

(2024) 05 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 917 Of 2024

Bebi Asha Naimoddin Shaikh

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 10-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 19, 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2024) 05 BOM CK 0048

Hon'ble Judges : Ravindra V. Ghuge, J; R. M. Joshi, J

Bench : Division Bench

Advocate : T. M. Venjane, S. B. Deshpande, P. K. Lakhotiya, D. S. Bagul, M. D. Shinde

Final Decision : Disposed Of

Judgement

Ravindra V. Ghuge, J

1. Rule. Rule made returnable forthwith and heard finally, by the consent of the respective sides.

2. The Petitioner has put forth prayer clauses (B) and (C), as under :-

B] By issuing writ of certiorari or any other appropriate writ, or directions or orders in the like nature, be pleased to quash and set aside the communication Dated 14.12.2023 passed by the Divisional Controller, Maharashtra State Road Transport Corporation, Latur Division, Latur.

C] By issuing writ of mandamus or any other appropriate writ, or directions or orders in the like nature, be pleased to direct the respondent No. 4 to cancel the show cause notice of dismissal dated 12.04.2012 by accepting fine amount from petitioner."

3. On 30/01/2024, we had passed the following order after hearing the learned Advocates for the respective sides :-

"1. The Petitioner is before us seeking a Writ of Mandamus that we should direct the MSRTC to condone her act of misappropriation as a Bus-Conductor in the light of the circular No.1/2017 dated 27.01.2017.

2. We have considered the submissions of the learned Advocate for the Petitioner.

3. The Petitioner joined as a Lady Bus-Conductor on 17.01.2011. On 26.12.2011, when she was on probation, she was issued the first show cause notice for misdeeds as a Bus-Conductor. Thereafter, on 09.05.2013, she was again punished for misdemeanors with stoppage of an annual increment for three months. On 08.10.2020, she was again punished for a misdemeanors by imposing a penalty of Rs.100/-. On 16.08.2022, she was punished with imposition of penalty of Rs.70,800/- in the light of the Circular No.1/2017 for misdemeanors as a Bus-Conductor.

4. The Petitioner is before us on the basis of her first misconduct, which led to the issuance of a show-cause notice followed by a Disciplinary Enquiry and a second show cause notice dated 12.04.2012, proposing the punishment of dismissal from service. The Petitioner preferred Complaint ULP No.23/2012. She was granted interim relief. During her such interim protection, she has committed further misconducts in 2020 and 2022. The ULP Complaint was finally dismissed by judgment dated 25.01.2023. Her Revision ULP before the Industrial Court was dismissed by judgment dated 20.03.2023 and presently she is under the protection of the interim order of the learned Single Judge dated 03.04.2023 passed in Writ Petition No.3815 of 2023.

5. The learned Advocate for the Petitioner submits that there are hundreds of such delinquent Conductors who are taking advantage of Circular No.1/2017, day-in and day-out. In some cases, such Conductors are benefited by the said circular for more than 10 times/occasions.

6. We have perused the Circular No.1/2017, which is in the form of an amnesty being granted to those Bus-Conductors who indulged in misdemeanors. Various misdemeanors are covered in different categories and punishments are imposed upon such errant Bus-Conductors. The Petitioner herself has been earlier penalized with Rs.70,800/- under the said circular. Taking into account the fact that the circular does not impose a limit of pardoning of an employee either once or twice or thrice, errant Bus-Conductors are rampantly indulging in misdemeanors and after they are apprehended by the flying squad, they pray for amnesty under such circular.

7. Prima-facie, we feel that the circular has been misused by several employees of the MSRTC to deprive the MSRTC of the revenue by allowing passengers to travel ticket-less, re-issuing used tickets or issuing tickets of lesser denominations and the like. Moreover, such Bus-Conductors who indulge in such misappropriation, for which the MSRTC should be having zero tolerance level, we find that the Bus-Conductors are blatantly taking advantage of the said circular. We appreciate if the theory of deterrence is made applicable by the said circular

and Bus-Conductors are pardoned either once or twice. Limitless pardoning cannot be countenanced and is unconscionable.

8. Therefore, issue notice to the Respondents, returnable on 04.03.2024. The learned AGP waives service of notice on behalf of Respondent No.1. Mr. Shinde, the learned Advocate waives service of notice on behalf of Respondent Nos. 2 to 4.

9. We are also issuing show cause notice to the MSRTC and the State of Maharashtra, as to why this circular should not be quashed or should be limited for pardoning an errant Bus-Conductor with penalization on one or two occasions. The MSRTC shall file its affidavit-in-reply at least 10 days prior to the returnable date and shall produce data before us with regard to the number of employees of the MSRTC who have been given advantage of the said circular, since its introduction on 27.01.2017. All details about employees having been given the benefit on any number of occasions, should be placed before the Court.

10. Since an important issue is being taken up in this Petition, we are requesting the learned Senior Advocate Shri Sanjeev Deshpande, to assist the Court as Amicus-Curiae. Shri Deshpande graciously agrees to assist the Court. The learned Advocate for the Petitioner Shri Venjane and the learned Advocate for the MSRTC Shri Shinde, shall supply copies of the Petition and affidavits-in-reply and all data, to the learned Amicus-Curiae.

11. All office objections to be removed on or before 23.02.2024.

12. By consent, the Petition would be listed in the 'urgent orders' category on 04.03.2024."

4. On 19/04/2024, the learned Advocate for the Respondent/ Maharashtra State Road Transport Corporation (MSRTC) placed on record a Circular dated 18/04/2024, that was issued by the MSRTC. The said Circular is marked as 'X-1' for identification. Considering the said Circular, the learned Advocate for the Petitioner submitted on instructions that the Petitioner desires to withdraw this Petition. The learned Amicus Curiae canvassed that, though the Circular dated 27/01/2017 has been introduced by the MSRTC, unless the Discipline and Appeal Rules are modified to include the newly introduced punishments, the said types of punishments, cannot be introduced through a circular.

DETAILS OF THE PETITIONER'S MISDEMEANORS

5. The Petitioner has approached this Court with a peculiar request. She prays that the show cause notice dated 12/04/2012, issued by Respondent No.3/ Divisional Traffic Superintendent, MSRTC, proposing the punishment of dismissal from service, be cancelled and the Petitioner be permitted to deposit the fine amount as per the Circular dated 27/01/2017. The challenge to the said second show cause notice is already turned down by the Labour Court, as well as, by the Industrial Court.

6. The Petitioner joined service as a 'lady Bus Conductor' in 2011. In the very first year of service, on 26/12/2011, the Bus was subjected to a surprise check at Ashta, on the Latur to Udgir route.

7. On 02/01/2012, the Assistant Traffic Inspector submitted his report and a charge-sheet was issued on 04/01/2012, under Clauses 7 (h), 7(j) and 12 (b) of the Discipline and Appeal Procedure. By conducting an enquiry, the Enquiry Officer submitted his report on 16/02/2012 and concluded that the charges are proved against the Petitioner.

8. After issuing the second show cause notice dated 12/04/2012, proposing the punishment of dismissal from service, the Petitioner approached the Labour Court, Latur, by filing Complaint (ULP) No.23/2012. The Petitioner's service was protected by an ex-parte order. On 25/01/2023, the ULP Complaint of the Petitioner was dismissed by the Labour Court. The Petitioner approached the Industrial Court by filing Revision Petition (ULP) No.02/2023. The protection was continued. On 20/03/2023, the Revision Petition was dismissed by the Industrial Court.

9. The Petitioner approached the learned Single Judge Bench of this Court in Writ Petition No.3815/2023. By an ad-interim order dated 03/04/2023, the learned Single Judge protected the Petitioner. It is in this backdrop, that the Petitioner approached the MSRTC to take benefit of the Circular No.10/2017, dated 27/01/2017. The said Application was rejected by an order, dated 14/12/2023. Hence, the Petitioner approached this Court.

10. We have appointed the learned Senior Advocate Shri. Sanjeev Deshpande to assist the Court since we found that it was necessary for this Court to go into the aspect of the legality of the said Circular dated 27/01/2017, when we are called upon to decide whether the Petitioner was entitled to a Writ of Mandamus, for granting the benefits of the aforesaid circular. We deem it appropriate to record that after passing the above reproduced order, we have granted opportunities to the litigating parties to advance their case. All were heard in details on the legality of the Circulars dated 27/01/2017 and 28/04/2024, in the light of the claim of the Petitioner. It is apparent that the Petitioner sought to withdraw this Petition, for self-serving purpose so as to derive advantage of the Circular dated 18/04/2024. Shri Deshpande is right in submitting that public accountability is at stake, whether it be the 2017 Circular or the 2024 Circular.

SUBMISSIONS OF THE LITIGATING PARTIES

11. The learned Amicus Curiae Shri. Deshpande, has canvassed that the said Circular dated 27/01/2017 is illogical, irrational, legally unsustainable and which results in not only condoning corruption amongst the employees of the MSRTC, but indirectly grants immunity to them from corruption, thereby emboldening the Conductors to resort to corrupt practices while on duty.

12. Shri. Deshpande has referred to a portion under Chapter 7, titled as

"Fundamental Duties", from the Book "CONSTITUTIONALISM & the RULE OF LAW in a THEATRE OF DEMOCRACY", authored by Justice Arjan Kumar Sikri, Former Judge of the Supreme Court of India, which reads as under :-

"Palkhiwala, a noted jurist and one of the best legal brains of Independent India, had described the Indian state of affairs, about 40 years ago, by saying that the picture that emerges is that of a great country in a state of moral decay. The immediate future seems to belong to the doomsayers rather than to the cheer mongers. We suffer from a fatty degeneration of conscience, and the malady seems to be not only persistent but prone to aggravation. The lifestyle of too many politicians and businessmen bears eloquent testimony to the truth of the dictum that single-minded pursuit of money impoverishes the mind, shrivels the imagination and desiccates the heart. The tricolour fluttering all over the country is black, red and scarlet-black money, red tape and scarlet corruption. This proves that we have landed ourselves from karambhumi to bhogbhumi."

13. He has then referred to the Book "We, the People" written by Shri. N. A. Palkhiwala. He referred to Chapter 1 "THE STATE OF THE NATION-The four costly failures" and adverted to the following portion :-

"The four costly failures of the government and the people, which are the direct causes of the present sorry spectacle, are:

(1) Failure to maintain law and order. We have too much government and too little administration; too many public servants and too little public service; too many controls and too little welfare; too many laws and too little justice.

(2) Failure to bring the unbounded economic potential of the country to fruition.

(3) Failure to make human investment-investment in education, family planning, nutrition and public health, in contradistinction to physical investment in factories and plants. Gross national happiness should have been given priority over gross national product.

(4) Failure to provide moral leadership. We do not live by bread alone, and we are greater than we know.

The blame must be shared by the people along with the government; because it is the public who elect politicians to power, and because private initiative of the citizenry could have gone a long way towards counteracting the deficiencies of the government."

14. He has further referred to another portion from the said Chapter, which reads as under :-

"There are two basic lessons of Indian history. First, our people have always taken their moral standards from their rulers: the people have risen to great heights when they have basked in the glow of noble kings or leaders. Secondly, regimes and kingdoms have been destroyed not by adversity but by abasement. Corruption is the greatest solvent of public institutions; poverty poses a far

smaller threat.

So far from giving the moral leadership which the people are yearning and waiting for, our politicians are only occupied in maintaining a system which is poisoned by collective bad faith and polluted by individual avarice. They are served by deception and craftiness, instead of vision and imagination. The caption of a famous cartoon, "The world is neither flat nor round-it is crooked", aptly sums up the world of Indian politics. In modern India, Machiavelli would have remained unemployed on account of his naivete."

15. He has then referred to the Book "THE STATE OF THE NATION" authored by Shri. Fali S. Nariman. Below Chapter V, under the title "CORRUPTION", he has referred to the following :-

" 'Corruption' is one of the most elastic of words in the English language. To every individual, it is something of which he or she disapproves. Some years ago, at a seminar of the International Bar Association held in Berlin, Jeremy Pope (of Transparency International) gave what then struck me as the most comprehensive, and yet the most concise, definition: 'Corruption is the misuse of public power for private profit. How right he was. Or so it seemed. But recent events have shown that his definition was not as all-embracing as I had once thought it was, because there are simply no limits to where, when or how corruption rears its ugly head. For example, with the revelations of the match-fixing and drug-related scandals in the world of sports (in cricket, cycling and the like), Pope's definition needs restructuring. For instance, there is no leverage of public power in cricket; cricketers do not hold any public office, and yet they exercise moral power - the power to instill idealism among millions of cricket-loving fans. Such fans feel cheated when a player, due to corrupt motives, plays badly or does not play well. The word 'corruption' now embraces the 'misuse of power of any kind for private gain'.

A former procureur general of France (the equivalent of an attorney general in the common-law countries), Pierre Truche, placed the problem of corruption in ancient and modern times in proper perspective. In a proceeding before the Court of Cassation (the highest court in France), he said: 'Corruption is ancient in behaviour, illegal for a long time, but it was a practice tolerated in the higher echelons and by public opinion. We have currently entered a period in which this illegal behaviour which was previously tolerated is tolerated no longer. Simply and effectively put, it is the level of intolerance in society that is the ultimate combating force to tackle corruption.

The need to combat corruption was vividly brought out in a UN Report (the tenth) - on Human Development in South Asia published in November 1999 which covered India, Pakistan, Bangladesh, Sri Lanka and Nepal. This report was prepared by Mahbub-ul Haq - a Pakistani economist and a well-known pioneer of the theory of human development; he was founder of the Human Development Report (HDR). He died in July 1998 before the report could be published. It was

ultimately brought out - dedicated to his memory - with a foreword by Mark Malloch Brown, the newly appointed administrator of UNDP.”

16. Shri. Deshpande has further canvassed that the MSRTC has a particular punishment procedure which is codified in its Discipline and Appeal Rules. The Circular dated 27/01/2017, introducing a sort of an amnesty scheme, allowing the delinquent employees to commit offences upto three occasions and practically purchase a pardon and exoneration by payment of money, is illegal and unsustainable. He further submits that the MSRTC came out with this novel Circular only to escape the effects of the *Suo Moto* PIL. Reacting to the statement of the MSRTC that the said Circular dated 27/01/2017, has been withdrawn by the Corporation and has been replaced by a new Circular dated 18/04/2024, which is marked as 'X-1', he submits that this is also unsustainable. According to him, unless the Discipline and Appeal Rules are amended, incorporating pardon on one occasion with payment of fine as a mode of punishment, 'X-1' would not stand the test of judicial review.

17. He relies upon a judgment delivered by the Hon'ble Supreme Court in *State of Rajasthan Vs. Rajkumar Agarwal*, AIR 2013 SC 847, more specifically, paragraph No.10, which reads as under :-

“10. Mr. Shishodia submitted that Respondent 1 is on the verge of retirement. He has suffered the agony of investigation since 2007 and therefore, this Court may take a kindly view of the matter. Rampant corruption is seen in every walk of our life. People, particularly those holding high office, are frequently seen accepting illegal gratification. In such serious cases showing mercy at this stage may send wrong signals. We are, therefore, unable to accede to Mr. Shishodia's request.”

18. The learned Advocate Shri. Bagul representing Respondent Nos.2 to 4/ MSRTC, has relied upon the judgment delivered by Aurangabad Bench of this Court, dated 30/04/2021, in *Suo Moto Public Interest Litigation No.01/2017* (The High Court of Bombay, Bench at Aurangabad Vs. State of Maharashtra and others). The MSRTC had introduced a scheme known as 'Kutumb Suraksha Yojna', dated 06/08/2016, whereby terminated or suspended Conductors were sought to be re-appointed. This was scrutinized in the *Suo Moto Public Interest Litigation*. In paragraph No.2 of the said judgment, it was recorded as under :-

“2. One Mr. Sharad Babrao Pote and others had filed writ petition No.10038 of 2016 before this Court and sought relaxation of the age restriction made under the notification of the MSRTC from 45 to higher age in order to get benefit of the said scheme "Kutumb Suraksha Yojna". The said writ petition was placed before the Division Bench of this Court on 30.06.2017, when this Court noticed that the scheme floated by the MSRTC is against the public interest since the employees who were charged or terminated or suspended on account of mis-appropriation of funds sought to be re-appointed under the guise of the scheme. This Court, converted the above said writ petition into *Suo Moto Public Interest Litigation* to consider the notification in question / scheme since it is against the interest of

the public at large.”

19. Shri. Bagul then draws our attention to the factual matrix of the case, as was recorded in paragraph No.3 in the Suo Moto Public Interest Litigation and the stand of the MSRTC in paragraph Nos.4 to 8, which reads as under :-

“3. The factual matrix of the case is as under:

3(i) The MSRTC has come out with a novel scheme of re-appointment of those conductors who are either suspended or terminated in order to extend financial benefits to the family members of such conductors under the scheme "Kutumb Suraksha Yojna". Respondent No.2 / MSRTC has issued a Circular No.25 of 2016 dated 06.08.2016, thereby launched a scheme for conductors who are dismissed on account of mis-appropriation or any charges of fraud or otherwise, employed with MSRTC to be re-appointed as per the said Circular / Resolution passed by the Board of Directors of MSRTC in the meeting dated 01.04.2016 under the scheme "Kutumb Suraksha Yojna". The intention in launching such scheme was tried to be canvassed in such a fashion to show that due to the litigation between the MSRTC and the suspended / dismissed conductors on account of mis-appropriation or fraud, heavy financial loss is being caused to the Corporation. It is also stated in the said scheme that due to the misdeeds of the said conductors, their family members are facing financial problems and in order to protect their families, such a scheme is launched in for their benefit.

STAND OF THE MSRTC

4. The Vice Chairman and Managing Director of MSRTC, Mumbai has sworn the affidavit and tried to justify the scheme floated by the MSRTC. It is stated in the reply affidavit that there are about 32,000 conductors who come from semiliterate category had bench mark qualification for their recruitment of S.S.C. pass. In most of the cases, the person recruited as a conductor is alone member of the family who takes care of old parents and family. While discharging duty as conductors, they commit mistakes in issuing tickets as well as counting passengers. There is improper calculation of the cash. As they are handling cash, they are lured by the sense of making immediate profit of few bucks. In doing so find themselves in unfortunate circumstances and are branded as persons committing mis-appropriation.

5. The MSRTC as a policy, does not file criminal cases against those conductors. The conductors found committing mis-appropriation or causing loss to the Corporation by negligence are dealt with disciplinary Rules of the Corporation. The employees of the MSRTC have several unions and some times they are misguided by the unions and it results in filing the cases against the MSRTC before the various forums, thereby putting financial burden on the MSRTC. Many conductors used to obtain loan from the State Transport Cooperative Bank and there is responsibility on the shoulders of conductors to repay the loan. If the conductors are slapped with dismissal, their entire family come on the street. There are rounds of litigation, enquiry, appeals and Court litigation. The family

members are the most sufferers. The children have to lose the opportunity of education. By taking into consideration all these facts, the Board of Directors in its meeting dated 01.04.2016, decided to provide one time solution to such conductors and their families. Accordingly, the MSRTC had issued a Circular No. 25 of 2016 dated 06.08.2016 and introduced the scheme as "Kutumb Suraksha Yojna".

6. The very purpose of issuance of such Circular is that the employees who are dismissed from the services for the irregularities in issuing tickets and for misappropriation may get a chance to save their family from starvation. The object of the scheme is that the family members of the said employees should not be punished for the act of their sole bread earner. One more aspect is to provide an opportunity to such conductors to reform themselves by getting fresh appointment and begin their employment a fresh. The Corporation in this regard adhere to the Gandhian philosophy of reforming a criminal rather than punishing them and detaching them from the social cycle of which they were a part before the crime was committed by them.

7. It is further stand of the MSRTC that while issuing such Circular No. 25 of 2016, the MSRTC has put stringent terms and conditions. The Circular is applicable to all types of irregularities in issuing tickets and misconducts. The employees will not get benefit of the past service benefits like gratuity etc. The employees who have completed 45 years of age on 01.04.2016 will not get the benefit of re- appointment as well as the employees dismissed for more than three times, will not be re-appointed under the scheme.

8. It is the stand of the MSRTC that such scheme is introduced to give financial support to the families of the employees / conductors who are involved in the enquiries or who faced suspension or dismissal so that they may get one chance in their life to begin new chapter."

20. The learned Amicus Curiae in the said Suo Moto Public Interest Litigation had canvassed that the said scheme was against public policy and was nothing, but, an attempt to give a go-bye to the legal process. His submissions were recorded in paragraph Nos.11 to 13 in the said order in Suo Moto Public Interest Litigation, as under :-

"11. Mr. Gangakhedkar, learned counsel for the petitioner vehemently submitted that the scheme introduced by the MSRTC is against the public policy. It is also against the public interest. So called family protection scheme / "Kutumb Suraksha Yojana" sought to be introduced by the MSRTC is nothing but an attempt to give go by to the legal process. The procedure adopted by the MSRTC by way of Circular to re-appoint suspended / dismissed employees is unknown to law. He submitted that the impugned scheme is apparently against the public interest since a person carrying stigmatic character and already placed under suspension or dismissal from service on account of mis- appropriation of funds of the MSRTC and not to be given any sympathetic treatment by colour of

rehabilitation of his family under the purported scheme of "Kutumb Suraksha Yojana". Such an approach of showing sympathy towards the wrong doors at the cost of public at large cannot be digested. The impugned scheme is nothing but giving re-appointment to the conductors who have been suspended or dismissed on account of charges of mis-appropriation of funds of MSRTC by giving back door entry. The impugned Circular is in contravention of public interest and policy. It clearly amounts to giving price or reward to an employee who has been suspended or dismissed from services on account of mis-appropriation of funds. It is some what novel idea tried to be introduced by the MSRTC against the settled provisions of law. The impugned scheme is against the Constitutional provisions. Mr. Gangakhedkar, learned amicus curiae urged to quash the impugned Circular / scheme since it is against the public policy and it contravene the settle legal principles.

12. Mr. Gangakhedkar, learned amicus curiae has placed his reliance on the following stock of citations in support of his argument.

(i) State of Haryana and others Vs. Piara Singh and others reported in AIR 1992 SC 2130.

(ii) State of Orissa Vs. Bimalkumar Mohanty reported in (1994) 4 SCC 126.

(iii) Jaskaran Singh Brar Vs. State of Punjab reported in 2005 (3) SLJ 354.

(iv) Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank reported in (2010) 8 SCC 573.

13. Per contra, Mr. Sapkal, learned Senior Counsel supported the Circular / impugned Scheme. Mr. Sapkal submitted that the Public Interest Litigation in service matters cannot be entertained. The impugned Circular is in between the MSRTC and its employees. There is no public interest involved. The MSRTC in its meeting of Board of Directors has taken a policy decision on 01.04.2016, by taking into consideration all the pros and cons. Accordingly, the scheme has been launched by Circular No.25 of 2016 dated 06.08.2016 and introduced the scheme as "Kutumb Suraksha Yojana". It is an attempt to give re- employment to the conductors who are involved in the departmental enquiry or who have been suspended or dismissed due to several- mistakes committed while discharging their duty. Their family members are the most sufferers. By considering all these aspects, the scheme has been introduced by the MSRTC. The MSRTC has launched the said scheme to safeguard the fundamental rights of its employees which are conferred on them by Article 14, 16 and 19 of the Constitution of India. He submitted that the impugned Circular issued by the MSRTC is not to bestow luxury on its employees but by way of humanitarian ground and in order to rehabilitate the family of the employees who are victims of the circumstances, such a scheme is launched."

21. Finally, this Court concluded in paragraph Nos.24 to 29, 36 and 37, as under :-

"24. The Division Bench of this Court while hearing the writ petition No.10038 of 2016 (Sharad Baburao Pote and others Vs. The State of Maharashtra and another) prima facie noticed that the scheme launched by the MSRTC to re-appoint the suspended or terminated conductors under the scheme "Kutumb Suraksha Yojana" is against the public interest and directed to initiate Suo Moto Public Interest Litigation to consider notification in question. In that background, it is difficult to accept the argument advanced by the learned Senior Counsel that the instant Public Interest Litigation relating to service matter is not maintainable.

25. It is tried to be canvassed before us that for the welfare of the family members of suspended or dismissed conductors of the MSRTC, the impugned scheme is launched. It is by way of rehabilitation of suspended / dismissed conductors and their families. It is for their welfare and to protect their fundamental rights. We are not impressed by such argument. The MSRTC is run and controlled by the State of Maharashtra. The Corporation is rendering its services to the public at large. The policy decisions taken by the State Government from time to time are also applicable to the MSRTC.

26. There cannot be debate that welfare of the employees is to be protected by the employer. At the same time, whatever policy decision is to be taken, it must be in consonance with the rules and regulations and should be reasonable and not irrational. The decision or the policy should not be against the public interest, which may hamper generation of employment.

27. There are various State and Central Laws which takes care of welfare of labours. For example, Factories Act, Industrial Disputes Act, Workmen Compensation Act etc. The purpose of Labour Legislation is to protect legal rights of Labour. Labour Legislation that is adapted to the economic and social challenges at the modern world of work fulfills three crucial roles:

(a) It establishes a legal system that facilitates productive individual and collective employment relationship and therefore a productive economy.

(b) By providing a frame work within which employers, workers and their representatives can interact with regard to work related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy.

(c) It provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

28. We have carefully studied the impugned scheme. The MSRTC has its own procedure for taking action against its employees, viz. the procedure for Discipline and Appeals. Various punishments are provided against the employee involved in acts of misappropriation, including suspension or removal from the service. However, in view of the new scheme, even if a Conductor is found guilty

in a case of misappropriation, instead of suspending or dismissing him, provision is made to recover the amount of fifty times of the misappropriated amount, but that amount should be at least Rs.5,000/-. The scheme further speaks that if that Conductor repeats the said act, then an amount of seventy five times of misappropriated amount be recovered from him. Similar kind of provisions are made in the said scheme and instead of taking action against the Conductors as per procedure of discipline and appeals, the Conductors are allowed to be re-appointed/reinstated in view of the scheme by recovering the misappropriated amount from them.

29. The impugned scheme appears to be unique and novel which has indirectly given go-bye to the legal procedure. It is well settled position of law that if the law requires that a particular thing is to be done in a particular way, it should be done in the same way and not by any other way. If a conductor is found guilty in a case of misappropriation, he must be dealt with according to the discipline and conduct procedure of the MSRTC. Whatever legal action is contemplated under the procedure must be adhered to.

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36. Having regard to the above reasons and discussion and after studying the impugned scheme, we have no manner of doubt that impugned scheme/decision/circular is against the public policy and public interest at large. The impugned decision is nothing but abuse of powers. The impugned decision is arbitrary and violative of well settled principles of Labour Laws and employment and equally, it violates Constitutional provisions of Articles 14, 16 and 19. The impugned decision if allowed to continue, bad signal would reach in the society that the persons/Conductors who are involved in cases of misappropriation are being reemployed/reinstated in the Corporation. This cannot be allowed in the welfare State. It is necessary to struck down the impugned policy by looking to the public interest at large and generation of employment. The impugned scheme is violative of Constitutional provisions and as such, must be thrown in the dust - bin. However, those who have already been granted benefit of this scheme earlier may not be disturbed.

37. With these reasons, we conclude and proceed to pass the following order:

ORDER

(i) The Suo Moto Public Interest Litigation is hereby allowed.

(ii) The impugned scheme known as 'Kutumb Suraksha Yojana' bearing No.25/2016 dated 6.8.2016 is hereby quashed and set aside.

(iii) The Registrar (Judicial) to forward copy of this judgment and order to the Managing Director, M.S.R.T.C., Mumbai for information and further necessary

action.

(iv) Fees of Mr S.S. Gangakhedkar, learned Counsel appointed as Amicus Curiae is quantified at Rs.5,000/-(Rupees Five Thousand only) and the Secretary, High Court Legal Services Sub-Committee at Aurangabad shall pay the above quantified fees to learned Counsel Mr S.S. Gangakhedkar.”

22. Shri. Bagul submits that, the MSRTC introduced the Circular dated 27/01/2017, with a purpose. He submits that, the larger interest of the MSRTC, as well as that of the delinquent employees, was considered in this Circular. Delinquent employees were given opportunities to improve their conduct. Since this Court had expressed a view in this Petition, vide its speaking order dated 30/01/2024, that the MSRTC decided to withdraw the said Circular and introduce the new Circular dated 18/04/2024, X-1. He has further canvassed, that the MSRTC has restricted the benefits under the 2024 Circular, by modifying the 2017 Circular. Clause 1A of the 2017 Circular has been modified to the extent of Sr. Nos.1 and 2. Clause 2 under the 2017 Circular has been cancelled and the misconducts mentioned below Clause 2 were made subject to the Discipline and Appeal Rules. He, therefore, submits that the MSRTC has shown pragmatism in granting only one opportunity to the delinquents.

23. The learned Advocate for the Petitioner, while strongly supporting the MSRTC stand, has canvassed that, since 27/01/2017, hundreds of employees have taken advantage and benefit of the said 2017 Circular. Now, that the said Circular has been modified by the new Circular on 18/04/2024, providing only one single opportunity for the first category and two opportunities for the second category, no fault can be found with the said Circular. He has, therefore, urged us to refrain from interfering with the 2024 Circular because the MSRTC is following the policy of reformation.

ANALYSIS AND OUR CONCLUSION

24. For the sake of brevity, we deem it appropriate to reproduce the Circular dated 27/01/2017, here under :-

25. The new Circular dated 18/04/2024, reads as under :-

[Emphasis supplied]

26. Before we advert to the effect of the above stated two Circulars, we deem it appropriate to refer to certain Reports as regards corruption and misappropriation at work places. In P. R. Shele Vs. Union of India and others, 2008 (2) Mh.L.J. 33, while dealing with the challenge to the charge-sheet, the Division Bench of this Court held in paragraph Nos.7 to 10, as under :-

“7. It must be stated here at the outset that in the original application as the prayer clause indicates the petitioner had challenged only the charge-sheet dated 12/2/01, the petitioner had not challenged the order dated 8/2/02 passed by the Disciplinary Authority or the order dated 13/10/02 passed by the Appellate

Authority. The Tribunal has dismissed the original application on the ground that such challenge is not tenable. The Tribunal has also held that the original application is time barred.

8. In our opinion, no fault could be found with the Tribunal for taking a view that challenge to charge-sheet is not tenable. In this connection we may refer to the judgment of the Supreme Court in (Transport Commissioner. Madras-5 Vs. A. Radhakrishna Moorthy)¹, 1994 DGLS 1103: (1995)¹ S.C.C. 332 where while dealing with somewhat similar contention, the Supreme Court has observed as under:

The truth and correctness of the charges was not a matter for the Tribunal to go into—more particularly at a stage prior to the conclusion of the disciplinary enquiry. Even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence i.e. where they are perverse. The jurisdiction of the Administrative Tribunal is akin to that of the High Court under Article 226 of the Constitution. It has power of judicial review. It only examines the procedural correctness of the decision-making process. For this reason the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.

9. We may also refer to yet another judgment of the Supreme Court in (Union of India & Ors. Vs. Upendra Singh)², 1994 DGLS 240: (1994)³ 5.C.C. 357. The relevant observations of the Supreme Court may be quoted:

In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the Disciplinary Authority. The truth or otherwise of the charges is a matter for the Disciplinary Authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the Disciplinary Authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the

said writs must be kept in view.

10. We may also refer to the judgment of this Court in (Ramchandra Govindrao Gaidhani Vs. Union of India & Anr.)³, delivered on 18/9/2006 in Writ Petition No. 6211 of 1999, to which one of us (Smt. Ranjana Desai, J.), is a party. Similar view has been taken by this Court in that case. Examined in the light of the above judgments, we cannot fault the Tribunal for having refused to examine the correctness, the truth or otherwise of the charges. We cannot lose sight of the fact that the petitioner did not challenge the Disciplinary Authority's order or the Appellate Authority's order. The first submission of learned Counsel for the petitioner must, therefore, fail."

27. With regard to dishonest conduct, it was held in paragraph Nos.14 to 17, as under :-

"14. That takes us to the last submission of learned Counsel for the petitioner as regards the alleged disproportionate punishment. In this connection our attention is drawn by Mr. Suresh Kumar, learned Counsel appearing for the respondent, to the judgment of the Supreme Court in (Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane)⁴, 2004 DGLS 664: A.L.R. 2004 S.C. 4761: (2005)3 S.C.C. 254 where the employee had misappropriated the funds of the appellant Corporation. The employee was removed from service. The High Court directed reinstatement with full back wages and continuity of service. The Supreme Court observed that while dealing with the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. The Supreme Court further observed that when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal. The Supreme Court restored the dismissal order passed by the Disciplinary Authority.

15. We may also refer to another judgment of the Supreme Court in (Managing Director, North-East Karnataka Road Transport Corpn. Vs. K. Murti)⁵, (2006)12 S.C.C. 570. The relevant paragraph of the judgment may be quoted:

The learned Counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this Court, one in (Regional Manager, Rajasthan SRTC Vs. Ghanshyam Sharma)⁶, 2002(10) S.C.C. 330 which was also a case of bus conductor carrying passengers without issuing tickets. This Court, in the above case, held that carrying the passengers without tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. This Court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgment in (Karnataka SRTC Vs. B.5. Hullikatti)⁷. In the said judgment, this Court has held that in such

cases where the bus conductors carry passengers without ticket or issue tickets at a rate less than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed that in cases like the present, orders of dismissal should not be set aside.

The learned Counsel for the appellant also cited (Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh)⁸, 2006(6) S.C.C. 157. In this case, this Court was considering the case of misappropriation of a small amount of State Road Transport Corporations fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the Corporation. This Court also held that punishment of dismissal from service awarded by the Disciplinary Authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any employer unless there exists a statutory provision in this behalf. This Court also observed that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

16. In this case the Divisional Authority, the Appellate Authority as well as the Revisional Authority have held the petitioner guilty. It is observed that the special cancellations were made by the terminal manned by the petitioner. The privilege of special cancellation can only be accessed, if the appropriate user ID and password are entered. The password being confidential is known to the concerned Enquiry Reservation Supervisor who enters his User ID and password. It is observed that the concerned Enquiry Reservation Officer at the relevant time was the petitioner. Conduct of the petitioner is despicable. It shows dishonesty. As said by the Supreme Court, the amount involved is immaterial. It is the conduct and its effect which needs to be seen. If the respondents feel that such a person should not be allowed to work in railways which is a service essentially meant for general public their action of removing him from service cannot be faulted.

17. In the view that we have taken it is not possible for us to interfere with the punishment awarded to the petitioner. Besides there is no challenge to the Enquiry Officers order. Challenge is to the charge-sheet. In the circumstances, in our opinion, there is no merit in the petition. The petition is rejected.

Petition rejected.”

28. In Managing Director, The North East Karnataka Road Transport Corporation Vs. K. Murti, 2006 (12) SCC 570, the Hon’ble Supreme Court concluded in paragraph Nos.8 to 11, as under :-

"8. The learned counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this Court, one reported in 2002 (10) SCC 330 (Regional Manager, RSRTC versus Ghanshyam Sharma), which was also a case of bus conductor carrying passengers without issuing tickets. This Court, in the above case, held that carrying the passengers without tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. This Court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgment reported in 2001 (2) SCC 574 (Karnataka SRTC vs. B.S. Hullikatti). In the said judgment, this Court has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed that in cases like the present, orders of dismissal should not be set aside. The learned counsel for the appellant also cited judgment reported in 2006 (6) SCC 187 (Divisional Controller, N.E.K.R.T.C. vs. H. Amaresh). In this case, this Court was considering the case of misappropriation of a small amount of State Road Transport Corporations fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the Corporation. This Court also held that punishment of dismissal from service awarded by the Disciplinary Authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any employer unless there exists a statutory provision in this behalf. This Court also observed that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

9. In the instant case, the position held by the employee (conductor) is one of faith and trust. A conductor holds the post of trust. A person guilty of breach of trust should be imposed punishment of removal from service. The respondents conduct in not collecting the requisite fare at the designated place from persons who had travelled were in violation of various regulations contained in the provisions of the Corporation C & D Regulations, 1971.

10. The following judgments can be usefully referred to for the above proposition. They are:

1. V. Ramana vs. A.P. SRTC & Ors., 2005 (7) SCC 338
2. Madhur Coats Ltd. vs. Madhan Kumar & Ors., 2000 (85) FLR 933 Madras
3. Management of T.I. Diamond Chain Ltd. vs. P.L. Ramanathan & Anr., 2005

11. We, therefore, set aside the final order dated 25.2.2005 passed by the High Court of Karnataka in Writ Appeal No.1565 of 2004 and allow the appeal filed by the Management. The orders passed by the learned Single Judge of the High Court and the Labour Court are also set aside. No costs."

29. In Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.), Etc Vs. Secretary, Sahakari Noukarara Sangh, etc., AIR 2000 Supreme Court 3129, the Hon'ble Supreme Court held in paragraph Nos.6 and 7, as under :-

"6. As stated above, the learned single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management removing the workmen from the service and reinstating them with 25% back wages. Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstalling the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari, (1996) 2 SCC 714): (1996 AIR SCW 1309: AIR 1996 SC 1249: 1996 Lab IC 1056). In U. P. State Road Transport Corporation v. Basudeo Chaudhary, (1997) 11 SCC 370 this Court set aside the judgment passed by the High Court in a case where a conductor serving with the U. P. the conductor was attempt to cause loss of Rs. 65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs. 2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. v. Kala Singh, (1997) 6 SCC 159: (1997 AIR SCW 2625: AIR 1997 SC 2661: 1997 Lab IC 2649), this, Court considered the case of a workman who was working as a Dairy Helper- cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held that "in view of proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would. truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the I.D. Act to grant relief with minor penalty".

7. In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent-workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered

several years of service without any blemish and to some extent, there was lapse on the part of the Management.”

30. The Discipline and Appeal Rules of the MSRTC which have the force of law, which prescribe various punishments for various misconducts, minor and major, as under :-

31. In view of the above, it is apparent that any mode of granting pardon to the employees by imposition of fine or penalty, in lieu of the prescribed form of punishment, in a manner, which is alien to the prescribed list of minor and major punishments, cannot be introduced through Circulars. The only way out for the MSRTC, if it desires to pursue the theory of reformation within permissible, reasonable and logical limits, is to introduce the said types of punishments vide an amendment to the Discipline and Appeal Rules.

32. Insofar as the 2017 Circular is concerned, though we conclude that the types of alternative pseudo punishments introduced to pardon/condone corruption and misappropriation, are depreciable, illegal and cannot be sustained, the said Circular has now been withdrawn by the MSRTC. In this backdrop, we do not intend to issue any direction to the MSRTC to dig out all those cases which have already been concluded and given a ‘quietus’ vide the 2017 Circular till 18/04/2024 (when the new Circular was introduced). However, we specifically conclude that the pending cases, whether in litigation or under Departmental Enquiries or with the Appellate authority, will not be entertained under the 27/01/2017 Circular.

33. Insofar as the 18/04/2024 Circular is concerned, it obviously prescribes one opportunity for reformation under Clause 1 and two opportunities in Clause 2 (the underlined portion in paragraph no. 25 hereinabove) with regard to the second type of misconduct. The reproduced portion of the Circular, for ready reference, is below paragraph 25 herein above. We find that the MSRTC may, at the most grant one more opportunity for reformation to a delinquent. Repeated opportunities are depreciable, irrational and unconscionable. It would be ridiculous to pardon a delinquent for acts amounting to misappropriation and dishonesty.

34. The theory of reformation can neither be stretched too far, nor to an unacceptable proportion or to render an illogical conclusion, as is held in Managing Director, The North East Karnataka Road Transport Corporation (supra).

The position held by the Bus Conductor is one of faith and trust. A person guilty of breach of trust should be imposed with punishment of removal from service. This has been the consistent view of the Hon’ble Supreme Court in KSRTC Vs. A. T. Mane (supra); The Managing Director, The North East Karnataka Road Transport Corporation (supra); Janatha Bazar (supra) and in catena of judgments. Once the employer loses confidence and trust in a Bus Conductor, it is unconscionable that such candidate can be pardoned by introducing such contingencies, as are set out in the Circular dated 18/04/2024, and that too

without amending the D and A Rules.

35. Though the theory of reformation has been made applicable in a few cases, it ought not to be stretched too far. The MSRTC has strenuously canvassed that the 2024 Circular grants bare minimum opportunities to the delinquent to suffer monetary punishments, so as to reform the said employee. The punishment proposed is by way of granting an opportunity to the employee to show remorse and express regret for his act and at the same time feel the pinch of a monetary loss. The intention of the MSRTC is to ensure that the punishment of dismissal from service, which actually amounts to civil death, should not be imposed on an employee in order to grant him an opportunity of improving his conduct.

36. Even if we appreciate the said stand of the MSRTC, though we are of the firm view that there should be a zero tolerance for the acts of misappropriation and dishonesty, we do not appreciate the second chance granted to a delinquent below Clause 2, in the chart reproduced under paragraph 25. Hence, at this stage, we are quashing and setting aside the second portion set out below Clause 2 in the chart reproduced under paragraph 25 herein above. The said Clause stands deleted from the Circular dated 18/04/2024. This is subject to our direction being set out in paragraph 37, here in below. We also make it clear that, this Circular can be made applicable only to an employee whose past record is clean and unblemished, so as to extend him one opportunity to reform himself. It will not be made applicable to those who are already reported to have indulged in more than one misdeed.

37. We have no hesitation in concluding that, if any type of punishment, as like the punishments introduced by the 2024 Circular below Clauses 1 and 2 (the second option below Clause 2, having been held to be illegal and quashed and set aside by us), is to be made applicable, the same will have to be introduced in the Discipline and Appeal Rules, more specifically, the clause prescribing various types of punishments for various types of misdemeanors. If the MSRTC includes these two types of punishments in its list of punishments set out under the Discipline and Appeal Rules, it would be permissible to the MSRTC to resort to the said types of punishments. Hence, we hold that, unless the said punishments under the Circular dated 18/04/2024, are not introduced under the types of punishments set out in the Discipline and Appeal Rules, there can be no sanctity to the said Circular.

38. We, therefore, hold that the MSRTC shall initiate steps to include the said two punishments in its list of punishments by amending the Discipline and Appeal Rules by following the due procedure prescribed in law, within a period of 60 days from today. Until then, the said Circular to the extent of these two punishments, shall not be made applicable to any of the employees of the MSRTC, until introduced in the Discipline and Appeal Rules. If such steps are not initiated within 60 days from today, the said Circular shall lose its efficacy and the MSRTC is directed, not to apply the said Circular to any of its cases. Nevertheless, the 2017 Circular shall not stand restored under any circumstances.

39. We make it clear that, after the two punishments are introduced in the Discipline and Appeal Rules, if there is any specific challenge to it's legality, the said issue can be looked into by the appropriate Court on it's own merits and we hasten to add that, the said aspect is kept open to be considered in an appropriate case.

40. In view of the above directions, this Writ Petition is disposed off. Rule is discharged.

41. We appreciate the efforts of the learned Senior Advocate Shri Sanjeev Deshpande for the able assistance rendered to the Court.