
(1998) 12 BOM CK 0069
In the Bombay High Court
Case No : Writ Petition No. 4502 of 1998

Arjun

APPELLANT

Vs

Divisional Controller, Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (2001) 3 LLJ 1065

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Judgement

R.J. Kochar, J.—Heard Sri V.Y. Patil and Sri Bora, the learned advocates for their respective parties.

2. Rule. Expedited.

3. Interim order is being granted by me directing the respondent to allow the petitioner to join his duties forthwith within one week from today.

4. Sri P.B. Akolkar, the learned Member of the Industrial Court, Nasik, has passed an ex-fade perverse order without considering any facts after remand by the order, dated March 26, 1998, passed by this Court (LODHA, J). There is total non-application of mind by the Industrial Court. The Industrial Court ought to have taken an elementary care to check the impugned order as at one place he writes that -"the revision requires to be dismissed in limine"" while finally he has allowed the revision. He does not care to give any reasons for allowing the revision. He merely cites some rulings without referring to the ratios of those decisions and the facts, at least in brief. The learned Judge shall take every care and precaution while writing the judgments and orders so as to appear to be judicial orders of a Court of Law.

5. The Labour Court had allowed the complaint of the employee only on the

ground of punishment under item (1)(g) of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. The Labour Court has held that the extreme punishment of dismissal for absence from duty from May 8, 1992 to November 13, 1992 was shockingly disproportionate particularly when the employee had explained his absence as he was suffering from deep jaundice and was under medical treatment. The employee was in employment as a conductor from April 1992 with a clean and unblemished service record. In the aforesaid circumstances, the employee had prayed for reinstatement and had even foregone his claim for entire back wages for the whole period. According to the learned Labour Court, this gesture of the employee was worth considering as that itself would also act as a deterrent punishment, though for the reasons beyond his control as he was ill and, therefore, could not report for work. While exercising his jurisdiction, the Labour Court has given cogent reasons in his order. Against this order, the Divisional Controller appears to have filed revision application u/s 44 of the Act (I am skipping the intervening two or three rounds of litigation as they are today irrelevant). While disposing of the revision application the learned Member of the Industrial Court has not exercised his jurisdiction as a revisional Court at all. He has, as stated earlier, totally failed to apply his mind to the facts of the case and to the findings recorded by the Labour Court. Instead of treating the matter seriously on law, he has indulged into an unnecessary controversy regarding the fixing of the date on the receipt of the High Court order of remand as passed by this Court (LODHA, J). If he had not received the said order, he could have waited for some time. It was the duty of the employee to have pointed out that this Court had specifically directed him to remain present, before the Industrial Court on July 13, 1998. This order was passed in the presence of both the learned advocates for the parties. It must be mentioned that even the law officer of the Corporation acted in a way which did not become a law officer of the Corporation by showing total ignorance of that order and insisted for a copy of the order and he further submitted that no cognisance of any application filed by the employee on July 13, 1998 could be taken and he further insisted that the revision application should be rejected. In the heat of the submissions he forgot that the revision application was filed by his own Corporation. In any case, it was for the Member of the Industrial Court to have taken cognizance of the application which was specifically made by the employee that the Hon"ble High Court had directed him to remain present on July 13, 1998 and this direction was for both the parties. The Law Officer should have been slow in opposing such an application which was made with all seriousness by the employee and ought to have contacted his advocate who appeared in High Court to confirm the order. The learned Member also has not properly dealt with that point and has blamed all along the employee for not having put on record the order passed by the High Court. He could have very well waited for receipt of writ from High Court. Instead of entering into all these unnecessary rigmarole, it would have been far better in the interest of justice to have considered the facts of the case and the law and whether he could reappreciate or reassess the judgment of the Labour Court under his narrow jurisdiction of Section 44 of the Act. The learned Member has

not given even a ghost of reason to set aside the order of the Labour Court granting the employee reinstatement without back wages while interfering with the extreme punishment of dismissal for unauthorised absence of the employee who, subsequently, reports for work and satisfies to the employer that he was ill and produces medical certificate in support of his illness. The learned Member does not say anything on merits of the case and allow the revision application finally though earlier, in the body of the judgment, observes that the revision was to be dismissed in limine. The Industrial Court further must remember that mere giving a list of the judgments does not reflect that he has read those judgments and considered them. If he has considered them, then that ought to have been reflected in the judgment itself. The above order became necessary as I have come across two-three such matters in the present assignment here which were dealt with by the very same learned Member in the same cavalier manner.