

(2005) 02 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 1752 of 1994

Dinkar Pujari

APPELLANT

Vs

Divisional Controller, Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 11A, 28

Citation : (2006) 1 BomCR 905 : (2005) 3 MhLj 651

Hon'ble Judges : Naresh H. Patil, J

Bench : Single Bench

Advocate : A.B. Karande, holding for P.R. Patil, for the Appellant; P.R. Patil, for the Respondent

Final Decision : Dismissed

Judgement

Naresh H. Patil, J.—This petition is directed against the judgment and order dated 19-3-1993 passed by the learned Member, Industrial Court, Nasik in Revision Application (ULP) No. 500/1992.

2. The petitioner filed a complaint u/s 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (hereinafter called as "the said Act"). He contended before the Labour Court that he was in service of respondent M.S.R.T.C. since 1976 as a conductor. His past service record was unblemish. On 25-11-1986 when he was on duty, the bus was checked near Palaskheda, Tal. Bhadgaon by the squad of M.S.R.T.C. He was on duty on the route Shirpur - Pachora. Five persons boarded the bus at Dhule who were to proceed to Pachora and they were found travelling without proper tickets but, it was found that they had paid full fare for the journey. As against ticket of Rs. 10.50 for each of the passengers, the group of five passengers was found possessing tickets worth Rs. 17.30. When the complainant was asked about

issuance of tickets of lesser denomination, he made a statement before the squad that through oversight the mistake occurred. It was also found that the conductor was possessing excess cash of Rs. 11.35 and the way bill was not properly prepared and completed.

3. On these allegations, charge was framed and charge sheet was served on the employee and departmental enquiry was held and he was found guilty in the enquiry and accordingly, the competent authority passed an order of dismissal of the petitioner from services.

4. The Labour Court allowed the complaint and directed reinstatement of the petitioner with continuity of service with 50% backwages from the date of termination by judgment and order dated 27-8-1992.

5. The M.S.R.T.C. preferred revision application which came to be allowed. The learned Counsel for the petitioner submits that the punishment meted out to the delinquent employee was shockingly disproportionate to the alleged misconduct. The enquiry was not properly held and the explanation of the petitioner ought to have been accepted that by mistake, the passengers were given tickets of less denomination. Due to rush of passengers, according to the learned Counsel, such eventuality do occur for which the conductor was punished severely. He placed reliance on the reported judgments in the cases of *The Management of Shri Ganapati Bus Service Thirunelveli Vs. Presiding Officer, Labour Court and Others*, and *APSRTC v. B. Vikram Reddy*, : (2003)11SCC570 to substantiate his contentions.

6. The judgment in the case of *Shri Ganapati Bus Service, Thirunelveli (supra)*, cannot be made applicable in the facts of the present case.

In the case of *APSRTC v. B. Vikram Reddy (supra)*, it was observed by the Apex Court that in spite of the award passed, the Corporation did not implement the award and the respondent therein was not reinstated in service. The plea of the Corporation was that the employee did not approach them for taking steps for implementation of the award. The said contention raised by the Corporation was rejected by the Apex Court as the award was not challenged by the Corporation.

7. The learned Counsel for the respondent M.S.R.T.C. states that no error of law, apparent on the face of record, is pointed out by the petitioner in this petition for causing interference in the impugned judgment and order passed by the Industrial Court, in writ jurisdiction of this Court. The past record of the petitioner was not good and, therefore, the Industrial Court had rightly allowed the revision of the M.S.R.T.C. This Court, in exercise of jurisdiction under Article 227 of the Constitution of India, therefore, may not reverse the findings of the Industrial Court which are arrived after considering the issues raised by the parties. He placed reliance on the following reported judgments to support his contentions :

1) *Janatha Bazar (South Kanara Central Co-op. Wholesale Stores Ltd.) v.*

Secretary, Sahakari Noykarara Sangha Etc. 2000 (II) CLR 568 Karnataka State Road Transport Corporation v. B.S. Hullikatti 2001(i) CLR 699 , U.P. SRTC v. Basudeo Chaudhary, (1997) 11 SCC 370 ; 4) State of Haryana and Another Vs. Rattan Singh, .

8. In the case of Janatha Bazar (supra), the Apex Court observed in case of proved misappropriation, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

In the case of Karnataka State Road Transport Corporation (supra), the employee bus conductor faced domestic enquiry on the allegation that he had collected, on a particular trip of bus, Rs. 2.25 from each of 35 passengers but issued tickets of denomination of Rs. 1.75 only. The conductor was dismissed from service. The Labour Court directed reinstatement of the employee with full backwages. The Apex Court observed that it is misplaced sympathy by the Labour Courts in such cases when on checking, it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged and it is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

In the case of U.P. State Road Transport Corporation (supra), on inspection it was found that the conductor had recovered from 23 passengers Rs. 5.35 per head, the prescribed fare for travelling from Basti to Gorakhpur but in the waybill he had entered as having received the sum of Rs 2.35 from each of them. Having regard to the misconduct that was found established against the petitioner-employee, it was held that it was not possible to say that the corporation, in removing the petitioner from service, has imposed a punishment which is disproportionate to the misconduct.

In the case of State of Haryana v. Rattan Singh (supra), the Apex Court observed :

"In a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion

of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good."

9. I have heard the learned Counsel for the parties. The learned Counsel for the petitioner further raises a ground that the revisional court was not empowered to re-appreciate the facts of the case and arrive at the findings other than those arrived at by the Labour Court.

10. The Industrial Court was aware that the Labour Court or the Industrial Court are not supposed to sit as an appellate authority on findings of a domestic tribunal. In the present case, no case is made out by the petitioner to cause interference on the ground that principles of natural justice were not followed in conducting the departmental enquiry. Labour Court also concluded that the enquiry was legal and proper which was affirmed by the Industrial Court. The main charge was regarding issuance of tickets of less denominations to the passengers which caused revenue loss to the M.S.R.T.C. and explanation was given that it was due to some mistake. The Industrial Court in paragraph 10 of its judgment, refers to the contentions raised in the complaint, which was filed by the petitioner-employee and has reproduced the same. In which, the complainant stated that he had collected from 5 passengers full fare charges but, issued tickets of lesser denomination for their travel from Dhule to Pachora. Spot statement (Exh. 40) of the petitioner was also recorded. He did not give any reason for issuing deficit tickets. There was no explanation given for possessing excess cash. The waybill 52, 53 and 64 were not filled in and there was no explanation on that count also. Therefore, the Industrial Court found that the M.S.R.T.C. had made out a case of violation of the provisions of Discipline and Appeal Rules framed by the M.S.R.T.C. The misconduct was viewed seriously by the Enquiry Officer and the competent authority. The Industrial Court, in paragraph No. 12 of the judgment, has further observed that the complainant had admitted that in the past some punishments were imposed on him but, he did not remember the details of the same. He was examined before the Court. On the basis of these glaring admissions on record, the Industrial Court, after considering the case on merits, allowed the revision.

11. In case, the Court or tribunal arrives at some conclusions without considering the admissible evidence on record, I do not find any error of jurisdiction in the higher Court which exercises revisional jurisdiction by causing interference in the impugned judgment and order. Perusal of the judgment of the Labour Court shows that the Traffic Inspector Shri Sable, who was part of the squad, was examined before the Labour Court but, he did not utter a word about misconduct or breach of any administrative circulars or orders. Neither it was stated, according to the Labour Court, by Mr. Sable that the complainant had misappropriated the amount. If, the complaint and the admissions given by the complainant before the Court are considered, I find that even whatever stated by

the Officer of the M.S.R.T.C. before the Court, was sufficient to establish the misconduct on the part of the employee, attracting punishment.

12. In the case of Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC , the conductor was punished for more than one occasion and was charge sheeted on the ground of not issuing tickets to the passengers. In the said case, he was found carrying twenty-three and half passengers without ticket and an enquiry was conducted and he was removed from service. The Supreme Court observed thus :

"4. This Court in Karnataka SRTC v. B.S. Hullikatti has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court was firmly of the opinion that in cases like the present, orders of dismissal should not be set aside. 5. Furthermore, we agree with the observations of the Single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though u/s 11-A the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal."

13. In the case of Devendra Swamy v. Karnataka State Road Transport Corporation (2002) SCC 644, the appellant conductor was found to have not issued tickets to eight passengers in spite of collecting fare from them. After departmental enquiry, the appellant was dismissed from service. The Apex Court observed thus :

"7. The Division Bench of the High Court relied on the decisions of this Court in State of Haryana v. Rattan Singh, U. P. SRTC v. Basudeo Chaudhary and U. P. SRTC v. Subhash Chandra Sharma for forming opinion that unless punishment is shockingly disproportionate to the charge which has been proved the punishment awarded by the disciplinary authority should not be interfered in exercise of power of judicial review. In our opinion, the Division Bench was right in taking the view which it has taken. The opinion formed by the Labour Court that punishment of dismissal imposed by the management on the workman was too harsh and undeserved, was a perverse finding and arrived at by ignoring the material as to previous acts of misconduct and punishments awarded to the appellant brought to the notice of the disciplinary authority and the Labour Court. We are also of the opinion that the gravity of the charge of misconduct for which the disciplinary proceedings were initiated and which charge was found to be substantiated by the Labour Court seen in the light of previous service record of the appellant fully justified the punishment awarded by the disciplinary

authority."

14. In the case of Bharat Forge Co. Ltd. v. Uttam Manohar Nakate air 2005 SCW 554, the Apex Court was dealing with a case of an employee who being a watchman was found sleeping during service hours. It was observed by the Apex Court in para 32 :

"32. In The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc., , it has been held that it is not the normal jurisdiction of the superior Courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceeding, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary."

15. Considering the nature of misconduct, I find that it is serious enough for causing severe punishment as meted out to the employee. I am not inclined to interfere even in the order of punishment awarded to the delinquent employee.

16. The petition, therefore, stands dismissed. Rule is discharged. No orders as to costs.