

(1995) 02 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 1421 of 1988

B.E.S.T. Workers" Union

APPELLANT

Vs

Bombay Electric Supply and Transport Undertaking

RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

Citation : (1996) 74 FLR 1855 : (1998) 3 LLJ 915

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : S.B. Naik, for the Appellant; S.K. Talsania, instructed by Crawford Bayley and Co., for the Respondent

Final Decision : Dismissed

Judgement

B.N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India is directed against the order of the Industrial Court dated October 30, 1987, in Appeal (IC) No.50 of 1987 upholding the order of the Labour Court, Bombay, made in Application (BIR) No. 273 of 1986 dated February 26, 1987, by which the application was dismissed. Both proceedings arose under the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the Act").

2. The Petitioner is the representative Union of the employees employed in the Transport Division of the Respondent Undertaking. One employee, by name A.M. Akbar, was employed as Bus Driver in the service of the Respondent Undertaking. On October 21, 1984 Akbar was driving Bus No. 2364 of route No. 106 from Colaba Bus Station to Kamla Nehru Park along Mayo Road (now known as Karamveer Bhaurao Patil Marg). At about 7.25 hours, when the said bus reached behind High Court, it dashed from behind against another Bus No. 4452 of Route No. 123 proceeding from R.C. Church to Tardeo side. Because of this dash, the front right corner of Bus No. 2364 collided with the left rear side of Bus No.4452 of Route No. 123. The impact was so serious that one lady passenger standing on the foot board of Bus No.4452 of Route No. 123 suffered injuries to

her back side, her head and her right half face was crushed between the two buses. She fell down on the road and instantaneously died. The staff of the bus immediately gave information to the Respondent Undertaking. The Accident Inspector of the Respondent Undertaking reached the spot. Police also reached the spot and made panchanama of the spot and the dead body. The statements of the staff of both the buses were taken. A contemporaneous statement in writing made by Bus Driver Akbar was taken which reads :

"On October 21, 1984 while I was driving Bus No. 2364 along Route No. 106 at about 7.25, while came to take left turn, all of sudden route 123 took left turn without showing any signal, hence on seeing the said bus applied emergency brake, but due to short distance Right Front corner of the bus dashed against the foot board and one lady who was standing on the foot board pressed between both buses and she fell down on the road and died."

As a result of the investigation made, Akbar was served with the charge-sheet alleging gross negligence on his part. A lengthy inquiry ensued in which all the concerned staff were examined and one passenger who happened to be travelling in the double decker bus of route No. 123 was also examined. On appreciation of the evidence, the Trying Officer found the petitioner guilty of the misconduct of gross negligence under Standing Order 20 (j). Since in his view the seriousness of the charge proved against the employee itself warranted removal from service, he ordered that Akbar be dismissed from service. Akbar was dismissed from service with effect from April 17, 1985. The Petitioner Union filed two successive appeals on behalf of the dismissed employee to two Appellate Officers of the Respondent, Undertaking as provided under the Service Regulations. Two different Officers independently applying their minds to the evidence on record, concurred with the Trying Officer's finding that the employee was guilty of gross negligence and deserved to be dismissed.

3. The Petitioner Union then filed Application (BIR) No. 273 of 1986 u/s 78 read with Section 79 of the Act before the Labour Court at Bombay. The learned Judge of the Labour Court by his order dated February 26, 1987 held that the inquiry held against the employee concerned was fair and proper, and upon appreciation of the evidence before the Trying Officer, the Labour Court rejected the contention that the findings of the Trying Officer were perverse. The Labour Court was further of the view that, despite the fact that the Bus Driver concerned had joined service on March 1, 1983, he had committed the accident on October 21, 1984. In this short span of service he had committed such a serious misconduct of gross negligence resulting in death of the passenger. The Labour Court felt that, if the Respondent Undertaking was of the view that such a Driver should, not be retained in employment, the punishment of dismissal under such circumstances could not be said to be disproportionate. In this view of the matter, the Labour Court dismissed the application.

4 Against the dismissal of the application, an Appeal (IC) No.50 of 1987 was carried to the Industrial Court by the Petitioner Union. The Industrial Court also

analysed the evidence and agreed with the conclusion drawn by the Trying Officer, the two appellate authorities and the Labour Court. It rejected the contention that in the circumstances the punishment awarded was unconscionable and shockingly disproportionate. As a matter of fact, the employee concerned was prosecuted on a charge u/s 304-A of the Indian Penal Code and was acquitted by the Criminal Court by its order dated August 22, 1987. Hence, the petition.

5. Mr. Naik, learned Advocate appearing for the Petitioner Union, urged only one contention. He contends that the evidence on record could never have led to the conclusion that there was gross negligence on the part of the concerned Bus Driver. With his assistance, I have gone through the statements of all the witnesses recorded during the inquiry which have been annexed to the writ petition. The Trying Officer appears to have rejected the theory of dangerous overtaking by the Bus Driver of Route No. 123, which was put forward as a defence by the Petitioner Union, by pointing out that there was no such mention made by Akbar, Bus Driver, in his written statement given to the Accident Inspector, P.J. Mishra, soon after the accident. He also analysed the other evidence and was of the view that the accident had occurred because the concerned Bus Driver of Route No. 106 had failed to keep the distance between his bus and the bus of Route No. 123. Though Mr. Naik criticised some of the findings made by the Trying Officer in his report, I am unable to accede to the contention that there is such perversity in the reasoning of the Trying Officer, which has been completely ignored by the two Courts below, so as to warrant interference by this Court in exercise of writ jurisdiction under Article 227 of the Constitution of India. At Mr. Naik's insistence, I have perused the entire evidence led before the Trying officer and also the contemporaneous statement made by the delinquent employee which has been reproduced in the earlier part of the judgment. It is significant that, in the contemporaneous statement given by the delinquent employee he had not even suggested that there had been any dangerous overtaking of his bus by the driver of Route No. 123. On the other hand, the cause of the accident was that the Bus Driver of Route No. 123, who was ahead of him, suddenly made a left turn without indicating the left signal light. Mr. Naik's strenuous efforts to support the dangerous overtaking theory notwithstanding, I am unable to accept that the Trying Officer's reasoning in rejecting the defence of the delinquent employee is perverse. Though it is true that the Labour Court did not analyse the evidence as meticulously as has been done by Mr. Naik, I do not accept the contention that there was such a failure to exercise jurisdiction on the part of the two Courts below that it needs interference in writ jurisdiction. Though I was thinking of suggesting to the Respondent Undertaking to take back the delinquent employee with suitable undertakings, my attention was drawn by Mr. Talsania learned Advocate appearing for the Respondent Undertaking, to the fact that, in the short span of less than two years, the delinquent employee had five accidents to his credit (or discredit ?), all of which were cases of collision. Faced with this record, my

judicial conscience does not permit me to make the recommendation which I had initially thought of. After all, the Court also has to bear in mind the safety of the travelling public. I am not satisfied that this is a case where the Court can, with clear conscience, send back the employee to sit behind the wheel of a bus, which may be driven at break-neck speed, on a crowded street.

6. In the result, I am unable to accept the contention in the writ petition. The writ petition is dismissed. Rule discharged with no order as to costs.