

(2010) 10 BOM CK 0126
In the Bombay High Court
Case No : Writ Petition No. 3118 of 2001

Bhojraj Parate

APPELLANT

Vs

Divisional Controller Maharashtra State Road Transport
Corporation, Nagpur Division

RESPONDENT

Date of Decision : 15-10-2010

Acts Referred:

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

Citation : (2011) 1 ALLMR 115 : (2011) 3 BomCR 378 : (2011) 129 FLR 305 :
(2011) 1 MhLj 726

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : M.V. Mohokar, for the Appellant; R.S. Charpe, for the Respondent

Judgement

Mridula Bhatkar J.

1. The petitioner has challenged the order dated 4/5/2001 passed by the Industrial Court dismissing him from the service. The petitioner was working as a Conductor and while on duty on 15/11/1999 at Aroli the Inspection Squad found that a group of 18 passengers was travelling without ticket. The Inspector recovered the charges of the tickets with penalty from the travelers. A charge-sheet was issued on 24/1/1991 and the petitioner was chargesheeted for misconduct and was suspended from service for some period. The petitioner was held guilty in the inquiry followed by the order of dismissal dated 10/10/1991 which came into effect from 13/10/1991. The petitioner therefore, challenged the dismissal order before Labour Court vide Complaint ULPA No. 860/1991. The Labour Court gave preliminary finding that the inquiry was not fair and finally by order dated 13/8/1998 allowed the complaint and set aside the dismissal and reinstated the complainant with 25 % back wages with continuity of service. The said order was challenged by the respondent. The petitioner also challenged it on the point of allowing only 25 % back wages. The Member of the Industrial Court by order dated 4/5/2001 allowed the revision filed by the respondent and set

aside the order of the Labour Court on the point of dismissal and also back wages. Hence this petition.

2. Shri Mohokar, learned Counsel for petitioner, submitted that the petitioner has good case as no actual pecuniary loss was caused to the respondent - authority. The Labour Court though held him guilty on the point of misconduct, has rightly considered the conduct of the petitioner not a deliberate but a negligent act and no misappropriation of money was found at the time of inspection. The learned Counsel for petitioner argued that the Member of Industrial Court re-appreciated the evidence when it was not permissible in the revision and thus has exceeded the limits laid down u/s 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act"). Shri Mohokar, the learned Counsel for petitioner, on the point of scope of the Industrial Court u/s 44 of the Act relied on the following rulings of the Supreme Court -

(1) 2005 III CLR 669 Ramesh S/o Ramkrishna Bakde v. Divisional Controller MSRTC and Anr., (2) M.K. Bhuvaneshwaran v. Premier Tyres Ltd. and Anr. reported in 2001 II CLR 245, (3) Colour Chem Ltd. v. A.L. Alaspurkar and Ors. reported in 1998 I CLR 638.

On the point of payment of back wages he has relied on (4) J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, .

3. Shri Mohokar, the learned Counsel for the petitioner, highlighted the examination-in-chief and admissions given in the cross examination by the witness of the respondents. He argued that the said witness who was the Inspector of the Inspection Squad has admitted that he did not come across any misappropriation of the funds by the petitioner. The learned Counsel submitted that in totality of the evidence and the limited scope of the powers given u/s 44 of the Act, petition deserves to be allowed and the claim of remaining back wages of 75 % also be allowed.

4. Shri Charpe, learned Counsel for respondent, submitted that the Industrial Court has rightly set aside the findings of the Labour Court and dismissed the petitioner. Though re-appreciation or reassessment of the evidence is not permissible for the Industrial Court u/s 44 of the Act there is no total prohibition or complete bar for the Industrial Court to look into the evidence and find out whether Labour Court has considered the evidence reasonably or not. Shri Charpe, the learned Counsel for respondent, submitted that the Act of the petitioner is not a minor or technical misconduct but is falling under Clause 7 (a), 7 (d) and 12 (b) of the Disciplinary and Appeal Procedure laid down by the Maharashtra State Road Transport Corporation (for short "M.S.R.T.C."). The petitioner has not challenged the applicability of the said procedure. The charges under Clause 7(a), 7(d) and 12 (b) of misconduct are proved against the petitioner. The said charges are as follows:

1) not to issue tickets without any reason; [Clause 7(a)]

2) failure to give ticket within a time specified; [Clause 7(d)] and

3) committing fraud, dishonesty and misappropriation in respect of work and the property of M.S.R.T.C. [Clause 12(b)]

5. Shri Charpe, the learned Counsel for respondent, submitted that if all these charges are proved then as per the proviso of Clause 7, the delinquent is to be dismissed/ terminated. In support of his submissions he relied on the case of Karnataka State Road Transport Corporation v. B.S. Hulikatti reported in 2001 I CLR 699 in which the Supreme Court has observed that if bus conductor either not issued tickets to a large number of passengers though should have or collected more amount and have issued tickets of lesser denomination knowing fully well the correct fair to be charged then it would be a case of gross misconduct. He argued that not issuing the tickets by the petitioner has resulted in monetary loss to the government and therefore, conduct of the petitioner is correctly held as misconduct and dismissed him.

On the issue of back wages Shri Charpe submitted that it is the responsibility of the petitioner to demonstrate that during the period of suspension he was not employed gainfully and if petitioner has not pleaded or proved this fact of non-employment during said period of dismissal, then no order of back wages can be passed. He relied on the case of U.P. State Brassware Corporation Ltd. and Anr. v. Udai Narain Pandey reported in 2006 1 CLR 39. He has further relied on the judgment of this Court in the case of Chief Engineer Irrigation Department, Nagpur and Ors. v. Aashish S/o Vasantrao Dabhade and Anr. reported in 2010 (2) Bom. LC 135 (Bom).

6. Section 44 of the Act confers supervisory powers over Industrial Court and so has revisional jurisdiction to set aside the order passed by the Labour Court if found illegal. It does not empower the Industrial Court to sit in appeal and enjoy wider scope over the orders of the Labour Court. In the case of Sadanand Ramesh Samsi Vs. Kirloskar Cummins Ltd. and Others, this Court held that scope of the Industrial Court can be stretched in its revisional jurisdiction only to look into the evidence which is not considered by the Labour Court. On limitation of the powers of the Industrial Court u/s 44, I place reliance on the case of M.K. Bhuvaneshwaran v. Premier Tyres Ltd. and Anr. reported in 2001 II CLR 245. The Industrial Court in present case has exceeded its limits by reassessing the evidence of the petitioner.

7. The Labour Court and Industrial Court both have held that the charges of misconduct under Clause 7(a), 7(d) and 12(b) under Disciplinary and Appeal Procedure i.e. non-issuance of tickets to 18 passengers were proved. This Court does not want to disturb the said findings.

The two issues are before this Court for consideration -

(a) Whether the penalty of dismissal given by Industrial Court is proper considering the nature of the charges against the petitioner; and

(b) Whether the petitioner is entitled to back wages ?

8. Though the charges under Clause 7(a), 7(d) and 12 (b) are proved against the petitioner under the said procedure and as per the proviso of Clause 7 if said charges are proved the employee should be dismissed. The said procedure of M.S.R.T.C. is subject to the settled principles of law. The quantum of punishment is always measured and decided by applying the "principles of natural justice" and "doctrine of proportionality" or "doctrine of reasonableness". In the present case though the petitioner did not issue the tickets to 18 passengers, on checking by the Inspection Squad, the said passengers paid all the amount of tickets along with the penalty charged thereon. Thus, there was no actual pecuniary loss to the revenue of M.S.R.T.C. - respondent. Moreover, there is no charge of misappropriation of amount leading any financial gain to the petitioner. The observations of Industrial Court that the petitioner had ulterior motive to extract the amount from the passengers are not legal and correct. On the contrary, the findings of the Labour Court that omission to issue tickets was a negligent act of the petitioner appears sound and well founded.

In the case of Karnataka State Road Transport Corporation, cited supra, the respondent bus conductor has collected the more amount from 35 passengers but issued tickets of lower denomination and therefore, it was held that such conduct or non-issuance of the tickets to a large number of passengers is a case of gross misconduct. Moreover in the said case the order of dismissal rightly was not set aside but respondent was already superannuated and therefore, as a special circumstance the order of reinstatement was not set aside. In the present case the Labour Court has held that it is a negligent act and not an act of deliberate intention. Hence the punishment of dismissal is found disproportionate to the guilt of the petitioner. The order of Industrial Court to that effect is quashed and set aside and the order of the Labour Court reinstating the petitioner with continuity of service is restored.

9. On the point of back wages the Supreme Court in the case of U.P. State Brassware Corporation Ltd. and Anr., cited supra, specifically held that the employee should plead and prove that he was not employed during the period of dismissal. This ratio is followed by the ruling of the Divisional Bench of our High Court in the case of Chief Engineer Irrigation Department, Nagpur and others, cited supra. Thus, in nutshell back wages is not a necessary corollary to the order of reinstatement with continuity of service. This High Court in the case of Taranjitsingh I. Bagga Vs. Maharashtra State Road Transport Corporation, has taken a different view and held in paragraph 8

...At the same time, no Court can be oblivious to the grim reality of unemployment pervading all states of the society. Therefore, we would not be in a position to conclude that the moment a person is sacked he can find alternate means of his wherewithal. In this situation, it would be unjust to insist upon a technical requirement of pleading and proof of absence of gainful employment by an employee who is wrongfully dismissed.

In the said ruling this Court has placed heavy reliance on J.K. Synthetics Ltd., cited supra. The ratio laid down by the Supreme Court in the case of U.P. State Brassware Corporation Ltd. and Anr., cited supra, and in J.K. Synthetics Ltd., cited supra, is binding on this Court and no other view can be taken other than the ratio laid down by the Apex Court. In the case of J.K. Synthetics Ltd., cited supra, the Supreme Court has considered all the possibilities of the punishment, dismissal reinstatement and held that where misconduct is proved and lesser punishment is given awarding the back wages to the delinquent and where the continuity of service is directed it should only be for the purpose of pensionary and retirement benefits and not for other benefits like promotions etc. In the event of victimization of the employee if dis-proportionate excessive punishment is given then back wages can be awarded. Thus, it is expressly clear that in the absence of specific pleading regarding non-employment, the order of back wages cannot be passed.

10. Shri Mohokar, learned Counsel for petitioner, has pointed out that the petitioner has given the evidence before the Labour Court that he was not employed during the relevant period. He, with the permission of this Court, filed an affidavit of the petitioner, which is taken on record and marked as "X" for identification. In said affidavit the petitioner has made specific statement that he was not employed after his dismissal till he was reinstated. This statement of the petitioner is not controverted by the learned Counsel for the respondent by way of counter affidavit though he has prayed that the matter be remanded as he wanted to cross examine the petitioner on the point of his non-employment during the relevant period.

11. Once the fact of non-employment is pleaded by the worker either in the body of the petition or in the affidavit, it is the responsibility of the respondent to file a counter affidavit disclosing his knowledge or information about the employment of the worker during that period. A statement of non-employment is itself a negative fact pleaded by the petitioner therefore, it has to be challenged or denied specifically. If it is controverted specifically in the counter affidavit, then only next stage of giving an opportunity of cross examination on this issue may be granted. However, in absence of specific challenge to the said negative fact, remanding the matter with a view to give an opportunity to the respondent to cross examine the petitioner on this issue will not only be an empty formality but will also amount to unreasonable delay in judicial process. In the view of these facts and circumstances of the case, the order passed by the Industrial Court is quashed and set aside and the order of the Labour Court is upheld.

With these observations writ petition is disposed of.

No order as to costs.