

(1997) 07 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 1607 of 1995

Divisional Controller, M.S.R.T.C. Division Office Amravati

APPELLANT

Vs

Vinay Vasantrao Parwatkar

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 11
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 44

Citation : (1998) 4 BomCR 437 : (1998) 2 MhLj 156

Hon'ble Judges : S.S. Dani, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant; J.T. Gilda, for the Respondent

Judgement

S.S Dani, J.—The petitioner-Corporation challenges the order of the Industrial Court, Amravati, dated 17-2-1995, in Revision, U.L.P. No. 180 of 1987, u/s 44 of the M.R.T.U. and P.U.L.P. Act, hereinafter "the Act", setting aside the order dated 15-10-1987, of the Labour Court, Amravati, in Complaint, U.L.P. No. 223 of 1986, and directing the reinstatement of the present respondent on his former post as a fresh candidate.

2. The respondent was inducted in the service of the present petitioner-Corporation as a Conductor. On 23-7-1984, the respondent, while on duty as conductor on the S.T. bus, on the route of Bhokardi to Amravati, did not issue tickets to certain passengers. On checking the bus, bearing Registration No. 6877 at Seema Don, it was found that 35 passengers were travelling, and out of them, 8 were without tickets. It was further found that 4 passengers out of these 8 were travelling from Mangiya to Seema Don, and, had paid each Re. 1.50 Ps. as fare at the time of boarding the bus, and in spite of it, were not issued the tickets by the respondent. It was further revealed that other 4 passengers were travelling from Village Pilly to Seema Doh and had each paid Re. 0.60 Ps. as fare and were also not issued tickets by the respondent. The checking staff then

recorded the statements of the respondent (Annexure "A"), as well as of the concerned passengers (Annexure "B"). After a preliminary inquiry, a charge sheet dated 23-8-1984 came to be issued to the respondent, as per Annexure "C" and a departmental inquiry was conducted, in which the respondent participated. The charges levelled against the respondent were then found as duly proved and the misconduct of the respondent was considered as serious; and as per the Discipline and Appeal Procedure, the order dated 12-7-1985, Annexure "E", came to be passed, dismissing the respondent from services. The respondent then challenged this order of dismissal by filing complaint. U.L.R No. 223 of 1986, in which the departmental inquiry was held as having been conducted as per the rules of natural justice. The findings of the Inquiry Officer were held as just and proper, and, on finding that during the pendency of the departmental inquiry, a similar misconduct was committed by the respondent, the Labour Court held the respondent as a habitual defaulter, and on perusal of the past service record, dismissed the complaint filed by the respondent by his order dated 15-10-1987, Annexure "F". The respondent took up the matter to Industrial Court, Annavati, in Revision U.L.R No. 180 of 1987, and the findings in respect of the misconduct and its serious nature came to be confirmed. However, by an order dated 17-2-1995, the Industrial Court, taking lenient view, in spite of the serious misconduct, set aside the order of dismissal and directed reinstatement as a fresh employee, without continuity of service and back wages. It is this order of the Industrial Court dated 17-2-1995, which is being challenged in this writ petition by the petitioner-Corporation.

3. It may be noted at the inception that before the Labour Court, as well as the Industrial Court, the respondent employee did not challenge the department inquiry on its merits, and restricted arguments only to the question of punishment. The respondent-employee filed a purshis before the Labour Court accepting the findings of the departmental enquiry, and merely challenged the finding in respect of the punishment. So also, before the Industrial Court, the dismissal was challenged as disproportionate punishment and the matter was, therefore, considered and argued on the background of these contentions of the respondent.

4. Admittedly, there were 8 passengers travelling in the bus at the material time and were not issued tickets by the respondent employee, although they had paid the fare for their journey. It may also be noted that the bus in question was checked after it had travelled a substantial distance and, at that time, those 8 passengers were found without tickets, though the fare was, in fact, paid by them. Therefore, both the Labour Court, as also the Industrial Court, has rightly held that the respondent was guilty of grave misconduct by reason of his act of not having issued tickets, though paid for by those 8 passengers. It is, therefore, only to be considered in this writ petition as to whether the punishment of dismissal was shockingly disproportionate, despite the fact that the findings recorded by the Inquiry Officer were legal, correct and based on the principles of natural justice. It may be noted at this juncture that a similar misconduct was

committed by the respondent during the pendency of the departmental inquiry. Further it may be noted that, even on two previous occasions to the incident in question, the respondent was punished for carrying the passengers without tickets. In spite of all these actions of the respondent, chances were given to him to improve, but, he continued to indulge in the same types of activities. It has been observed by both the courts below that the default card sufficiently discloses that, even during the pendency of the departmental inquiry, the respondent indulged in the same activities and committed the similar misconduct by pilfering the amount of the Corporation. It is, therefore, clear from the record that the incident in question was fourth incident and the respondent was given three chances earlier to improve and to behave properly while discharging his duties, but he proved to be unworthy of it. Further it is material to note that only 35 passengers were travelling by the bus in question and out of them, 8 were found having not been having any tickets, and, as such, one-fourth of the passengers had travelled a considerably long distance without tickets, though they had paid fare for it. It was, therefore, clearly brought on record that the respondent wanted to grab the amount, which was collected from those 8 passengers. It is, therefore, material to note that, in a short span of service, the respondent has been repeatedly found indulging in misconducts and the Labour Court rightly upheld the punishment of dismissal, which cannot be labelled as disproportionate with the gravity of the misconduct.

4-A. The Industrial Court, while taking the lenient view in this case, made an order of reinstatement without continuity of service and back wages. Section 11A of the Industrial Disputes Act empowers the Tribunal to make an award, directing reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or, give such other relief, including of award of any lesser punishment, in lieu of dismissal, as circumstances of the case require. In the case at hand, the inquiry was held fairly and properly; and there was no violation of the principles of natural justice. The respondent was found indulging in misconduct and, despite the fact that he was awarded minor punishments on the earlier three occasions, he continued to do so, and thus it showed that he had little respect for the discipline. It is, therefore, the repeated omission on the part of the respondent-employee to improve after he was found guilty of similar misconduct that is material to be considered for inflicting the appropriate punishment.

5. The Industrial Court has also considered the small amount involved in this incident as sufficient circumstance for showing the leniency. It, however, cannot be lost sight of the fact that the respondent was under a duty to collect revenue for the Corporation, and, if he played with it in the manner in which he did, the extreme punishment of dismissal cannot be said to be uncalled for. Further, the respondent did not have a clean record and, as stated above, was found guilty of the similar misconducts on earlier three occasions, and as such, the punishment of dismissal cannot be said to be shockingly disproportionate to the proved misconduct.

6. In this connection, a useful reference may be made to the decisions of this Court in Writ Petition No. 2436 of 1993, Divisional Controller, M.S.R.T.C. Chandrapur Vs. Giridhar Raghunath Derkar, ; and in Writ Petition No. 620 of 1991, Mohd. Haroon Ali Mohd. v. M.S.R.T.C., Buldana, decided on 7-11-1996, wherein the punishment of dismissal was held as not disproportionate to the proved misconduct, especially when the employee was found not improving his conduct despite the modest punishment awarded on the previous occasions.

7. A useful reference may also be made to the decision of this Court in Pandurang Kashinath Wani v. Divisional Controller, M.S.R.T.C. Dhule, 1995 (1) C.L.R. 1052, wherein the punishment of dismissal was justified on considering the length of service and also on the serious nature of the misconduct and the previous record of the employee for identical misconduct. The facts involved in the case at hand are at par with the facts involved in all these three cases, referred to above, and in view of the facts as stated above, the punishment of dismissal cannot be said to be grossly disproportionate to the proved misconduct of the respondent.

8. As stated above, the Labour Court itself has found that the misconduct of the respondent is sufficient to inflict the punishment of dismissal, but, the industrial Court in revision interfered with the order of the Labour Court on the ground of leniency. The order of the Industrial Court reversing the order of dismissal and substituting it by its own order of reinstatement cannot be justified, inasmuch as the powers are limited and the Industrial Court should be extremely slow in interfering with the decision and findings of the Labour Court. This Court in the case of Municipal Corporation of Greater Bombay v. Best Workers' Union, 1993 (2) M.L.J. 1660 : 1994 (1) C.L.R. 570, has held that the order of the Industrial Court reversing the order of dismissal and substituting it with its own order of reinstatement passed on different view in the matter cannot be sustained and has to be set aside. The findings of the authorities, including the Labour Court, have been confirmed by the Industrial Court and the misconduct of the respondent has been held as a grave one and, as such, there can be no justification to the Industrial Court to show generosity and leniency with the punishment imposed and confirmed by the Labour Court on merits.

9. In view of all the above, the impugned order of the Industrial Court setting aside the order of dismissal and substituting it by its own order of reinstatement even without continuity of service and back wages cannot be sustained. The order of the Industrial Court is, therefore, required to be interfered with and set aside and the order of the Labour Court dated 15-10-1987 confirming the order of dismissal is required to be restored.

10. In the result, writ petition succeeds. The order of the Industrial Court dated 17-2-1995, Annexure "G", is hereby set aside; and the order of the Labour Court dated 15-10-1987, Annexure "F", is restored; and the Complaint U.L.P. No. 223 of 1986 stands dismissed. Rule made absolute accordingly. No order as to costs.

11. Writ petition allowed.