
(2004) 07 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 45 of 2001

Brihanmumbai Municipal Corporation	Vs	APPELLANT
Dattatraya E. Galave and Another		RESPONDENT

Date of Decision : 11-07-2004

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2005) 104 FLR 786

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : S.K. Talsania, for the Appellant; N.M. Ganguli, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocate for the parties. Perused the avoids.

The petitioner challenges the order passed by the Industrial Court in Appeal (1C) No. 50 of 1999 whereby the Industrial Court has allowed the appeal against the orders dated 5th April, 1999 and 13th July, 1999 passed by the Labour Court in Application (BIR) No. 104 of 1995 filed under the Bombay Industrial Relations Act, 1946, hereinafter called as "the said Act", and has directed reinstatement of respondent No. 1 with continuity in service however without payment of back-wages.

2. The impugned order is sought to be challenged on the ground that the appellate-authorities, merely on the basis that the respondent was acquitted in criminal prosecution u/s 304-A of the Indian Penal Code, could not have set aside the order passed by the Labour Court. The Labour Court had held that domestic inquiry was fair and just and the findings arrived at by the Inquiry Officer were not perverse and hence had refused to interfere with the punishment imposed by the Corporation upon the respondent, merely on the ground of acquittal of the employee in the criminal prosecution which was mainly on account of failure on the part of the prosecution therein to establish the charges consequent to

examination of only one witness viz. Investigating Officer.

3. Few facts relevant for the decision are that the respondent was employed by the petitioner as Bus Driver since September, 1991. He was involved with an accident on 24th April, 1994 which caused the death of a pedestrian. He was prosecuted u/s 279 read with Section 304-A of the Indian Penal Code for the said accident and the death of a pedestrian. On 8th June, 1994, the respondent was charge-sheeted by the petitioner for misconduct under Standing Order No. 20(j) i.e. "gross negligence". After the inquiry, the charges levelled against the respondent were proved and after hearing the respondent, his services came to be terminated. The respondent thereupon filed an application to the Labour Court under Sections 78 and 79 of the said Act which was contested by the petitioner. During pendency of the said application before the Labour Court, the respondent came to be acquitted in criminal prosecution by an order dated 4th March, 1998 and copy thereof was produced before the Labour Court. The Labour Court, however based on the materials on record was not impressed with the acquittal of the respondent in criminal prosecution and considering the inquiry held by the petitioner to be fair and just and findings arrived at by the Inquiry Officer were not perverse, did not interfere with the punishment imposed upon the respondent. The respondent thereupon filed the appeal to the Industrial Court and by the impugned order, the Industrial Court set aside the judgment and order of the Labour Court, allowed the appeal and directed reinstatement of the respondent with continuity of service however without back-wages. Hence, the present petition.

4. Upon hearing the learned Advocate for the parties and perusal of the records, it is seen that, the Industrial Court merely on the basis that the respondent was acquitted in criminal prosecution arising out of the accident on account of which the respondent was also subjected to disciplinary action, has set aside the order of dismissal and directed reinstatement of the respondent with continuity of service but without payment of back-wages. The Industrial Court has not bothered to consider whether the findings arrived at by the Inquiry Officer on the basis of the materials before the Labour Court were borne out from the record or not and mere acquittal in the criminal prosecution is held to be sufficient to set aside the order of dismissal in disciplinary action. In that regard, reliance was sought to be placed in the decision of the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . Bare reading of the impugned judgment alongwith the decision of the Judicial Magistrate First Class in the matter of prosecution of the respondent for the offence of accident, reveals that not only there has been misreading of the decision of the Apex Court in M. Paul Anthony's case (supra) by the Industrial Court but also disclosed improper exercise of its jurisdiction by the Industrial Court in entertaining and applying the ratio of M. Paul Anthony's case (supra) as well as ignoring the fact that the acquittal of the respondent in criminal case was on account of total failure on the part of the prosecution to establish the case and mere examination of only one witness viz. Investigating Officer.

5. The Apex Court in M. Paul Anthony's case (supra) was dealing with a matter wherein the employee who was appointed as Security Officer by Bharat Gold-Mines Ltd. was allegedly found to be in possession of a mining sponge gold ball weighing 4.5 grams and 1276 grams of gold bearing sand and the same were allegedly recovered from him in the course of raid conducted by the Superintendent of Police at on house on 2nd June, 1985. Based on those facts, he was charge-sheeted for regular departmental inquiry as well as there was a criminal prosecution against him. The employee was however acquitted in criminal prosecution on 3rd February, 1987 and based on the said judgment, the employee requested for reinstatement in the service which request was rejected by the company. Meanwhile, the order of dismissal which was passed by the company was challenged in the departmental appeal which also came to be rejected on 22nd July, 1987. At this stage, a petition came to be filed in the High Court of Karnataka which was allowed by the learned Single Judge of the said High Court by order dated 26th September, 1995 holding that the departmental proceedings and the criminal case being based on the same set of facts, the departmental proceedings should have been stayed, and that since in the criminal case the employee was acquitted and the prosecution case was not found established, he could not have been dismissed from the service. The said judgment was set aside by the Division Bench of the said High Court on 17th September, 1997 in a Letters Patent Appeal filed by the company and the matter thereafter was carried in appeal, before the Apex Court. The Apex Court taking note of the fact that on the service of the charge-sheet, the employee had raised an objection that the departmental proceedings were to be stayed, as the basis of those proceedings, was the raid conducted at his residence on which basis the criminal case has already been launched against him and therefore he requested that the decision in the criminal case may be awaited; however, his request was turned down. When the employee approached the High Court, certain directions were issued. However, without complying with those directions in letter and spirit, the company proceeded to continue with the departmental proceedings which could not be attended by the employee, the proceedings became ex-par to against the employee wherein he was held to be guilty of the charges and ordered to be dismissed from the service. In the background of those facts, the Apex Court has also observed that the employee was not provided any subsistence allowance during the period of his suspension and the adjournment prayed for by him on account of his illness, though supported by medical certificates, was refused resulting in ex-parte proceedings against him and, therefore, there was total violation of the principles of natural justice and literally the employee was not afforded any opportunity of hearing in the matter. Considering the same, as far as the criminal prosecution and the order passed therein, it was observed that,-

There is yet another reason for discarding the whole of the case of the respondent. As pointed out earlier, criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at

the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by the Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellants. The same witnesses were examined in the criminal case, but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, whether the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust) unfair and rather oppressive to allow that findings recorded at the ex-parte departmental proceedings, to stand.

6. Bare reading of the decision of the Apex Court therefore would disclose that the Apex Court has set aside the order of dismissal in a departmental proceedings not merely because the delinquent was acquitted in the criminal prosecution but taking into consideration the various factors which included that the departmental proceedings were ex-parte proceedings, the witness examined in the departmental proceedings and the criminal proceedings were the same and there was no further additional witness examined in the departmental proceedings, the findings arrived at by the judicial pronouncement on the basis of such evidence produced in the criminal prosecution was to the effect that the "raid and recovery" at the residence of the delinquent was not proved and furthermore, that there was total violation of the principles of natural justice in the course of the departmental inquiry against the delinquent. Being so, the decision was squarely based on the peculiar set of facts and does not lay down a general proposition of law, that moment the delinquent is acquitted in criminal prosecution, the departmental proceedings should fall.

7. The law on this point, on the contrary, has been elaborately discussed and settled by a decision of the learned Single Judge of this Court, based on various decisions of the Apex Court, which is to the effect that the findings arrived at by the Court in the course of criminal trial are not necessarily conclusive for the decision in disciplinary proceedings. In *State of Andhra Pradesh Vs. Sree Rama Rao*, it was ruled that the judgment of the Magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental inquiry against the public servant. In the case of *State of Rajasthan Vs. B.K. Meena and others*, it was held that "the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different and in the disciplinary proceedings, the question would be whether the delinquent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the

criminal proceedings, the question is whether the offences registered against the delinquent under the relevant Act are established and, if established, what sentence should be imposed upon him and the standard of proof, the mode of inquiry and the rules governing the inquiry and trial in both the cases are entirely distinct and different." Undoubtedly, ruling of the Apex Court was in the matter arising under the Prevention of Corruption Act. However, the ratio thereof would equally apply to a case wherein the delinquent is also prosecuted under any criminal law while being subjected to departmental inquiry.

8. Considering the law laid down by the Apex Court and fully discussed by the learned Single Judge of this Court in *Satish Ganesh Saphtarshi and Others Vs. Kirloskar Oil Engines Ltd.*, it is apparent that the Industrial Court ignoring the said well-established law merely on the basis that the respondent has been acquitted in a criminal prosecution u/s 304-A of the Indian Penal Code held that he is entitled for reinstatement in the service. It is pertinent to note that the criminal case which was faced by the respondent concluded with acquittal of the respondent from the charges u/s 304-A of the Indian Penal Code by order dated 4th March, 1998 and a perusal of the said order reveals that the prosecution therein had examined only one witness i.e., P.S.L., who was an Investigating Officer in the said case. It is needless to say that in a criminal case where the charges are in relation to Section 304-A of the Indian Penal Code arising out of the motor vehicle accident, no accused can be convicted merely on the basis of the testimony of the investigating Officer. Apart from establishing the rash and negligent driving to hold the accused to be guilty for the offence punishable u/s 279 of the Indian Penal Code in case of death of a person arising out of motor vehicle accident, it is necessary for the prosecution to establish ingredients of Section 304-A of the Indian Penal Code and those are necessary to be established by the cogent evidence including the evidence in the form of Panchas and other witnesses. In a case where the prosecution was based on the examination of the Investigating Officer alone, nobody can even dream for conviction of the accused in such a case. Being so, in the case in hand, the respondent having been acquitted from the criminal case and failure on the part of the prosecution to lead any evidence in the matter apart from the examination of an Investigating Officer and at the same time bearing in mind that in the departmental proceedings, the employer had taken care to examine the relevant Witnesses in support of the charges, the Industrial Court clearly erred in ordering reinstatement of the respondent in service solely on the basis of his acquittal in such a criminal proceedings, The Industrial Court has not bothered even to analyse the materials which were placed before the Labour Court and to ascertain whether the materials in criminal proceedings were the same materials or whether the departmental proceedings disclose any additional material, apart from taking note of the basic difference in the two proceedings and difference in the standard of proof, mode of inquiry and the rules governing the inquiry and trial in the departmental proceedings as compared with those in the criminal proceedings. Apparently therefore the judgment of the Industrial Court cannot be

sustained and is liable to be set aside.

9. However, at the same time, as already observed, the Industrial Court has not considered whether the Labour Court was justified in arriving at the findings on the basis of the material placed before the Labour Court and it was necessary for the Industrial Court to undertake the said exercise before disposing of the matter in hand. Having failed to do so, it is necessary to remand the matter to the Industrial Court with direction that it shall deal with all the points sought to be raised in the matter, excluding the point in relation to the effect of acquittal of the respondent in criminal prosecution as the same stands concluded with this judgment.

10. In the result, therefore, the petition partly succeeds. The impugned judgment dated 12th October, 2000 passed by the Industrial Court is set aside. The matter is remanded to the Industrial Court to be dealt with an appeal in accordance with the provisions of law, excluding the issue regarding the effect of acquittal of the respondent in criminal proceedings. Rule is made absolute accordingly. No order as to costs.

Needless to say that the Industrial Court shall expedite the hearing of the said appeal.