
(2002) 11 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 3835 of 2002

Anandrao Vithobaji Dayre

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 30-11-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2003) 3 MhLj 861

Hon'ble Judges : C.K. Thakker, C.J

Bench : Single Bench

Advocate : S.N. Dandekar, for the Appellant;

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—Being aggrieved and dissatisfied with the order passed by the Industrial Court, Nagpur on April 5, 2002 passed in Revision (ULP) No. 333 of 2001, the petitioner has approached this Court.

2. The petitioner was appointed with the Maharashtra State Road Transport Corporation ("MSRTC" for short) as a conductor. It is the assertion of the petitioner that he was discharging his duties diligently and honestly. His bus was checked on April 3, 1998 and out of 24-1/2 passengers, 9 passengers were found without tickets. An inquiry was instituted against the petitioner wherein it was found that the petitioner had not issued tickets to those passengers. Holding the petitioner guilty of the charges levelled against him, he was dismissed from service by the Corporation.

3. Being aggrieved by the order of dismissal, the petitioner approached the First Labour Court at Nagpur by filing Complaint (ULP) No. 711 of 1998. The Labour Court, vide its order dated October 3, 2001, held that the charges levelled against the petitioner were proved. It also recorded that perusal of the past service record of the workman was not unblemished as he was punished on six occasions because "he has not issued tickets". The Labour Court, however,

observed that the punishment of dismissal imposed on the complainant was shockingly disproportionate. Accordingly, the complaint was allowed and the respondent Corporation was directed to reinstate the workman in service with continuity of service without back wages.

4. Being aggrieved by the order passed by the Labour Court, the Corporation approached the Industrial Court and the Industrial Court, in the order impugned in the present petition, held that the Labour Court had committed grave error in directing reinstatement of the complainant. After considering several judgments as also taking into account earlier defaults, the Industrial Court held that the punishment of dismissal awarded by the Disciplinary Authority on the complainant was "perfectly legal, proper and correct considering the nature of misconduct committed by him of not issuing tickets to nine passengers though these passengers paid the fare of Rs. 22=50 to him." The above order is challenged by the petitioner in the present petition.

5. The learned counsel for the petitioner vehemently argued that the Industrial Court has committed an error of law as well as an error of jurisdiction in interfering with the order passed by the Labour Court. It was submitted that u/s 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), power has been conferred on the Labour Court to grant appropriate relief in case of such penalty. Having considered the facts and circumstances as also the earlier defaults, the power was exercised by the Labour Court and the Industrial Court ought not to have interfered with the order. The Counsel also urged that the Industrial Court ought to have taken into account a relevant and material fact, namely, that in all past cases, the petitioner was either given warning or imposed a small amount of fine upto Rs 50/-. Relying on the procedure applicable in such cases, the Counsel submitted that if the amount of fine is up to Rs. 50/-, the order is not be appealable and no appeal could be filed against it. As in earlier defaults, in none of the cases the petitioner was imposed penalty of fine of more than Rs. 50/-, he could not file an appeal. Non-filing of appeal, therefore, could not come in the way of the petitioner. Finally, it was submitted that the petitioner had completed about twenty years of service. During that long term of service, he had committed only few irregularities and for such minor irregularities, extreme economic death penalty ought not to have been imposed on him. The petitioner is aged about 50 years. If at this stage, the impugned order is confirmed and he is asked to go home, it would create serious problems not only for him but for his family members also. It was, therefore, submitted that an appropriate relief may be granted to the petitioner so that the petitioner may not be deprived of his livelihood.

6. In my opinion, the order passed by the Industrial Court does not deserve interference. It is no doubt true that Section 11-A of the Act empowers Labour Court to interfere with punishment in certain cases and to grant an appropriate relief considering the facts and circumstances and keeping in mind as to whether in the light of the allegations levelled and proved, punishment or penalty

imposed on the employee would be called for. At the same time, however, such power must be exercised reasonably, rationally and in the interest of society. When there was financial irregularity and a finding of fact was recorded by the respondent Corporation which had not been interfered with by the Labour Court that the petitioner had accepted an amount of fare but he had not issued tickets to 9 passengers, the Act would amount to misappropriation. This, in my opinion, is a serious misconduct. The Labour Court, therefore, ought to have taken into consideration that fact. Powers u/s 11-A of the Act must be exercised keeping in view a finding of fact and the misconduct proved.

7. It is also pertinent to note that even in the past, the petitioner has committed similar misconduct. The learned Counsel for the petitioner submitted that the Labour Court has stated that some misconduct was committed by the petitioner but it was not of a serious nature. I am unable to agree with the above submission. In 1989 twice and in 1992, 1994 and 1995 once at each occasion, the petitioner was found guilty of not issuing tickets to passengers.

8. It is true that in 1989, at both the occasions the ticket was not issued to only one passenger, in 1992 to two passengers and in 1994 and 1995 to one passenger each, ticket was not issued, but the fact remains that those cases related to non-issuance of tickets which shows modus operandi of the petitioner. It is further clear that at regular interval, the petitioner used to indulge in such activity from 1989 to 1998 i.e. for about ten years. In other words, in spite of the punishment in 1989 twice, the petitioner was not improved. He continued his activities which finally resulted in an order of dismissal passed against him. In my considered opinion, the Labour Court ought to have adverted to this aspect and refrained from exercising jurisdiction as interference with the order of dismissal was not called for. By setting aside the order passed by the Labour Court, the Industrial Court has not committed error of law or of jurisdiction. On the contrary, to me the Industrial Court was right in observing that in the light of the misconduct proved as also similar misconduct in past, "purported" exercise of power by the Labour Court u/s 11-A was uncalled for and no such indulgence ought to have been shown to the petitioner.

9. The learned Counsel for the petitioner is right in submitting that the petitioner could not file an appeal against the orders passed against him in past. The relevant point is not whether the petitioner could or could not file an appeal, but the fact that he was found guilty and punishment was imposed on him. Non-filing or inability to file an appeal will not obliterate the finding recorded against the petitioner and punishment imposed on him. It is thus proved that during last ten years, the petitioner was found guilty at six times. In my view, therefore, the Industrial Court was right in interfering with the order passed by the Labour Court.

10. The final submission of the learned Counsel for the petitioner also does not take the petitioner anywhere. If the petitioner had committed misconduct and was found guilty, an order of dismissal was merely a consequence. It is

unfortunate that the impugned order of dismissal, which has now been confirmed by the Industrial Court as well as by this Court, may deprive him of livelihood. It is also true that it may adversely affect even the family members of the petitioner. That, however, cannot be helped. It is merely the resultant effect of the misconduct committed by the petitioner. He ought to have taken lesson from his earlier misconduct, when indulgence was shown to him and more than one chance was given to him to improve. When the petitioner failed to improve, it is only the petitioner who has to thank himself.

11. For the foregoing reasons, in my opinion, no error of law and/or jurisdiction can be said to have been committed by the Industrial Court in allowing the revision and in setting aside the order passed by the Labour Court. I see no infirmity therein. The petition deserves to be dismissed and it is accordingly dismissed.