IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13958 OF 2025

Kalyan Dombivli Municipal Corporation ***...Petitioner***

V/s.

Shri. Dattatray Devidas Vedpathak ***...Respondent***

Mr. A.S. Rao, *for the Petitioner.*

Mr. Piyush P. Hushing *with Ms. Gitanjali B. Harihar, for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 2 JULY 2026

PRONOUNCED ON: 10 JULY 2026

JUDGMENT:

1) Rule. Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final hearing.

2) By this Petition, the Transport Undertaking of Kalyan Dombivali Municipal Corporation has challenged the Award dated 6 December 2024 passed by the Presiding Officer, Second Labour Court,

Thane, partly answering Reference (IDA) No. 154 of 2018 in the affirmative. The Labour Court has declared discharge of the Respondent-employee vide order dated 21 April 2015 to be improper and unjustifiable. The Labour Court has set aside the discharge order and has directed payment of 50% backwages till attaining the age of retirement and continuity of service for being considered for retirement benefits.

3) Petitioner is a Transport Undertaking of Kalyan Dombivali Municipal Corporation providing transportation services through buses in and around the area of Kalyan-Dombivali cities. Respondent was appointed as a *badli* Driver on daily wage basis vide order dated 11 July 1999. By order dated 14 August 2001, he was appointed as a permanent Driver retrospectively w.e.f. 24 July 2000. Respondent was served with chargesheet dated 21 October 2014 alleging the misconduct of remaining unauthorisedly absent from time to time. It was alleged that since July 1999 to December 2013, Respondent had remained absent for 1872 days and that he was punished on several occasions in the past. Enquiry was conducted into the charges levelled against the Respondent in which he participated. The Enquiry Officer submitted report holding that the charges levelled were proved. The Disciplinary Authority thereafter proceeded to pass order dated 21 April 2015 removing the Respondent from service.

4) At the instance of the Respondent, the Appropriate Government made a Reference to Second Labour Court, Thane in relation to demand of the Respondent for reinstatement in service with full backwages and continuity w.e.f. 22 April 2015. Respondent filed his

Statement of Claim, which was resisted by the Petitioner by filing Written Statement. The Labour Court framed preliminary issues relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer. By Part-I Award dated 4 July 2024, both the issues were answered in favour of the Petitioner and against the Respondent. Respondent examined himself. Petitioner led evidence of Traffic Inspector. After considering the pleadings, documentary and oral evidence, the Labour Court has delivered Award dated 6 December 2024 answering the Reference partly in the affirmative. The Labour Court has set aside the discharge order dated 21 April 2015. However, since the Respondent had crossed the age of retirement in May 2022, the Labour Court has directed payment of 50% backwages to him upto May 2022 in addition to grant of benefit of continuity of service for the purpose of retirement benefits. Aggrieved by the Award dated 6 December 2024, the Petitioner has filed the present Petition.

5) Mr. Rao, the learned counsel appearing for the Petitioner submits that the Labour Court has erred in holding that the punishment of dismissal is disproportionate to the misconduct proved. That the Respondent did not produce any evidence of the alleged paralysis attack. That no medical certificates were produced either before the Labour Court or with the Petitioners. That therefore the finding of sickness recorded by the Labour Court is perverse and based on no evidence. That the Labour Court has accepted the position that Respondent is a case of chronic absenteeism and that he was punished on several occasions in the past. He submits that during the period from 1999 to 2013, Respondent was absent for 1872 days as against presence for 3402 days.

That he absented for 202 days and 205 days in the years 2012 and 2013. That a Driver remaining absent for such a long time without intimation puts the Petitioner-employee in difficulty in operating municipal bus service. That therefore the punishment of dismissal is proportionate to the misconduct proved. In support, he relies on judgment of this Court in ***Brihan Mumbai Electric Supply and Transport Undertaking vs. Kishor Gulab Salve***[1].

6) *Per contra*, Mr. Hushing, the learned counsel appearing for the Respondent opposes the Petition, submitting that the Labour Court has correctly appreciated the evidence on record for arriving at the conclusion that the punishment imposed on the Respondent is disproportionate. That there is no element of perversity in the findings recorded by the Labour Court. That the case involves correct exercise of jurisdiction under Section 11A of the Industrial Disputes Act, 1947. That the provision confers discretionary power on the Labour Court, and this Court cannot interfere in the discretion exercised by the Labour Court. That the case does not involve willful insubordination or deliberate dereliction of duties. That the action was forced upon the Respondent due to grave and debilitating medical conditions, namely paralysis. That therefore Petitioner ought to have been compassionate towards the Respondent instead of dismissing him from service. He takes me through the cross-examination of the Petitioner's witness who has admitted the factum of Respondent suffering from paralysis. That the Labour Court has rightly held that past service record of the workman cannot be used as an aggravating factor. He relies on judgment of the Apex Court in

1 2024 SCC Online Bom 2586

Scooters India Ltd. Lucknow vs. Labour Court, Lucknow & Ors.[2] That the Labour Court has awarded only the relief of 50% backwages though the dismissal is held to be invalid. That Respondent has already retired from service.

7) Mr. Hushing also relies on judgment of the Apex Court in the case of ***Nicholas Piramal India Limited vs. Harisingh***[3]**.** He submits that considering the facts and circumstances of the present case, this Court need not interfere in exercise of discretion by the Labour Court. He prays for dismissal of the Petition.

8) I have considered the submissions and have gone through the reasons recorded by the Labour Court in the impugned Award. I have also perused the records of the case filed with the Petition.

9) Respondent is dismissed from service by the Petitioner-employer w.e.f. 21 April 2015 after he was found guilty of unauthorised absence for a considerable period of time. Respondent was appointed in service initially on *badli* basis on 11 July 1999 and was apparently brought on regular establishment since 24 July 2000. It appears that Respondent made it a policy to remain absent for a considerable period of time since the year 2000. The details of days of absence of the Respondent during 1999 to 2013 are spelt out in the chargesheet which are as under:

वर्षे	हजर दिवस	गैरहजर दिवस
१९९९	१६४	०
२०००	३११	५४

2 1989 Supp. (1) SCC 31
3 (2015) 8 SCC 272

२००१	३१४	५१
२००२	३००	६५
२००३	२३३	१३२
२००४	२७७	८८
२००५	२९५	७०
२००६	२९४	७१
२००७	१६३	२०२
२००८	१९१	१७४
२००९	९४	२७१
२०१०	१६४	२०१
२०११	२७९	८६
२०१२	१६३	२०२
२०१३	१६०	२०५
एकूण	**३४०२**	**१८७२**

10) In at least five different years - in 2007, 2009, 2010, 2012 and 2013, Respondent remained unauthorisedly absent for over 200 days. Thus, for more than half a year, he did not attend the duties. Respondent is also punished on several occasions in the past. The details of past record of the Respondent are as under:

१) जाक्र/कडोमपा/परि/वाह/अपराध/६२, दिनांक ०७/०६/२००२ अन्वये दिनांक २५/०५/२००२ ते २८/०५/२००२ या कालावधीत कोणतीही पूर्व सुचना न देता कामगिरी गैरहजर असल्याप्रकरणी "अपराध प्रकरणी" समजपत्र देण्यात आलेले आहे.

२) जाक्र/कडोमपा/परि/अप/आगार/१३६, दि. २६/०७/२००४ अन्वये दि. २३/०७/२००४ रोजी विना परवानगी गैरहजर राहिल्याप्रकरणी "ज्ञापन" देण्यात आलेले आहे.

३) जाक्र/कडोमपा/परि/मुका/२२७५, दिनांक ४/०२/२०१२ अन्वये दिनांक ०१/१०/२०१० ते दिनांक १२/०१/२०११ या कालावधीमध्ये एकूण १०४ दिवस विनापरवानगी, विनासंमती, रजेशिवाय कामगिरीवर गैरहजर राहिल्याप्रकरणी अपराध प्रकरणी शासन म्हणून एक वार्षिक वेतनवाढ ०१ वर्षाकरीता रोखण्यात आली आहे.

४) जाक्र/कडोमपा/परि/पुका/१७६१, दि. २७/१२/२०१२ अन्वये माहे सप्टेंबर २०१२ मध्ये एकूण १६ दिवस विनासंमती गैरहजर राहिल्याप्रकरणी रुपये ८००/- दंड करणेत आलेला आहे.

५) जाक्र/कडोमपा/परि/आगार/२२, दि. २५/०५/२०१२ अन्वये दिनांक २०/०५/२०१२ या दिवशी विना संमती गैरहजर राहिल्याने अपराध प्रकरणी शासन म्हणून रुपये ५०/- दंड करणेत आलेला आहे.

६) जाक्र/कडोमपा/परि/आगार/२२, दि.२५/०५/२०१२ अन्वये दिनांक २१/०५/२०१२ या दिवशी विना संमती गैरहजर राहिल्याने अपराध प्रकरणी शासन म्हणून रुपये ५०/- दंड करणेत आलेला आहे.

७) जाक्र/कडोमपा/परि/आगार/२९, दि. २८/०५/२०१२ अन्वये दि. २७/०५/२०१२ या दिवशी विना संमती गैरहजर राहिल्याने अपराध प्रकरणी शासन म्हणून रुपये ५०/- दंड करणेत आलेला आहे.

८) जाक्र/कडोमपा/परि/आगार/२७, दि. २८/०५/२०१२ अन्वये दिनांक २८/०५/२०१२ या दिवशी विना संमती गैरहजर राहिल्याने अपराध प्रकरणी शासन म्हणून रुपये ५०/- दंड करणेत आलेला आहे.

९) जाक्र/कडोमपा/परि/आगार/५१, दि. १६/०६/२०१२ अन्वये दिनांक ०९/०६/२०१२ या दिवशी विना संमती गैरहजर राहिल्याने अपराध प्रकरणी शासन माणून रुपये ५०/- दंड करणेत आलेला आहे.

१०) जाक्र/कडोमपा/परि/पुका/१९६८, दिनांक १५/०२/२०१३ अन्वये दिनांक १७/११/२०१२ ते २१/०१/२०१३ पर्यंत एकूण ६६ दिवस विनासंमती कामगिरीवर गैरहजर राहिल्याप्रकरणी अपराध प्रकरणी शासन म्हणून रुपये ४५०/- इतका दंड करणेत आलेला असून गैरहजेरीचा कालावधी सेवाखंड म्हणून ग्राह्य धरलेला आहे.

११) दिनांक १७/११/२०१२ ते २१/०१/२०१३ पर्यंत एकूण ६६ दिवस विनासंमती कामगिरीवर गैरहजर राहिल्याप्रकरणी दिनांक १२/०२/२०१३ रोजी "वैयक्तीक बंधपत्र" लिहून घेवून दिनांक १६/०२/२०१३ रोजीपासून कामगिरीवर हजर करुन घेण्यात आलेले आहे.

१२) जाक्र/कडोमपा/परि/मुका/उपव्य/११९, दिनांक १२/०८/२०१३ अन्वये माहे जुन २०१३ ते जुलै २०१३ या कालावधीत फक्त १५ दिवस कामगिरीवर उपस्थित राहिल्याने उर्वरीत ४५ दिवस विनासंमती गैरहजर राहिल्याप्रकरणी ०७ दिवस विनावेतन निलंबीत करण्यात आलेले आहे.

१३) जाक्र/कडोमपा/परि/मुका/१३२९, दिनांक १३/०१/२०१४ रोजी "अंतिम नोटीस" बजावणेत आलेली आहे.

11) Thus, for misconduct of unauthorised absence, action has been taken against the Respondent at least on 13 occasions in the past. It thus appears that Respondent has become a chronic case of absenteeism. The last action taken against him was in respect of absence from June to July 2013. It appears that the last long absence during 2012 and 2013 became the reason for initiation of disciplinary proceedings against the Respondent. Otherwise, Petitioner used to penalise the Respondent by imposing fine on him during the years 2012 and 2013. Prior to that, he was once punished during 2010 and 2011 by withholding his increment.

12) Respondent took a defence that he was suffering from paralysis and was prevented from attending the duties. However, the exact date from which Respondent started suffering from the ailment was not pleaded by him in the Statement of Claim. The vague averments in the Statement of Claim are as under:

> h. The Second party state that the Second party was suffering from paralysis and some other diseases and domestic problems however, the First party has not considered the same or not allotted any light duty and victimized him by issuing the termination order.

Thus, Respondent vaguely pleaded that he was suffering from '*paralysis and some other diseases and domestic problems*'.

13) As observed above, the enquiry is held to be fair and proper. The findings of the Enquiry Officer are not considered perverse by the Labour Court. Thus, the charge of unauthorised absence is correctly held to be proved by the Labour Court. This would essentially mean that the defence of the Respondent about suffering from paralysis is not accepted by the Labour Court as a justification of remaining unauthorisedly absent. However, when the Labour Court took up the issue of legality of the punishment under Section 11A of the ID Act and went into the issue of proportionality of penalty, it appears that the Labour Court has taken into consideration the factor of paralytic attack. This is clear from the findings recorded in para-20 of the Award which reads thus:

> 20. The last absenteeism which led to the issuance of impugned charge-sheet, is of period from February 2013 to November 2013. It is the allegation that during that period second party was absent for 205 days. There is no dispute thereabout. However, it is the contention of second party that, he sustained

> paralysis attack and therefore, during that period he was not in position to discharge his duty. It is his case that, he submitted several applications to the first party praying either to allot him lite duty or accept his resignation. But his applications were not considered. Second party deposed to that effect in his evidence affidavit. Nothing was elicited during his cross-examination which could have afforded ground to deduce otherwise. On the contrary, he reiterated that he sustained paralysis attack in year 2014-15, but does not recollect exact date.

14) From the above findings recorded in para-20 of the impugned Award where the Labour Court has taken into consideration the claim of the Respondent about seeking light duty due to paralysis attack, it appears that the Respondent took a defence that the paralytic attack was suffered before dismissal from service. However, admittedly, no Medical Certificate was produced by him before the employer about sufferance of paralytic attack before dismissal from service. Even before the Labour Court, apparently no Medical Certificate was produced by the Respondent. The Labour Court has merely relied upon some stray admission in the cross-examination of Petitioner's witness for assuming that the Respondent did suffer from paralysis. The relevant admission in the cross-examination given by the witness of the Petitioner is as under:

> I personally know Dattatray Ved Pathak i.e. second party. As per the record, he was suffering from paralysis in the year 2013-2014. Now I am shown documents at Pg. No.62 to 65 of list Exh.C-4. It is correct to say that they are the applications of the second party submitted with the first party. They are marked as **Exh.C-6** (colly).

15) For holding that the Respondent was not given light duty, the Labour Court has recorded following findings:

> However, in reply to the question that despite request of second party, he was not given lite work, this witness stated that such applications were filed belatedly in year 2015. However, perusal of such applications filed by the

second party shows that, they were submitted during the period from March 2013 till April 2015. Therefore, it does not appear that such applications were filed belatedly as stated by above witness.

16) Mr. Hushing has placed on record compilation of documents with which copies of various applications submitted by the Respondent are produced. It appears that on 26 June 2013, an application was submitted by the Respondent stating that he was sick from 12 June 2013. The application does not indicate that he had suffered paralytic attack. The second application was submitted on 12 July 2013, which was not supported by any Medical Certificate. In that application, the sickness referred to him was 'बी.पीचा त्रास हात पाय गळणे'.

17) There is a medical certificate of one "Sushrusha Clinic" dated 24 August 2013 covering period from 12 July 2013 to 23 August 2013, which does not make any reference to paralytic attack and is issued in respect of the ailments of typhoid and bodyache. Another application submitted on 24 December 2013 is placed on record, in which again no specific ailment was referred. Petitioner has also relied upon application dated 3 March 2015 in which the ailment indicated is 'blood pressure'. Petitioner has also placed on record several medical certificates, none of which remotely suggest sufferance of paralysis by the Respondent. Most of the certificates are in respect of ailment of hypertension.

18) The application for light duty was submitted for the first time in 17 March 2015, i.e., a month before his dismissal. The light duty was sought due to old age. The application does refer to two past paralysis attacks. However, the said claim was totally vague. The Labour

Court has not taken into consideration the contents of various applications and certificates relied upon by the Respondent and has blindly accepted the claim of paralysis and non-grant of light duties by recording following perverse findings:

> 21. Further, first party has not disputed the submissions of such applications by second party. In fact, first party has filed the copy of such applications with list Exh.C-4 (Pg.No.57 to 65). During cross-examination, the witness of first party admitted that as per the record, second party was suffering from paralysis in year 2013-14. He also identified the applications of second party. Hence they came to be marked as Exh.C-6. However, in reply to the question that despite request of second party, he was not given lite work, this witness stated that such applications were filed belatedly in year 2015. However, perusal of such applications filed by the second party shows that, they were submitted during the period from March 2013 till April 2015. Therefore, it does not appear that such applications were filed belatedly as stated by above witness.

19) Thus, there is total absence of any medical evidence suggesting sufferance of paralysis by the Respondent during the relevant period. In only one application submitted few days before dismissal, the Respondent made vague reference to past two paralytic attacks. Otherwise, there is absolutely nothing on record to indicate that paralysis prevented him from attending duties during the years 2012 to 2015.

20) It must be borne in mind that the Petitioner runs a municipal transport service. If a driver is unauthorisedly absent from time to time and for a considerable period of time without giving prior intimation, the same drastically affects the schedule of operation of buses. Therefore, the misconduct of remaining unauthorisedly absent may entail slightly severe punishment for a bus driver of public transport

undertaking as compared to a clerk working in the office. The Labour Court ought to have taken this factor into consideration while deciding the issue of proportionality of penalty. It appears that Petitioner gave repeated opportunities to the Respondent to improve. The Respondent had submitted a personal bond on 12 February 2013 about regularly attending the duties, and on that condition, he was permitted to join the duties. However, after submitting such undertaking, he remained absent for 169 days during January to August 2014. The Petitioner thus faced a situation where Respondent had become incalcitrant and was a chronic case of absenteeism. Imposition of lighter penalties or fine in the past apparently did not have much impact on the Respondents for improving his conduct. In these circumstances, Petitioner was left with no alternative but to dismiss the Respondent from service.

21) Instead of appreciating the above position, the Labour Court assumed the claim of ailment of paralysis merely on the strength of admission given by the Petitioner's witness of Respondent suffering from paralysis in the year 2013. However, the Labour Court erred in not appreciating the position that in none of the applications except one, Respondent ever raised the claim of having suffered paralytic attack. His absence is sought to be justified by giving pretext of ailment of hypertension. In my view therefore, the Labour Court has recorded perverse findings on the issue of proportionality.

22) Ordinarily, this Court would not have interfered with the relief granted in favour of an employee who has been dismissed from service only on account of unauthorised absence. If the absence is not for

significant period, the High Court would not interfere in the relief granted by the Labour/Industrial Courts even if there is no proper justification for absence. However, when absence is for a long period and where the employee has become a chronic case of absenteeism, the Labour Court must demand proper justification for such absence. It is only when absence is justified with proof of medical treatment, the Labour Court would be justified in interfering in the quantum of punishment. In the present case, not only the absence is inordinate and chronic but the same is also not supported by medical certificates. In such circumstances, the Labour Court ought not to have offered the relief of 50% backwages on a platter. This would be like rewarding the Respondent despite remaining unauthorisedly absent for a considerable period of time. It is a well-known position that a municipal transport undertaking cannot sustain itself only through its operations. The municipal transport service is often required to be subsidised or funded through external sources. In these circumstances, if employees committing misconduct are rewarded with backwages, the same would put a financial strain on the Undertaking. In my view therefore, award of 50% backwages to the Respondent in the facts and circumstances of the present case was clearly unwarranted. Even direction for payment of pension in the facts and circumstances of the present case would put a huge financial burden on the Petitioner-Undertaking. In about 14 years from 2000 to 2013, there is absence for 1872 days. Even after issuance of chargesheet, it appears that the saga of unauthorised absence continued. On this count, I am unable to consider grant of relief of payment of pension. This is not a case where Respondent has worked diligently

during his tenure from 1999 to 2014. The table reproduced above would indicate that he was unauthorisedly absent almost in every year from 2000 till he was dismissed from service. His trend of remaining absent continued even after issuance of chargesheet. He attained the age of superannuation in May 2022. He is out of service from 21 April 2015 and has admittedly not worked for 7 long years between 2015 to 2022. Even his service upto the year 2014 is riddled with chronic absenteeism. Considering these facts, Respondent cannot be rewarded with grant of pensionary benefits, which would impose continuing financial liability on the Petitioner. Instead, Respondent can be awarded a lump sum compensation of Rs. 3,00,000/-. Award of compensation is purely by way of indulgence considering that there is some admission by the Petitioner's witness about sufferance of paralysis by the Respondent.

23) In view of the above discussion, the impugned Award passed by the learned Presiding Officer of the Labour Court is clearly unsustainable and liable to be modified by awarding only lump sum compensation to the Respondent.

24) Petition accordingly succeeds in part, and I proceed to pass the following order:

(i) Award dated 6 December 2024 passed by the Labour Court, Thane in Reference (IDA) No. 154/2018 is set aside and modified.

(ii) Petitioner shall pay to the Respondent lump sum compensation of Rs. 3,00,000/- towards full and final settlement of all his dues within 8 weeks.

(iii) Beyond the lump sum compensation so awarded, the Respondent shall not be entitled to any other service-related benefits from the Petitioner.

(iv) If the awarded amount is not paid within the stipulated period, the same shall carry interest @ 8% per annum from the date of expiry of period of 8 weeks.

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

[SANDEEP V. MARNE , J.]

NEETA SHAILESH SAWANT
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