorised by him and notified is satisfied on the report of a medical practitioner nominated by him that the employee is unfit or incapacitated by reason of ill-health to discharge his duties either permanently or for a considerable time, he may after granting whatever leave may be due or the emoluments in lieu thereof according to the leave regulations contained in the Appendix, terminate the service of such employee by

giving the usual notice prescribed in these standing orders, provided what the General Manager or any other officer duly authorised by him and notified may at his discretion and shall at the request of the representative of the employee take a second opinion, provided further that such second opinion is asked for within fourteen days of the date of the receipt of the notice of termination.

28) The Petitioner has relied on Standing Order No.26 in support of its contention that a Badli Driver having not completed 2 years of service can be struck off the panel by issuing notice of 24 hours. The Industrial Court has however held that Standing Order No.26 would come into operation only after enquiry under Standing Order No.23 is complete and it is proposed to punish the delinquent employee in respect of the enumerated misconducts under Standing Order No.20. I am unable to agree. As observed above, termination is not a punishment enumerated under Standing Order No.21. The listed punishments under Standing Order No.21 includes warning/censure, imposition of fine, suspension, demotion, discharge, dismissal, stoppage of increment, etc. However, termination is not one of the punishments enumerated under Standing Order No.21. On the other hand, Standing Order No.26 deals with termination of services with Undertaking. It provides for termination of permanent employees, as well as termination of probationer, temporary employees, apprentices, badlis and trade learners with less than 2 years of service. It appears that a permanent employee can be terminated by giving notice of one month or pay in-lieu thereof by either side. Thus, if a permanent employee wishes to leave the services of BEST, he can do so by issuing notice of one month or by paying wages for one month. So far as badlis are concerned, they can be

terminated with 24 hours of written notice by either side if they are yet to complete 2 years of service.

29) The finding of the Industrial Court that Standing Order No.26 would come into play only after enquiry is conducted under Standing Order Nos.20 and 23 appears to be clearly erroneous. If an employee commits misconduct enumerated under Standing Order No.20 and if he is found guilty in the enquiry conducted under Standing Order No.23, he can be punished with one of the enumerated punishments under Standing Order No.21. In such circumstances, Standing Order No.26 does not come into play at all. This is clear from the fact that under Standing Order No.23, punishments enumerated under sub-clauses (e) to (h) of Standing Order No.21, can be imposed after conduct of enquiry. There is no necessity of issuing one month's notice to the employee who is found guilty of misconduct by having recourse to provisions of Standing Order No.26. Thus, Standing Order Nos.20, 21 and 23 operate in a distinct sphere than Standing Order No.26. The two sets of Standing Orders deal with distinct situations. Standing Order No.26 has no application where an employee is to be punished for having committed misconduct. That situation is governed by Standing Order Nos.20, 21 and 23. Therefore, for effecting termination under Standing Order No. 26, it is not necessary to conduct any enquiry under Standing Order No. 23.

30) The Industrial Court has grossly erred in not appreciating the above position and has erroneously held that Standing Order No.26

would come into play only after enquiry under Standing Order No.23 is conducted.

31) Once it is held that for terminating the services of a badli, it is not necessary to conduct enquiry under Standing Order Nos.20, 21 or 23. The issue of superiority between Certified Standing Orders and Departmental Circular becomes academic. There is no conflict between Certified Standing Orders and Departmental Circular of 1975. The Departmental Circular of 1975 envisages assessment of performance of a Badli Driver or Conductor by assigning demerit points. This ensures that there is no arbitrariness in dealing with Badli Drivers and Conductors and a transparent system is followed for assessing their performance. The Departmental Circular of 1975 also ensures that an adequate opportunity is provided to the Badli Drivers or Conductors to improve their performance. It ensures transparency where demerit points are assigned in a uniform manner for all. Assignment of such points can always be questioned or disputed by the badli employee. As observed above, a Badli Driver/Conductor is merely impaneled. The empanelment merely results in possibility of assignment of duties by the BEST in the event of non-availability of regular Driver/Conductor. There is no guarantee of employment. On days where Badli Drivers/Conductors are not assigned any duties, they receive mere retainer charges if they are required to wait for more than 2 hours. Therefore, on a given day, a Badli Driver/Conductor may not receive any wages or even retainer allowance. It all depends upon a chance of non-availability of regular Drivers/Conductors. In such circumstances, there is no question of conducting departmental enquiry for removal of Badli Driver/Conductor

from the panel. In that sense again, there is no question of any conflict between the Certified Standing Orders, and the Departmental Circular dated 27 June 1975. Therefore, reliance by Mr. Dhavle on judgment of the Apex Court in ***Union of India Versus. K. Suri Babu*** is inapposite.

32) The Industrial Court has completely misread the entire badli scheme and has treated Respondent No.1 as if he was in regular service of the Petitioner. The findings of the Industrial Court about completion of 240 days of service by Respondent No.1 is again erroneous. The Industrial Court has considered the services of Respondent No.1 from 15 March 2010 to 28 December 2012 and has held that he continuously worked without a break. The finding is contrary to the evidence on record. The Labour Court had dealt with the period of absence of Respondent No.1. Respondent No.1 claimed that his wife met with an accident on 31 April 2011 and was admitted in hospital till 3 May 2011. He remained absent from August 2011 to 23 November 2011. Again, in December 2011 and February 2012, he remained absent. These periods of absence are not taken into consideration by the Industrial Court. Furthermore, Respondent No.1 was not in service of the Petitioner. He was merely empaneled as Badli Driver. Therefore, it was incumbent upon him to prove performance of duties for 240 days in a calendar year. No evidence is produced on record by Respondent No.1 to prove that he had worked for 240 days as a Driver. Thus, the finding of the Industrial Court about Respondent No.1 completing 240 days of service is clearly erroneous.

33) The Industrial Court has completely misunderstood the whole claim and has erroneously assumed as if Respondent No.1 was in employment of Petitioner-BEST. It is unnecessary to go into the issue of grant of breaks in service. There cannot be break in service as there is no right of being in continuous service. He only had right of being continued in the panel as Badli Driver. He lost even that right on account of unauthorised absence for substantial time. While being on the panel, his services were utilised only when regular driver was not available. Therefore, there is no question of granting any break in service as there can never be any continuous service by a Badli Driver whose name is put on a panel.

34) The conspectus of the above discussion is that the Industrial Court has grossly erred in reversing the decision of the Labour Court. It has erroneously awarded reinstatement with continuity and 50% backwages when Respondent No.1 had no guarantee of employment even while being empaneled as Badli Driver. In my view, therefore the Industrial Court has grossly erred in allowing Revision Application (ULP) No. 138 of 2014. It has exceeded revisionary jurisdiction under Section 44 of the MRTU & PULP Act. The impugned judgment and order of the Industrial Court is thus indefensible and liable to be set aside.

35) The Petition accordingly succeeds and I proceed to pass the following order:

- (i) Judgment and order dated 15 September 2015 passed by the Member, Industrial Court, Mumbai in Revision (ULP) No. 138 of 2014 is set aside.

(ii)The judgment and order dated 2 August 2014 passed by the Labour Court, Mumbai in Complaint (ULP) No. 138 of 2014 is confirmed.

36) The Writ Petition is allowed in the above terms. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE , J.]

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signed by
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SHAILESH
SAWANT
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