

(1997) 10 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 1042 of 1996

Division Controller M.S.R.T.C., Bhandara

APPELLANT

Vs

Gulab Tanbaji Bhandarkar

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30

Citation : (1998) 3 ALLMR 1 : (1998) 4 BomCR 537 : (1998) 1 MhLj 818

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : V.G. Wankhede, A.G.P, for the Appellant; N.S. Bhoyar, for the Respondent

Judgement

F.I. Rebello, J.—On 22nd October, 1983 the bus driven by the respondent met with an accident with Jeep bearing No. M.T.S. 245. The said incident unfortunately resulted in the death of five persons travelling in the jeep and some passengers in the bus also sustained injuries. A charge-sheet was served on the respondent. The Enquiry Officer gave his report and held that the misconduct alleged against the respondent was proved. By order dated 11th September, 1987 the Disciplinary Authority on a consideration of the enquiry papers and past service record dismissed the respondent from service of the petitioner. The internal appeals provided for in the conditions of service were pursued by the respondent. The appeals however were rejected.

2. The respondent, thereafter filed a complaint before the Labour Court, Bhandara dated 31st May, 1995. The Labour Court, Bhandara set aside the dismissal and ordered reinstatement with continuity of service. The Labour Court, however, declined to award backwages from the date of dismissal to the date of the order for reinstatement. Reinstatement was ordered within one month from 31st May, 1995. The Labour Court held that the enquiry was fair and proper; the Labour Court further held that the findings given by the Enquiry Officer were

legal and proper; but however, held that the punishment of dismissal was disproportionate to the charges levelled and misconduct proved and accordingly the order as referred to earlier.

The Labour Court proceeded on the footing that the Court has wide powers u/s 11-A of the Industrial Disputes Act to reconsider report of the Enquiry Officer. The Labour Court further held that from the record it could be seen that there was no evidence to show any past adverse service record, nor that the complainant before it was involved in similar acts of misconduct and as such the punishment of dismissal was shockingly disproportionate. The Labour Court further noted that no independent passenger travelling in the bus was examined at the enquiry. It was also noted by the Labour Court that the accident took place near village Wadhamna, on Amravati Road at a turn. From the evidence of the complainant it appeared that on account of the turn a clear view of the front portion of the road was not possible. The Labour Court then went on to observe that merely because the driver committed an accident he does not deserve punishment by way of economic death by removing him from service and that appropriate punishment commensurate with the misconduct could be imposed on the complainant.

3. Aggrieved by the said order, both the employer and the workman preferred revision applications before the industrial Court. The Industrial Court by a lengthy order dated 5th September, 1995 dismissed both the applications. The Industrial Court on appreciation of the contentions and material was pleased to hold that the order passed by the learned Judge granting reinstatement to the complainant/workman is legal and proper. In so holding the Industrial Court held that the defence taken by the workman that the accident arose on account of the failure of the breaks could not be supported and on the contrary the evidence showed that the respondent was driving the bus at a speed even on the blind turning when the jeep came from the other side. The industrial Court further held that the findings recorded by the Labour Court that the accident arose on account of the rash driving of the respondent could not be said to be perverse. The Industrial Court therefore held that the examination of the record on the various aspects clearly demonstrated that the workman was rash and negligent in driving the S.T. bus at the relevant time when the accident occurred. The Industrial Court thereafter proceeded to examine as to whether the Labour Court had properly and judiciously exercised its discretion in reducing the punishment imposed on the workman by the Disciplinary Authority. The Industrial Court noted the judgments considered by the Labour Court and also cited before it and held that considering the texts laid down in the various judgments of this Court including the judgment cited and reported in 1992 (2) C.L.R. 238, Ramdas s/o Kisan Navi v. Divisional Manager, M.S.R.T.C., and the judgment in L.P.A. No. 25 of 1992 arising from the said judgment the Labour Court acted according to law. The Industrial Court held that in the absence of a past record and no other material the discretion exercised by the Labour Court could not be said to be illegal and improper warranting interference by the Industrial Court in the

exercise of its jurisdiction u/s 44 of the Maharashtra Recognitions of Trade Unions and Prevention of Unfair Labour Practices Act.

In so far as the revision preferred by the workman regarding failure to award backwages the Industrial Court held that the Labour Court had refused backwages as that would be a proper and appropriate punishment. In these circumstances, the Industrial Court found that there was no merit in the revision application preferred by the workman.

4. In this writ petition what is sought to be contended is that having found the workman guilty of the misconduct and looking at the fact that five persons had died the orders of the courts below are liable to be set aside.

5. The petition by the employer is to challenge the findings of fact by the Labour Court based on material that the punishment was disproportionate and interfering with the said punishment by imposing lesser punishment and directing the reinstatement of the respondent but without backwages by holding that non-awarding of backwages would be an adequate punishment. In so arriving at the conclusion that the punishment was disproportionate the Labour Court considered the fact that there was no adverse service record proved by the employer against the workman. Even the service record produced, Exhibit "B" to this petition indicates that the incident in respect of which he was charge-sheeted was the only incident. The order of dismissal dated 11th September, 1987 does not also show that the past service record of the petitioner was considered before imposing the punishment of dismissal from service. All that the disciplinary authority held was that as the charge against the workman was proved the order of dismissal would be a proper punishment. The employer while imposing punishment on account of statutory provisions or regulations or standing orders is bound to consider the past record. Even otherwise as a matter of fair play the past record is normally taken into consideration before imposing a punishment. The past record serves as a barometer to consider the nature of punishment which is to be imposed. The case of an employee who commits a misconduct on one occasion is certainly different from that of an employee who has been charged on several occasions for misconduct and misconduct proved against him. Similarly, the nature of the misconduct would also be a factor relevant for imposition of punishment. The case of an employee held guilty for the first time of an act of rash and negligent driving, would be on a different footing than a workman who was charge-sheeted in the past for misconduct of rash and negligent driving and having been found guilty. The past service record thus helps in arriving at the conclusion to impose proper punishment. A solitary incident by itself considering the nature of the misconduct could on one occasion be sufficient to impose the punishment of dismissal. In another case the said solitary incident may not by itself warrant dismissal from service. The fact that five persons have died on account of the accident in one set of circumstance may be sufficient to impose the punishment of dismissal. In another set of circumstance looking at the manner in which the accident is caused even though

it has resulted in death may not justify imposition of harsh punishment. The Labour Court took cognizance of the fact that there was no adverse past record against the workman. On a consideration of the material including the fact that the accident took place on a curve the Labour Court interfered with the action of the employer in dismissing the workman on the ground that the punishment was shockingly disproportionate. The Industrial Court on a consideration of the material before it found that the Labour Court had applied the correct test and as such it was not an appropriate case for the Court to interfere with the order of the Labour Court. In the light of this background would this be a case where this Court ought to interfere with the exercise of discretion by the Labour Court as confirmed by the Industrial Court interfering with the order of dismissal and holding that the punishment is shockingly disproportionate. In the light of what has been set out earlier this would not be a fit and proper case warranting interference by this Court.

6. The only question which requires consideration is the order of the Labour Court which invoked jurisdiction u/s 11-A of the Industrial Disputes Act, 1947 for interfering with the punishment imposed by the Disciplinary Authority. The Labour Court was hearing the complaint under the provisions of M.R.T.U. & P.U.L.P. Act and not under the provisions of the Industrial Disputes Act, 1947. The Labour Court therefore could not have exercised the powers conferred on it while exercising jurisdiction under the M.R.T.U. & P.U.L.P. Act. Section 11-A is a power conferred on Labour Courts, Tribunals and National Tribunals as also on Arbitrator which are authorities created under the said Act. The Industrial Disputes Act, 1947 and the M.R.T.U. & P.U.L.P. Act are two different legislations which are supplemental to each other. In the case of Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, the Apex Court has noted the provisions of the Industrial Disputes Act, 1947, the provisions of the Bombay Industrial Relations Act and the provisions of the Maharashtra Recognitions of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Apex Court noted that under the Bombay Industrial Relations Act various protections were given to the workmen covered by the said Act but there was no provisions regarding prevention of unfair labour practices either on the part of the employers or on the part of the unions of employees. In so far as the Industrial Disputes Act, 1947, it was applicable to industries not covered by the Bombay Industrial Relations Act. These industries also did not have benefit of the provisions regarding unfair labour practices when M.R.T.U. & P.U.L.P. Act was enacted. The Industrial Disputes Act provided for a reference by an Appropriate Government of any industrial disputes between the employers and employees for adjudication of competent industrial or labour courts. Where an industrial dispute exists, reference has to be made by the Appropriate Government u/s 10 of the Industrial Disputes Act. There was no provision for reference of an industrial dispute under the Industrial Disputes Act for preventing any unfair labour practice at the time of the Maharashtra Act saw the light of day. The Apex Court there noticed the amendment to the Industrial Disputes Act whereby the Vth

Schedule was added which catalogued unfair labour practices on the part of the employers, and the trade unions of the employers and on the part of the workmen and trade unions of workmen which are in pari materia with the unfair labour practices on the part of employers, the trade unions and general unfair labour practices on the part of employers, under the M.R.T.U. & P.U.L.P. Act. This the Apex Court noted also did not provide for reference of an unfair labour practice or an industrial dispute in connection with such unfair labour practice. Other provisions of the Industrial Disputes Act and the Bombay Industrial Relations Act were also noted and the lacuna was indicated in both the Acts which did not provide for provisions for reference of unfair labour practice which has been provided for in the Maharashtra Act. Thereafter on a consideration of this Scheme of the M.R.T.U. & P.U.L.P. Act the Apex Court noted that M.R.T.U. & P.U.L.P. Act sought to supplement and cover the field for which the industries concerned governed by the Industrial Disputes Act and Bombay Industrial Relations Act did not get any coverage and that field was obviously amongst other a field pertaining to prevention of unfair labour practices as defined by the Act. It is clear, therefore, that the M.R.T.U. & P.U.L.P. Act is a supplemental legislation in so far as the Industrial Disputes Act is concerned. The question, therefore of reading of powers u/s 11-A of the Industrial Disputes Act and/or invocation of the same by the Authorities created under M.R.T.U. & P.U.L.P. Act would not arise. Section 11-A also is not incorporated into M.R.T.U. & P.U.L.P. Act either by reference or legislative incorporation to invoke the said provisions. In Writ Petition No. 94 of 1996 in the case Divisional Controller, M.S.R.T.C. v. Syed Shabir Jani, I had occasion to consider the question whether section 17-B of the Industrial Disputes Act has been incorporated into the M.R.T.U. & P.U.L.P. Act by reference or legislative incorporation. I have held it not to be so, The same reasoning has to follow in the case of section 11-A also.

7. Does that mean that the Labour Courts and the Industrial Courts under the provisions of the M.R.T.U. & P.U.L.P. Act are not authorised to interfere with the punishment imposed by the Disciplinary Authority. Section 11-A itself was introduced by an Amendment Act by an Act of Parliament as it was noted that the Authorities constituted under the Industrial Disputes Act could not interfere with the quantum of punishment. They could either sustain the action or set it aside. Judicial pronouncement had so held and on account of that, Parliament had intervened and introduced section 11-A which conferred power on the Authorities created or recognised under the provisions of the Industrial Disputes Act, 1947 to interfere with the quantum of punishment. A Single Judge of this Court had an occasion to consider the issue in the case of Daji Murarrao Surve v. I.T.C. Limited, Bombay, reported in 1990 M.L.J. 1117. The learned Single Judge (Kantharia, J.) held that the Authorities under the M.R.T.U. & P.U.L.P. Act could interfere with the quantum of punishment not because of section 11-A of the Industrial Disputes Act but on the reading of Item 1(g) of Schedule IV to the Maharashtra Recognitions of Trade Unions and Prevention of Unfair Labour Practices Act. Item 1(g) of Schedule IV of M.R.T.U. & P.U.L.P. Act reads as

under :---

"for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

Item 1 (g) of Schedule IV refers, therefore, only to a misconduct of a minor or technical character, where punishment of dismissal or discharge has been imposed and as such the punishment is shockingly disproportionate so as to constitute an act of unfair labour practice. Would therefore, in a case of a misconduct the authorities under the Act have jurisdiction to interfere with the order of punishment imposed by the Disciplinary Authority. Schedule IV also contains Item 1(a) which is by way of victimisation and Item 1(b) which is not in good faith, but in colourable exercise of the employer's rights. A reading of the said items, would indicate that discharge or dismissal of an employee by items covered under Item 1(a), Item 1(b) or Item 1(g) or other items under Schedule IV would amount to an act of unfair labour practice if an employee is discharged or dismissed. Therefore, can the courts in cases of dismissal or discharge under items of Schedule IV interfere with the punishment if it is shockingly disproportionate. There is no reason as to why considering the scheme of the Act and the purpose for which it was enacted namely to prevent unfair labour practices such a power to interfere cannot be read into the powers of the Labour courts and the Industrial Courts. In terms of section 30 of the M.R.T.U. and P.U.L.P. Act the Court which means the Industrial or Labour Courts can take affirmative actions which includes directing reinstatement of the employee and calling on the employer to desist from such unfair labour practices. The power to issue directions to cease and desists from committing unfair labour practices and taking affirmative action is a discretion vested in the Court. The powers conferred on the Court is to be exercised when in the opinion of the Court it is necessary to effectuate the policy of the Act. In other words the power conferred on the Industrial Court and the Labour Court is to effectuate the policy of the Act by calling on the parties to cease and desist from committing any act of unfair labour practice and directing affirmative action. Section 30 permits the courts to hold an enquiry. It permits the passing of any interim order which has been construed in the case of Hindustan Lever Limited (*supra*) even to restrain imposing of a punishment of dismissal if a strong *prima facie* case is made out. The affirmative action includes the action to direct reinstatement, compensation, etc. The actions set out are only inclusive. There is, therefore, no doubt that if section 30 is so read the spirit of the said section would indicate that the Labour Court or Industrial Court can pass orders which in the opinion of the courts are necessary to effectuate the policy of the Act. If the policy of the Act is to prevent the unfair labour practice by affirmative action which includes reinstatement of discharged or dismissed employees if unfair labour practice as set out in Schedule IV is established. If there is larger power, to set aside the action of dismissal, it would also include a power to impose a larger punishment as provided for in the Standing Orders, Regulations or Rules which govern the

workmen. In fact though the said issue was not directly in issue in the case of Hindustan Lever Limited (supra) there is a passing reference by the Apex Court pointing out therein that the courts could interfere even before an employer discharges or dismisses an employee on a consideration of the grounds listed in Clauses (a) to (g) of Item 1 of Schedule IV. In other words the Industrial Court could interfere even before punishment is imposed. If the Labour Court and the Industrial Court can interfere and pre-empt an employer from discharging or dismissing the employee even before the employer has dismissed or discharged the employee, it surely cannot be read to mean that the Industrial Courts and Labour Courts would have no powers to interfere in the matter of punishment. Item 1(g) of Schedule IV is restricted in character, limiting itself to shockingly disproportionate punishment in the case of misconduct of a minor or technical character. Thus on the reading of the provisions of the Act and the purposes for which it is enacted, it would be clear that Labour courts and the Industrial courts u/s 30 of the M.R.T.U. & P.U.L.P. Act could interfere with the punishment where it found that the same is shockingly disproportionate. The power, therefore, in the Labour Court or in the Industrial Court to interfere with the punishment is not traceable to Section 11-A of the Industrial Disputes Act but traceable to section 30 read with Items in Schedule IV of the M.R.T.U. & P.U.L.P Act.

8. In the result, no interference is called for in the order of the courts below. Rule discharged. Writ petition dismissed. In the circumstances of the case, there shall be no order as to costs.

9. Writ petition dismissed.