

(2016) 01 BOM CK 0098
In the Bombay High Court
Case No : Writ Petition No. 327 of 2016

Dinkar Murlidhar Anap

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

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

Citation : (2016) 1 ALLMR 854 : (2016) 4 BCR 342 : (2016) 2 CLR 34 : (2016) 149 FLR 248 : (2016) LabLR 604 : (2016) LabLR 226 : (2016) MCR 452

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

Bench : Single Bench

Advocate : Barde Parag Vijay, for the Appellant;

Final Decision : Dismissed

Judgement

1. The issue before this Court is as to the source of power of the MSRTC to impose punishment on an errant employee and whether, the MSRTC can be restrained from awarding punishment to an employee?
2. The Petitioner is aggrieved by the judgment and order dated 25.11.2015 delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) No. 39/2014 filed by the Petitioner has been dismissed and the interim relief granted has been vacated.
3. Shri Barde, learned Advocate for the Petitioner, has strenuously criticized the impugned judgment based on certain facts and circumstances which have occurred prior to the filing of the said complaint, in the earlier rounds of litigation.
4. The submissions of Shri Barde can be summarized as follows:-
 - (a) The Petitioner joined the Respondent-Corporation as a Bus Conductor in 1993.
 - (b) He was issued with a charge sheet with reference to ticket-less passengers travelling in his bus on 02.08.1997, which is just four years after he joined duties.

- (c) A domestic enquiry was conducted against him.
- (d) After the Enquiry Officer concluded that the charges levelled upon him were proved in the enquiry, the second show cause notice dated 25.05.2001 was served upon him, thereby seeking an explanation as to why he should not be awarded the punishment of termination from service.
- (e) By the part-1 judgment dated 09.08.2006, the Labour Court concluded that the enquiry is not vitiated and the findings of the Enquiry Officer are not perverse.
- (f) By the final judgment and order dated 01.09.2012, the complaint was allowed and the second show cause notice dated 25.05.2001 was quashed and set aside.
- (g) The Petitioner as well as the Respondent Corporation preferred Revision (ULP) No. 5/2013 and Revision (ULP) No. 116/2012 respectively under Section 44 of the MRTU & PULP Act, 1971 before the Industrial Court at Ahmednagar.
- (h) By the judgment and order dated 13.08.2013, the Industrial Court dismissed both the revision petitions.
- (i) The Petitioner has not challenged the part-1 judgment of the Labour Court dated 09.08.2006 by which the enquiry and the findings were upheld and the said issue has, therefore, been put to rest.
- (j) Neither the Petitioner nor the Respondent-Corporation have challenged the judgment of the Industrial Court dated 13.08.2013 before this Court and both have, therefore, accepted the same.
- (k) The Petitioner is aggrieved by the order dated 25.03.2014 by which he has been awarded the punishment of reduction in basic pay by three stages.
- (l) The Petitioner preferred Complaint (ULP) No. 39/2014 before the Industrial Court for challenging the order of punishment dated 25.03.2014.
- (m) By the impugned judgment dated 25.11.2015, the complaint has been dismissed by the Industrial Court and the punishment awarded has been confirmed.
- (n) As the Labour Court in it's judgment dated 01.09.2012 has come to the conclusion that the Petitioner has committed a minor misconduct and therefore, cannot be punished as per Rule 7 (a) to (j) of Schedule A of the Discipline and Appeal Rules, the Respondent Corporation could not have awarded the impugned punishment.
- (o) Since the Labour Court had allowed the complaint, the Respondent Corporation could have awarded any punishment that was permissible as against a minor misconduct.
- (p) The conclusions of the Labour Court in it's judgment dated 01.09.2012 have been confirmed by the Industrial Court in it's revisional powers by the judgment

dated 13.08.2013 and therefore, the Industrial Court has erred in not noticing the serious legal infirmity committed by the Respondent Corporation in passing the impugned order of punishment.

(q) Though the past service record of the Petitioner contains three punishments, none of these punishments can be said to be in connection with any act of misappropriation.

(r) The Discipline and Appeal Rules indicate in Rule 3(iii) that a minor misconduct shall be one which falls in Schedule B appended to the said Rules.

(s) The Respondent Corporation has awarded the punishment to the Petitioner under Rule 7 (a) to (j) and hence, the said punishment is unsustainable.

(t) This petition be allowed and the impugned judgment of the Industrial Court as well as the impugned order of punishment be quashed and set aside.

5. I have considering the submissions of the learned Advocate for the Petitioner as have been recorded herein above.

6. The issue, therefore, is as to whether, the MSRTC can impose punishment on an employee against whom a minor misconduct has been proved, under any provision of the Discipline and Appeal Rules barring Rule 7? The Labour Court in it's judgment dated 01.09.2012 has concluded that since the misconduct committed by the Petitioner falls under Rule 12 of Schedule-B, the MSRTC cannot impose any punishment upon the Petitioner under Rule 7(a) to (j). So also, it requires consideration as to whether, the MSRTC can be precluded from considering the past service record of the Petitioner prior to the date of the incident at issue which is 02.08.1997.

7. Though the Petitioner has contended that in a service period of 22 years, he has been awarded punishments for three misconducts which have nothing to do with the misappropriation, I cannot lose sight of the fact that the incident that has occurred is dated 02.08.1997 which is within four years from the date of joining of service by the Petitioner as a Bus Conductor. The past record indicates that the Petitioner has been punished on two occasions on 17.03.1993 and 13.11.1993. The first misconduct was with regard to unauthorized absenteeism and the second misconduct was with regard to refusal to perform duties. These two misconducts have occurred in the very first year of service of the Petitioner. The misconduct at issue dated 02.08.1997 is committed within four years from the date of joining duties.

8. This Court, in the matter of Bajaj Auto Limited v/s Kalidas Devram Patil reported in , 2000(2) Bom.C.R. 630 : 2000 (84) FLR 157, has concluded that a short and clean past service record would not operate as a mitigating factor since a clean record for a long duration will alone indicate the attitude, discipline and conduct of an employee. A short clean past service record is not an indicator of the attitude and conduct of an employee.

9. The Petitioner has laid heavy reliance on the observations of the Labour Court in paragraph 17 of its judgment dated 01.09.2012 wherein, the Labour Court has observed that the misconduct committed by the Petitioner would fall under Entry 12 to Schedule B of the Discipline and Appeal Rules and he would be entitled to suffer a punishment by applying the said provision instead of applying the provisions of Rule 7 (a) to (j) of Schedule A. However, in the operative part of the order in clause (4), the Labour Court has given the Respondent/ Employer the liberty to take appropriate action against the Petitioner if advised regarding the misconduct proved against him in the departmental enquiry.

10. Clause (4) of the order of the Labour Court dated 01.09.2012 reads as under:-

"4. However, the respondents are given liberty to take appropriate action against the complainant, if advise regarding the misconduct proved against the complainant in the departmental enquiry."

11. The Petitioner as well as the Respondent were before the Industrial Court in their respective revision petitions. In paragraph 10 of the judgment of the Industrial Court dated 13.08.2013, which has attained finality, it was concluded that "Not issuing tickets by employee concerned is definitely a misconduct though not warranting punishment of dismissal." It is astonishing that the Respondent Employer has not challenged this conclusion of the Industrial Court.

12. In a catena of judgments delivered by the Apex Court and various High Courts, not issuing tickets and allowing passengers to travel ticket less after accepting the fare of tickets or some amount, has been consistently held to be an act of misappropriation in the last about four decades.

13. Since the Respondent Employer has not challenged these findings of the Industrial Court, I may not have to deal with that issue though this Court cannot turn a blind eye to the incident that has occurred on 02.08.1997 wherein the flying squad in a surprise check noticed several ticket less passengers.

14. In the same paragraph 10 of the judgment of the Industrial Court dated 13.08.2013, it has been observed that "But, at the same time, taking money from the passengers for tickets and not issuing tickets definitely amounts to serious misconduct, but there being no observation to that effect at the hands of the competent authority, in my opinion, the observation of the learned Judge, Labour Court showing sympathy is very much proper and apart from that the learned Judge of the Labour Court has given liberty to the Employer to take appropriate action against the Employee on the basis of the proved misconduct in the departmental enquiry."

15. There is no dispute that the Flying Squad noticed ticket less passengers as well as found an amount of Rs. 32.75 in excess with the Petitioner. Rule 3(iii) of the Discipline and Appeal Rules deals with minor misconduct and permits imposing punishment under Rule 7. The Discipline and Appeal Rules though

define a minor misconduct, do not define what would constitute a major misconduct. The distinction found in the Rules is only as regards a minor misconduct and misconduct. Schedule-A to the Rules indicates that passengers travelling ticket less will be a misconduct under Rule 7. Rule 12 of Schedule B defines that if a conductor is found with excess amount upto Rs. 100/-, the same would constitute a minor misconduct.

16. I have closely perused Rules 3 and 7 of the Discipline and Appeal Rules with the assistance of Shri Barde. Besides Rule 7, there is no provision in the Discipline and Appeal Rules for awarding punishment to minor and other misconducts. Apparently in this backdrop, the observation of the Labour Court in paragraph referred to above, is an observation in inadvertence since it is Rule 7 alone that prescribes various punishments for minor as well as major misconducts. If the contention of the Petitioner is accepted that the Labour Court has directed the Respondent Employer not to award any punishment under Rule 7, then in that case, the Respondent would not be able to award any punishment to the Petitioner despite the misconduct having been proved since besides Rule 7 there is no other provision which would prescribe awarding of punishment for a minor misconduct.

17. In the light of the above, it is apparent that if the Respondent Employer has to award any punishment to an employee for a misconduct as defined under Schedules A and B, the Employer has to fall back on Rule 7 for awarding punishment as that is the only rule which prescribes the punishments. I, therefore, conclude that the MSRTC can impose punishment on an employee under Rule 7 of the Discipline and Appeal Rules.

18. With having settled the issue as above, I am required to look into whether, the punishment awarded to the Petitioner could be said to be shockingly disproportionate. It is trite law that merely because the punishment may appear to be disproportionate would not call for any interference by the Courts. The punishment has to appear to be shockingly disproportionate so as to shock the judicial conscience of the court. Such punishment should appear to be an outrageous defiance of moral standard and logic.

19. The Petitioner has been held guilty and punished for two misconducts in between 1993 and 1997. I am not considering the third misconduct for which he has been punished since the said misconduct was committed on 19.12.1999 which is after the date of incident at issue 02.08.1997. As such, it is apparent that the Petitioner has been punished on two occasions and has committed the third misconduct on 02.08.1997 within a span of four years of his employment. This period which is a short service period, therefore, involves three misconducts.

20. Considering the case of the Petitioner from this angle, I find that the impugned punishment awarded to the Petitioner is commensurate to the misconduct committed and the past service record which would hence aggravate the seriousness and gravity of the misconduct proved. The Petitioner has

succeeded in evading punishment from 1997 as he challenged the second show cause notice before the Labour Court. Considering the totality of the circumstances, I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous.

21. In the light of the above, this petition is devoid of merit and is, therefore, dismissed.