

(2016) 04 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 4086 of 2016

Ashok Rambhaji Tupe

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2)

Citation : (2016) 4 AIRBomR 58 : (2016) 6 ALLMR 630

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Mr. P.V. Barde, Advocate, for the Appellant; Mr. B.S. Deshmukh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J. (Oral) - Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 11/01/2016 delivered by the Labour Court, by which the application Exhibit U2, seeking interim relief under section 30(2) in Complaint (ULP) no.37/2015, has been rejected. The petitioner is also aggrieved by the judgment dated 30/03/2016 delivered by the Industrial Court, by which the Revision (ULP) No.6/2016 filed by the petitioner, has been dismissed.

3. The petitioner claims to have joined duties as a Bus Conductor with the Respondent/Corporation on 20/01/2011. On 02/01/2013, the petitioner was on duty on the bus moving from Kopargaon to Somthan. There were 70 students holding bus passes and 14 passengers travelling in the said bus. One lady boarded the bus at Rahuri and was travelling to Pandhariche Pool. Due to rush in the bus, the petitioner could not issue a travelling ticket.

4. That the bus was subjected to a surprise check and it was noticed that the

lady was travelling ticket-less. The lady passenger stated to the Reporter in the Flying Squad that though she had paid the fare, she was not issued a ticket. This statement is false and is unbelievable.

5. It is further submitted that a charge sheet dated 24/01/2013 was issued to the petitioner. He submitted his reply dated 30/01/2013 claiming that there were 90 to 95 passengers in the bus. By the time the bus would reach the place Pangeli, the pass holding students occupying the bus would be between 110 to 125. The charge of accepting fare and not issuing a ticket was denied. If the fare of the ticket Rs.32/had been accepted, the excess amount should have been Rs.32/and not a shortfall of Rs.18/-.

6. The charge sheet is vague and ambiguous is the contention. After the enquiry was completed, the petitioner received the second show cause notice dated 03/12/2015 on 07/12/2015 and he replied to the same on 11/02/2015. It was on 12/02/2015 that he preferred Complaint (ULP) No.37/2015 before the Labour Court and was protected against disciplinary action. The said protection was vacated by the impugned order dated 11/01/2016 when the application for interim relief was rejected. However, the protection was continued till the Industrial Court dismissed the revision petition filed by the petitioner and the said protection has been continued by the Industrial Court till 10/04/2016.

7. It is strenuously contended that there are several discrepancies in the report of the Enquiry Officer. The charge sheet states that a shortfall of Rs. 18/was noticed. The ticket issued to the lady passenger was for Rs.32/-. If the amount was accepted and the ticket was not issued, there should have been an excess amount with the petitioner. The report submitted by the reporter also contains mistakes and the Enquiry Officer has admitted that there were mistakes in the report. Yet, the Enquiry Officer has held the petitioner guilty of the charge levelled upon him.

8. Mr. Barde further submits that when the charge sheet is vague and when the report submitted by the reporter contains errors, the Labour Court should have interfered with the proposed punishment. The passenger Smt.Reshma Pramod Meher has filed an affidavit in the Labour Court contending that she had not paid any ticket fare to the petitioner who had failed to issue her a travelling ticket. All these aspects should have been considered by the Labour Court as well as the Industrial Court. The past record of the petitioner is clean and unblemished. He, therefore, prays for a protection to the services of the petitioner till the decision of his complaint before the Labour Court, Ahmednagar.

9. Mr. Deshmukh, learned Advocate for the respondent/Corporation submits that the misconduct at issue has been committed by the petitioner within 2 years of his joining duties. After the present misconduct, he was imposed with a punishment of fine of Rs.200/for issuing a manual ticket instead of an electronic ticket. On 25/06/2013, he was punished with fine of Rs.200/for having not returned the excess money to a passenger. He submits that from the date of

joining, the petitioner is involved in not less than 3 incidents amounting to misconducts. If this misconduct of the petitioner, which is visible in the first 2 years of his employment, goes unpunished, he has another more than 25 years of service and would continue to commit such misconducts.

10. He submits that the issue before the Labour Court was rightly considered by it as well as by the Industrial Court and hence interim relief has been refused by both the Courts. He, therefore, prays for the dismissal of this petition.

11. I have considered the submissions of the learned Advocates.

12. It is trite law that 2 years of clean service is not an indicative factor of an unblemished service of an employee. Over a considerable period of service rendered without any blemishes would indicate the discipline and honest attitude of employee. (Read *Bajaj Auto Limited v. Kalidas Deoram Patil*, 1999 (II) CLR 1108)

13. The report of the reporter as is analysed in the enquiry report indicates that the lady passenger has specifically stated to the Inspecting Squad that she has paid the fare for the ticket and the petitioner has not issued her a ticket. The Hon'ble Supreme Court in the matter of *KSRTC v. B.S. Hullikatti*, AIR 2001 SC 930 and *KSRTC v. A.T.Mane*, 2005(3) SCC 254 has held that non-examination of the passengers in the enquiry does not in any way vitiate the enquiry. It is not possible to examine passengers in every case and hence the non-examination of the passengers would not render the findings of the Enquiry Officer perverse.

14. The petitioner has placed reliance upon the judgment of this Court in the matter of *Mahadeo Atmaramji Nage v. MSRTC*, 2009(2) BCR 824. Mr.Barde points out from the said judgment that this Court has appreciated that none of the passengers had stated to the Squad that they had paid fare of the tickets and were not issued travelling tickets. They have also not stated that they demanded the tickets and the Conductor did not issue them such tickets. I do not find that this judgment would be of any assistance to the petitioner since the Lady Passenger has specifically stated to the Flying Squad that she had paid the money to the petitioner who had failed to issue her a ticket. This statement of the passenger negates the statement of the petitioner that there was a rush in the bus and he could not issue a ticket to the said lady passenger though he had every intention to reach her for collecting the fare and issuing a ticket.

15. It cannot be ignored that the law laid down by this Court in the matter of *Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd.*, and another v. *Vasant Ambadas Deshpande*, [2014(3) Mh.L.J. 339] that extraneous evidence is not to be considered while assessing whether the enquiry could be termed as being vitiated and whether the findings of the Enquiry Officer are perverse. The petitioner acquired an affidavit from the said lady passenger and produced the same before the Labour Court to support his contention that she had not paid any money to the petitioner. In my view, this affidavit of the concerned passenger would amount to an extraneous piece of evidence and will

have to be ignored.

16. It is stated by the learned Advocate for the respondents that earlier, the petitioner has been fined for two misconducts. Firstly for issuing a manual ticket instead of an electronic ticket and secondly for not returning the excess amount to a passenger.

17. The Hon"ble Apex Court in the matter of Hindustan Lever v. Ashok Vishnu Kate, (1995) 6 SCC 326 has struck a note of caution in paragraph Nos. 53 and 54 which read as under :

"53. Reference made in paragraph VI to the Bombay High Court's judgments also cannot be of any avail as they were based on the view which was accepted by the learned Single Judge of the High Court of Bombay at Nagpur which has rightly been overturned by the Division Bench of the Bombay High Court in the judgment under appeal on a correct interpretation of the relevant provisions of the Act. Therefore, the earlier view taken by the learned Single Judges of the Bombay High Court cannot be said to be well-sustained. For all these reasons, the appellant has made out no case for our interference in this appeal.

54. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge-sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated."

18. In the light of the above, I do not find that the Labour Court or the Industrial Court have committed any error in refusing interim relief to the petitioner. The impugned orders are neither perverse nor erroneous and cannot be interfered with only because a different view could be taken. Nevertheless, in the event the petitioner succeeds after his complaint is decided on its merits, he would stand to gain the service benefits as are available to a litigant succeeding in litigation.

19. This petition, being devoid of merit, is dismissed. Rule is discharged.

20. At this juncture, the learned Advocate for the petitioner prays for continuation of the protection granted earlier. Learned Advocate for the respondent has opposed the same on the ground that charges of misappropriation have been levelled against the petitioner.

21. The second show cause notice is dated 03/12/2015 and pertains to the charge of misappropriation. It is trite law that acts of misappropriation are to be dealt with, with an iron hand As observed above, the petitioner would be entitled for service benefits in the event he succeeds in proving unfair labour practices against the respondents. So also, considering the caution sounded by the Hon"ble Apex Court in the Hindustan Lever judgment (supra), the request made by the petitioner for protection, is rejected.