
(2005) 09 BOM CK 0108
In the Bombay High Court
Case No : Writ Petition No. 816 of 1996

Divisional Controller, MSRTC Satara Division and Others	APPELLANT
Vs	
Prabhakar Bajirao Pawar	RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2005) 107 BOMLR 549

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : G.S. Hegde and R.B. Raghuvanshi, for the Appellant; I.A. Saiyed, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—This petition arises from the judgment and order passed by the labour Court at Sangli in Complaint (ULP) No. 8V of 1987 on 18th July, 1990 and duly confirmed by the learned Member of the Industrial Court vide his judgment and order dated 24th February, 1995 dismissing the Revision Application (ULP) No. 119 of 1990.

2. The petitioner is an undertaking of the Government of Maharashtra providing road transport services to the public at large throughout the State. The respondent was employed as a conductor under the petitioner-Corporation since 1965. On 3rd December, 1986 when the respondent was on duty on the bus of the petitioner-Corporation plying from Karad to Killa-Machindragad, the bus was checked by the Inspector and it was found during the inspection that the respondent had collected some amount from some of the passengers but had not issued tickets to them. On this count, he was charge sheeted and a departmental enquiry was conducted. The Inquiry Officer held him guilty into the charges levelled vide the charge sheet dated 4th December, 1986. The petitioner issued a second show cause notice dated 13th June, 1987 to the respondent and called for his explanation as to why he should not be dismissed from service on the

basis of the enquiry Officer's report dated 13th April, 1987. This show cause notice came to be challenged in Complaint (ULP) No. 87 of 1987 before the Labour Court at Sangli.

3. On appreciation of the evidence and the arguments advanced by both the parties the Labour Court held that the charges were not proved and the complainant was not guilty of misappropriation of any amount. During the pendency of the complaint, the show cause notice was stayed and therefore he remained in service. The Labour Court therefore held that the employer was guilty of unfair labour practice as alleged and that he was entitled to continuation in his original post with all benefits available to him for the period of suspension if any. In the Revision Application, the Industrial Court upheld the findings of the Labour Court that the complainant proved the allegations of unfair labour practice against the employer under item No. 1 of Schedule IV of M.R.T.U. and P.U.L.P. Act, 1971.

4. It is pertinent to note that the Labour Court did not record a finding of unfair labour practice against the employer under a specific clause of item No. 1 of Schedule IV of the Act. On the contrary, the Labour Court concluded by saying. "For all these reasons, I am of the opinion that the respondent has failed to prove any of the unfair labour practice alleged against the complainant."

However, the Industrial Court agreed with the findings of the Inquiry Officer but, noted that the Inquiry Officer recommended the punishment of dismissal from service without considering the past record of service of the complainant. It noted that under Rule 6 (b) of the Discipline and Appeal Procedure framed by the Corporation, due regard will have to be given to the gravity to the misconduct and also the past record of service while recommending the punishment of dismissal. The Industrial Court therefore recorded a finding that the proposed punishment of dismissal was with undue haste or it was not in good faith and thus the employer was held to be guilty of unfair labour practice but, again without specifying any of the clauses of item No. 1 of Schedule IV of the Act by the Industrial Court as well.

5. The record and proceedings received from the Labour Court have been perused. It shows that on 3rd December, 1986 when the bus in which the respondent was a conductor (Bus No. 9046) had started from Karad to Killa-Machindragad with 48 passengers and when it was to reach the factory stop, the Inspector stopped the bus and when it reached the Karkhana stop the Inspector checked the tickets of all the 15 passengers who were getting down from the bus. All these 15 passengers stated that they were not issued any tickets though every one of them had paid 60 ps towards the bus fare. At the sametime, when the Inspector got into the bus the respondent-complainant issued 9 tickets and punched them. All these tickets were of 60 ps each. These tickets were confiscated before the respondent could offer them to the passengers. Statement of some passengers were recorded and they confirmed that they had paid money to the conductor who did not issue them the tickets. Along with the statement of

12 passengers, the statement of the driver of the said bus was also recorded. The Inspector submitted the report and noted that there were 8 educated passengers who were issued tickets but to the uneducated passengers no tickets were issued. The driver of the said bus in his written report also stated that there were 15 passengers who got down at Karkhana bus stop without tickets. In the departmental enquiry conducted the Inspector was examined and the defence representative of the complainant cross examined the said Inspector at length. In his defence, the complainant claimed that there was heavy rush in the bus and the distance between the two stops was very short. While he was approaching every passenger and issuing tickets after taking the bus fare the flying squad stopped the bus and the Inspector got in. The respondent contended that all the passengers from whom he had collected bus fare were issued the tickets and if there were ticketless passengers he had not recovered the bus fare. This defence was found to be totally false when the complainant was put to cross examination. He admitted that he had received the bus fare from all the 15 passengers who were found to be without tickets by the Inspector when they were getting down at the Karkhana stop. The plea of the complainant that there was heavy rush in the bus and therefore he could not issue the tickets to these passengers is falsified by his own admission that he had received the bus fare amount from all these passengers. Even if the bus was crowded, in the normal course the conductor moves from passenger to passenger to issue the tickets and in this process he receives the money and then tickets are issued. When he had admitted that all the 15 passengers had paid him the bus fare, there was no reason why he did not issue the tickets of 60 ps each to all these passengers before they reached to their destination i.e. the Karkhana bus stop.

6. The learned Judge of the labour Court misdirected himself in deciding the complaint. It held that the bus had left the original place and the conductor was in the process of issuing the tickets when the Inspector got into the bus and snatched the tickets tray from the complainant. The Labour Court further noted that issuing of tickets till the next stop as well and when the bus was crowded some allowance is required to be due to the conductor for issuing the tickets. The Labour Court therefore held that it was a case of confusion and it was not established that the conductor had misappropriated the money. The learned Member of the Industrial Court has held that the proposed action of dismissal from service without considering the past record of service was not sustainable and this seems to be the only reason for his conclusions that the employer was guilty of unfair labour practice.

7. It was to be noted that Rule 6 (b) of the Discipline and Appeal Procedure applies to summary cases and not to the disciplinary actions emanating from chargesheets issued to employees. The complainant has received the money from the passengers but did not issue the tickets and therefore it was a case of pilferage of public revenue. This is a misconduct of serious nature and misappropriation of public funds is not to be taken lightly. Even one instance of such misconduct warrants punishment of dismissal irrespective of the amount

meagre or large, more so, when the complainant himself was a public servant while in the employment of the petitioner-Corporation.

In this regard, we may refer to the following decisions in the cases of:

- (i) Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, ;
- (ii) Regional Manager, RSRTC v. Ghanshyam Sharma reported in 2001 (10) SC 12;
- (iii) Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, ;
- (iv) V. Ramanna v. A.P.S.R.T.C. and Ors. reported in JT 2005 (8) SC 134.

In the case of B.S. Hullikuti (supra) it was held that misconduct in such cases where the bus conductor either had not issued the tickets to a large number of passengers or had issued tickets of lower denomination the punishment of removal is proper. It is the responsibility of the conductors to collect fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they did not collect any fare or correct amount of fare. The conductor holds the post of trust. A person guilty of breach of trust should be imposed the punishment of removal from service. These principles were reiterated in the remaining 3 cases subsequently decided by the Apex Court.

8. While granting Rule, this Court had granted interim relief in terms of prayer Clause (c) by an order dated 19th March, 1996 and thus the impugned orders remained stayed. He was dismissed from service with effect from 28th April, 1994 on account of Disciplinary Enquiry No. 704 of 1994. He retired on attaining the age of superannuation in February, 2002. Though both the courts below have recorded a concurrent finding against the employer, the said findings are manifestly erroneous and therefore, call for interference while exercising the powers of superintendence under Article 227 of The Constitution of India in view of the above referred legal position. The findings of both the Courts below are perverse and the reasoning in support thereto is not supported by the evidence and hence the decisions impugned are required to be set aside under Article 227 of the Constitution.

9. In the result, this petition succeeds and the same is hereby allowed. The impugned orders are quashed and set aside and consequently complaint (ULP) No. 87 of 1987 hereby stands dismissed. Rule is made absolute accordingly with no order as to costs.