

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7320 OF 2019

Anil Sopan Koli,

Age: years, Occupation Nil,
C/o. D.P. Ikhar, r/at: 1064,
Shukrawar Peth, Subhash Nagar,
Galli No.9, Pune 400 002

... Petitioner

Vs.

Owner / Management,

M/s. Brihans Maharashtra Sugar,
Syndicate 600, Sadashiv Peth,
Pune 411 030

... Respondent

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PATHAN

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Mr. Neel G. Helekar with Mr. Kanhaiya Yadav and Mr.
Akhilesh Yadav for the petitioner.

Mrs. Anjali Raghunath Shiledar Baxi for the
respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 23, 2026.

PRONOUNCED ON : APRIL 24, 2026

JUDGMENT:

1. By the present Petition instituted under Article 226 of the Constitution of India, the Petitioner has called in question the legality, correctness and propriety of the impugned order dated 16 September 2017 passed by the learned Labour Court at Pune.

2. The facts giving rise to the present Petition, in brief, are that the Petitioner came to be employed with the Respondent Company in the capacity of a driver with effect from 01 December 2000. It is the case of the Petitioner that during the entire period of his service, his record remained clean, satisfactory and unblemished, and that no memo, warning or disciplinary proceedings were ever initiated against him at any point of time. According to the Petitioner, to his utter shock and surprise, the Respondent Company issued a charge-sheet dated 22 January 2008 alleging certain acts of misconduct against him. Pursuant thereto, the Respondent conducted a domestic enquiry against the Petitioner. The Petitioner participated in the said enquiry proceedings and submitted his reply to the show cause notice, wherein he denied all allegations levelled against him. The Petitioner craves leave of this Hon'ble Court to refer to and rely upon the said reply, if required, at the appropriate stage. Upon conclusion of the domestic enquiry, the Respondent Company terminated the services of the Petitioner with effect from 23 August 2008. Being aggrieved thereby, the Petitioner approached the Labour Commissioner seeking redressal of his grievance. Since the conciliation proceedings failed, the Appropriate Government referred the industrial dispute for adjudication to the Labour Court at Pune under the provisions of the Industrial Disputes Act, 1947. Pursuant to such reference, the Petitioner filed his Statement of Claim before the Labour Court seeking reinstatement in service with continuity, full back wages and all consequential service benefits. The Respondent Company resisted the said claim by filing

its Written Statement and denied the averments made by the Petitioner, contending inter alia that the order of termination was legal, valid and justified. The Respondent further contended that the past service record of the Petitioner was not satisfactory; however, according to the Petitioner, no documentary material was produced by the Respondent in substantiation of the said contention. The Respondent additionally alleged that the Petitioner had committed serious misconduct, including rash and negligent driving, and had caused damage to the property belonging to the Respondent Company.

3. Upon hearing the parties and considering the material placed on record, the learned Labour Court passed its Award dated 16 September 2017, whereby it held that the punishment of dismissal imposed upon the Petitioner was disproportionate to the misconduct alleged and that the order of termination was illegal and improper. However, despite recording the aforesaid findings, the learned Labour Court, instead of directing reinstatement of the Petitioner with continuity of service and full back wages, awarded lump sum compensation of Rs.1,00,000/- in favour of the Petitioner. The said Award came to be published on 10 January 2018. Being aggrieved thereby, the Petitioner has preferred the present Petition.

4. Mr. Helekar learned Advocate appearing for the Petitioner submits that the learned Labour Court has committed an error in recording a finding that the Respondent Company had lost confidence in the Petitioner and, on such premise, in declining the relief of reinstatement. It is contended that the Petitioner was

working merely in the capacity of a driver and was not occupying any post involving trust, confidence or fiduciary responsibility. It is, therefore, submitted that the finding regarding alleged loss of confidence is wholly misconceived, untenable and unsustainable in law. It is further contended that, in any case, the Respondent could have assigned the Petitioner alternative duties in any suitable post falling within the category of Class IV employment. The learned Advocate for the Petitioner further submits that once the order of termination has been held to be illegal, the Petitioner becomes entitled to all consequential reliefs flowing therefrom, including reinstatement in service with continuity and grant of back wages. It is submitted that the learned Labour Court failed to appreciate that the Petitioner had completed 240 days of continuous service and, therefore, was deemed to be in continuous employment within the meaning of the provisions of the Industrial Disputes Act, 1947. It is contended that after having recorded a finding that the termination was illegal, denial of reinstatement is contrary to the settled principles governing industrial jurisprudence.

5. It is further submitted that in the facts and circumstances of the present case, the impugned judgment and award passed by the learned Labour Court at Pune deserve to be quashed and set aside, and the Respondent be directed to reinstate the Petitioner in service with continuity and all consequential benefits from the date of termination, along with regularisation of his services. The learned Advocate for the Petitioner submits that the affidavit filed on behalf of the employer itself discloses that the Petitioner was appointed in the capacity of Driver-cum-Peon, and therefore the

nature of the post held by the Petitioner cannot be construed as one involving trust, confidence or fiduciary responsibility. It is contended that in view thereof, the finding recorded regarding alleged loss of confidence is wholly misplaced and unsustainable, as the post occupied by the Petitioner was not such as would attract the doctrine of loss of confidence in service jurisprudence. In support of his submissions, the learned Advocate for the Petitioner has placed reliance upon the decisions in *Mahavir Ispat Ltd. and Another vs. Mohammed Ismail Siddiqui*, 1994 SCC OnLine Bom 831; and *Umesh Kumar Pahwa vs. Board of Directors, Uttarakhand Gramin Bank & Ors.*, reported in (2022) 4 SCC 385.

6. Per contra, Ms. Baxi the learned Advocate appearing for the Respondent submits that the Respondent, being the first party before the Labour Court, had resisted the claim of the Petitioner, being the second party therein, by filing its detailed Written Statement. It is submitted that apart from the admitted factual aspects, the Respondent had specifically contended that the past service record of the Petitioner was unsatisfactory. It is further submitted that the Respondent had initiated disciplinary proceedings against the Petitioner on account of grave and serious misconduct. A domestic enquiry was thereafter conducted, in which the Petitioner duly participated through his representative. It is submitted that the charges levelled against the Petitioner were in relation to misconduct falling under the relevant Standing Orders, namely habitual neglect of work or gross habitual negligence; drunkenness or riotous, disorderly or indecent behaviour on the premises of the undertaking; wilful

insubordination or disobedience of lawful and reasonable orders of a superior; wilful damage to work in process or property of the undertaking; and frequent repetition of acts or omissions for which fine may be imposed under the Payment of Wages Act, 1936.

7. The learned Advocate for the Respondent further submits that the Petitioner was charged with several serious acts of misconduct including rash and negligent driving, which resulted in damage to the property belonging to the Respondent Company. It is submitted that on 20 April 2006, a serious accident occurred on the Bangalore–Pune Highway, in which consultants of the Respondent sustained injuries. It is further submitted that prior thereto, on 26 November 2004, another incident involving negligent driving by the Petitioner had occurred, resulting in injuries to company officials. It is also submitted that two further incidents arising out of negligent driving by the Petitioner took place on 04 March 2005 and 18 February 2006 respectively. The learned Advocate for the Respondent submits that the domestic enquiry was conducted strictly in consonance with the principles of natural justice. It is submitted that the Enquiry Officer considered both oral and documentary evidence adduced during the enquiry proceedings and, upon due appreciation thereof, held the Petitioner guilty of the charges levelled against him. It is further submitted that the past service record of the Petitioner was also taken into account, following which the Respondent Company dismissed the Petitioner from service with effect from 23 August 2008.

8. The learned Advocate for the Respondent further submits

that under Section 11-A of the Industrial Disputes Act, 1947, the Labour Court possesses jurisdiction to appreciate the evidence adduced before the Enquiry Officer and also to interfere with the punishment imposed by the employer, wherever warranted. It is submitted that the incidents referred to in the charge-sheet pertain to rash and negligent driving on the part of the Petitioner. Despite repeated instructions and warnings issued by the Respondent from time to time, the Petitioner allegedly continued to act in a negligent manner. It is contended that neglect of duty resulting in, or likely to result in, danger to the life and safety of employees constitutes serious misconduct. It is further submitted that although no criminal proceedings came to be initiated against the Petitioner and though certain material on record indicates that one of the accidents at Kolhapur was not attributable to the negligence of the Petitioner and had occurred due to the fault of the opposite vehicle, the Enquiry Officer, upon consideration of oral as well as documentary evidence, found all charges proved except the charge relating to wilful damage to work in process or property of the undertaking. The learned Advocate for the Respondent submits that having regard to the nature and gravity of the misconduct proved against the Petitioner, the punishment imposed upon him was fully justified and proportionate. In support of the said contention, reliance has been placed upon the judgment of the Supreme Court in *Union of India & Ors. vs. Subrata Nath, reported in (2024) 20 SCC 402*.

9. The learned Advocate for the Respondent, however, submits that the establishment of the Company situated at Shirur, where

the Petitioner was originally engaged in service, has since been closed down and that the Respondent Company is presently carrying on its operations only from its Head Office at Pune. It is, therefore, contended that in view of closure of the said establishment, the question of reinstating the Petitioner at the original place of employment does not arise and the relief of reinstatement, as sought by the Petitioner, has become impracticable in the facts of the present case.

REASONS AND ANALYSIS:

10. I have heard the learned advocates appearing for the respective parties at considerable length and with their assistance have carefully perused the pleadings, documentary material, findings recorded by the learned Labour Court, and the entire record made available before this Court.

11. The first aspect which requires examination is the nature of the appointment held by the petitioner, for the same goes to the root of the finding regarding loss of confidence recorded by the Labour Court. The affidavit filed by the employer indicates that the petitioner was appointed as a driver-cum-peon. The material on record does not indicate that the petitioner was entrusted with handling of confidential documents, financial transactions, custody of sensitive records, or any fiduciary obligations of such nature where trust forms the basis of employment. A driver-cum-peon falls in the category of subordinate workman discharging operational duties. Such employment requires discipline, careful conduct and responsible behaviour, particularly where driving of

vehicles is involved; however responsibility cannot elevate such post to the category of one involving confidence. Every employment requires degree of trust, but the doctrine of loss of confidence applies in circumstances where the relationship between employer and employee is founded on faith. In the present case, the Labour Court appears to have proceeded on an assumption that because allegations of misconduct were made against the petitioner, the employer was justified in claiming loss of confidence. Loss of confidence cannot be accepted as a general expression to deny reinstatement whenever misconduct is proved. It must arise from facts demonstrating that the employee occupied a position where trust formed the essence of the relationship and that such trust has been broken. In the absence of such foundation, the doctrine cannot be invoked. Here no such material exists. Therefore the reasoning of the Labour Court on this aspect appears legally unsustainable.

12. The respondent has endeavoured to justify its action by contending that the petitioner was involved in multiple incidents of rash and negligent driving and that his conduct had endangered both life and property. Specific reference is made to an accident dated 20 April 2006 on the Bangalore Pune Highway wherein consultants of the respondent allegedly sustained injuries. Reliance is also placed on incidents said to have occurred on 26 November 2004, 4 March 2005 and 18 February 2006. There can be no dispute with the proposition that allegations of negligent driving against a driver are serious. A driver entrusted with transport of officers or employees is expected to maintain caution and care.

Therefore this Court is conscious that if negligence is duly proved, the employer would be justified in taking disciplinary action. However while appreciating such allegations the Court cannot lose sight of the necessity of examining the findings returned in the enquiry and the factual matrix. Mere multiplicity of allegations does not establish misconduct to justify termination. What requires consideration is whether the charges were proved, whether the misconduct was of such gravity as to terminate employee and whether the punishment imposed was proportionate. In the present case the record indicates that the Enquiry Officer did not hold every charge proved. Further one of the accidents at Kolhapur was not attributable to negligence of the petitioner but had occurred due to fault of the opposite vehicle. This circumstance dilutes the submission of misconduct. It demonstrates that the petitioner's conduct cannot be viewed as reckless in every instance. Thus while some negligence may have been found, the record does not suggest conduct so dangerous to justify termination. In such circumstances, the question of punishment necessarily required proportionate evaluation.

13. It is true that a domestic enquiry was conducted by the respondent and the petitioner participated therein. The respondent has urged that the enquiry was held in accordance with principles of natural justice and that adequate opportunity was afforded to the petitioner. It is further submitted that evidence was considered by the Enquiry Officer. However even assuming the enquiry to be fair and procedurally valid, the matter does not conclude there. Under Section 11-A of the Industrial Disputes Act, the Labour

Court is vested with powers to examine the findings and determine whether the punishment imposed is proportionate to the misconduct. The power under Section 11-A empowers the Labour Court to interfere where the punishment shocks conscience or appears excessive in relation to the misconduct established. In the present case, the Labour Court itself has exercised such jurisdiction and recorded a positive finding that the punishment of dismissal was disproportionate and that the termination was improper. Once the Labour Court itself arrives at such finding, the legal consequence ought to follow. It becomes inconsistent for the same Court, after holding dismissal unjustified, to then deny reinstatement and substitute it with compensation without recording sustainable reasons. In the present case, the only reason assigned is alleged loss of confidence which is unsupported by the nature of employment and factual record. Therefore the conclusion reached by the Labour Court suffers from legal infirmity.

14. The submission advanced on behalf of the petitioner that, assuming the respondent was of the view that the petitioner ought not to be continued in the capacity of driver, he could have been assigned some alternative duties. Where misconduct alleged against a workman pertains to deficiency in performance of a particular nature of duty, the employer is not compelled to bring about total severance of employment if a lesser alternative is available. If the respondent formed an opinion that engagement of the petitioner in driving duties was not desirable having regard to the allegations of negligent driving, it was always open for the

respondent to examine whether the petitioner could be accommodated in some other assignment of equivalent category. This is particularly so when the petitioner was working in the cadre of driver-cum-peon and therefore his engagement was not confined to one irreplaceable position. The employer has not placed before this Court any material to demonstrate that no alternate work existed. There is no material showing that the respondent's organisation is so limited in nature that except driving work no other duties of basic character were available. The record also does not indicate that the respondent ever examined such possibility.

15. The affidavit filed on behalf of the respondent through its authorised signatory states that in the year 2010 the respondent company sold its manufacturing business to another concern by transfer of licence and assets such as land, building, plant, machinery and trade marks, and that at present the company is not owning any business. It is further stated that only few employees are working at the head office at Pune. This statement is pressed into service to contend that reinstatement of the petitioner is not practicable. It does not fully prove extinction of employer identity or impossibility of providing any employment at head office.

16. The affidavit of respondent also contains statement that from 2008 till 2026 no skilled labourer can remain idle and that petitioner is working with Chandukaka Saraf and Sons Pvt. Ltd. at Akluj, District Solapur, and is member of provident fund while enjoying other facilities. Such assertion does become relevant

when it is read together with the affidavit filed by petitioner himself.

17. Coming to the affidavit filed by the petitioner, he states that due to accident dated 20 April 2006 he became bedridden and remained unemployed till end of year 2009. He further states that in year 2010 he briefly worked as driver for one private person and lost said work after few weeks. He then states that during period 2010 to 2012 he remained unemployed and that his wife obtained part time work as ASHA worker on small honorarium, by which family survived. These averments indicate that petitioner was not in regular gainful employment for long period and had faced financial hardship. Such statements also show that petitioner was making efforts to maintain livelihood in difficult circumstances.

18. The petitioner further states that during period from 2013 to 2017 he worked as part time driver on daily wages and was earning meagre amount of Rs.13,425 per month on average whenever work was available. He has also referred to annexure concerning salary slip of his wife. Thereafter, he states that after year 2017 he again remained unemployed for about four years till 2021 and only thereafter obtained temporary work with Chandukaka Saraf at Pune involving housekeeping, sweeping and cleaning floors for monthly salary of Rs.6,000, without provident fund or allowances. These statements are significant for two reasons. Firstly, they substantially rebut the suggestion of respondent that petitioner was continuously employed in secure and regular service after termination. Secondly, they also amount to admission by petitioner himself that he had undertaken

intermittent, temporary and low paid work after termination.

19. The petitioner has also disputed alleged sale or closure of manufacturing unit and states that in absence of documents such statements cannot be accepted. He has further alleged that respondent suppressed alleged sale of year 2010 from the Labour Court during earlier proceedings. This objection has some substance because no documentary proof of sale or closure is produced before this Court. Therefore, this Court cannot record finding of closure merely on basis of affidavit. At the same time, considering tenor of pleadings and passage of time, some subsequent change in scale or structure of respondent business appears probable. Hence, while plea of closure is not fully proved, restructuring or reduction in operations also cannot be ignored while moulding final relief.

20. When both affidavits are read together, a balanced picture emerges before the Court. Once petitioner admits intermittent income, and no precise calculation of actual unemployment period or comparative wages is brought on record, grant of full back wages would not be justified. Therefore, the documents on record support a middle course, namely restoration of service with continuity, but without grant of back wages.

21. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (a) The Petition is partly allowed;
- (b) The impugned Judgment and Award dated 16 September 2017 passed by the learned Labour Court, Pune,

is quashed and set aside to the extent it denies reinstatement to the Petitioner;

(c) The Respondent is directed to reinstate the Petitioner in service in a suitable post commensurate with his cadre and eligibility, at its Pune office or at any other existing establishment within a period of eight weeks from the date of this order;

(d) The Petitioner shall be entitled to continuity of service for all consequential and retiral purposes from the date of termination;

(e) However, the Petitioner shall not be entitled to back wages for the intervening period;

(f) The Respondent shall give effect to this order within the stipulated period, failing which the Petitioner shall be at liberty to adopt appropriate proceedings in accordance with law;

(h) It is recorded that the Respondent has deposited an amount of ₹1,00,000/- in furtherance of order dated 2 May 2022, out of which the Petitioner has already withdrawn ₹50,000/-.

(i) The Respondent is permitted to withdraw the balance amount of ₹50,000/- together with accrued interest thereon, if any, in accordance with rules.

(j) The amount of ₹50,000/- already withdrawn by the Petitioner shall be adjusted towards future salary payable to

the Petitioner after reinstatement, in reasonable monthly instalments to be determined by the Respondent, without causing undue hardship.

(k) Rule is made absolute in the aforesaid terms. No order as to costs.

(AMIT BORKAR, J.)