

(2003) 03 BOM CK 0137
In the Bombay High Court
Case No : Writ Petition No. 3425 of 1993

Divisional Controller, State Transport Division

APPELLANT

Vs

Shri Gajanan Savlaram Hingse (since deceased through his legal heirs, Smt. Mirabai Gajanan Hingse, Shri Ravindra Gajanan Hingse, Shri Vijay Gajanan Hingse and Shri Ajay Gajanan Hingse)

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (2003) 3 ALLMR 84 : (2003) 5 BomCR 169 : (2003) 97 FLR 756

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : G.S. Hegde, for the Appellant; K.B. Sonwalkar, for the Respondent

Judgement

R.J. Kochar, J.—The Divisional Controller of the Maharashtra State Road Transport Corporation is aggrieved by the Award dated 2.3.1993 passed by the Presiding Officer of the Labour Court at Sangli in Reference (IDA) No. 66 of 1989, awarding reinstatement with 50% backwages till the retirement of the Respondent-employee on the basis of the birth date 19.6.1936. The Respondent-employee has also challenged the said Award to the extent of denial of 50% backwages to him. According to him, he was entitled to reinstatement with full backwages and continuity of service.

2. It appears that the Respondent-employee was employee by the Petitioner-Corporation in the year 1969 as a Driver. He had produced a School Leaving Certificate in the year 1971 from a School by name Jeevan Shikshan Mandir, Phaltan showing his birth date as 10.6.1939. It further appears that in the year 1980 Respondent-employee was transferred to the Satara Division. It is the case of the Petitioner-Corporation that on a routine verification of the School Leaving Certificate produced by the Respondent-employee it was found that the said Certificate was not a genuine Certificate. The Security Officer had made enquiries

and it was revealed that the said School Leaving Certificate was false and bogus. The Respondent-employee thereafter was served a chargesheet on 13.5.1985 alleging that he had committed an act of misconduct of producing a false and bogus School Leaving Certificate at the time of employment. He was called upon to furnish his written explanation, which he had filed. He denied the charge levelled against him. The Petitioner-Corporation held a regular domestic enquiry in the chargesheet. The Respondent-employee fully participated in the enquiry. He was defended by an office bearer of his Union. The Petitioner-Corporation produced the relevant documents including the School Leaving Certificate at the time of the enquiry. The Petitioner-Corporation had also examined Head Mistress of the Jeevan Shikshan Mandir, Phaltan to get the alleged School Leaving Certificate verified by her. The Respondent-employee was given full opportunity of cross examination in the enquiry. On the basis of the evidence and the material before him the Inquiry Officer recorded a finding that the misconduct alleged against the Respondent-employee was proved. The Respondent-employee was thereafter dismissed from employment on 4.12.1985. On his dismissal he availed of the benefit of filing first internal appeal before the First Appellate Authority which confirmed the order of dismissal and dismissed the Appeal. He thereafter preferred Second Appeal before the Second Appellate Authority. It appears that the Second Appellate Authority converted the Order of dismissal into an order of removal from employment as a result of which the Respondent-employee could get his legal dues which otherwise he could not get which the order of dismissal from employment.

3. It further appears that the Respondent-employee was not satisfied with the Order of the Second Appellate Authority and therefore, he raised an Industrial Dispute on 27.9.1988 challenging the decision of the Second Appellate Authority given on 21.4.1986, the Industrial Dispute raised by the Respondent-employee was referred by the State Government u/s 10(1) read with Section 12(5) of the Industrial Dispute Act, 1947 for adjudication to the Labour Court. The Respondent-employee filed his statement of claim before the Labour Court justifying his demand for reinstatement with full backwages and continuity of service challenging the legality and propriety of the Order of dismissal and also the last order passed by the Second Appellate Authority. The Petitioner-Corporation filed its written statement denying the allegations levelled by the Respondent-employee in the said claim. According to the Petitioner-Corporation the misconduct levelled against the Respondent-employee was fully proved in a legal, fair and proper domestic enquiry wherein he was given full opportunity of hearing and that all the principles of natural justice were satisfied. The Petitioner-Corporation contended that the Respondent employee had produced a false and bogus School Leaving Certificate which was proved before the enquiry and therefore, he was rightly dismissed from employment. The Corporation further submitted that the Second Appellate Authority took a lenient view to reduce the order of punishment from dismissal to simple removal from employment so that the Respondent-employee could get his legal dues. The Corporation fully justified

its order of dismissal as also the order of simple removal from employment.

4. No oral evidence as adduced by any of the parties before the Labour Court. The Respondent-employee appears to have given a Purshish stating that he did not want to adduce any oral evidence and that he did not want to challenge the legality and propriety of the domestic enquiry. He appears to have admitted the legality and propriety of the domestic enquiry held against him in the chargesheet. In the aforesaid circumstances the Labour Court has given her finding that the inquiry held by the Corporation was legal and proper. She however upheld the contention of the Respondent-employee that the Order of dismissal dated 4.12.1985 was illegal and improper and she granted the relief of reinstatement with continuity of service with 50% backwages from September, 1988 till his reinstatement / retirement. As stated by me earlier both the parties are aggrieved by the said Award, and therefore, both are before this Court challenging the said Award under Article 227 of the Constitution of India.

5. I have heard the submissions of both the learned Advocates. I have carefully gone through the whole proceedings including the Award given by the Learned Presiding Officer of the Labour Court. Since the domestic enquiry has been accepted as legal and proper by the Respondent-employee, the Labour Court has rightly referred to the material before the Inquiry Officer. It appears from the proceedings of the enquiry that the Petitioner-Corporation was careful to examine the Head Mistress of the School which had issued the School Leaving Certificate as claimed by the Respondent-employee. She has categorically denied in her statement before the Inquiry Officer that it was the School Leaving Certificate issued by her School. From this crucial and clinching evidence it is proved beyond doubt that the school Leaving Certificate produced by the Respondent-employee in the year 1971, two years after the employment, was the Certificate not issued by the said School. The said Certificate was obviously a false and bogus Certificate relied on by the Respondent-employee to get employment under the Corporation. There is another very crucial aspect in the matter which again is brought on record by the Corporation. It appears that the Respondent employee had produced another Certificate as an Extract from the Birth and Death Register maintained by the Baramati Municipal Council. In the said Certificate the birth date of the Respondent-employee is recorded as 19.6.1935. Even this Certificate was produced by the Respondent employee. The latter certificate shows the birth date as 19.6.1935 while the former School Leaving Certificate produced by the Respondent employee himself shows birth date as 10.6.1939. One of the Certificate is certainly false and bogus one. I had specifically inquired from the learned advocate for the Respondent-employee that apart from anything else what was the birth date that was given by the Respondent-employee at the time of employment. He had very fairly and categorically admitted that the employee had given 10.6.1939 as his birth date at the time of his employment. In these circumstances it cannot be said that the action initiated by the Petitioner-Corporation against the Respondent-employee suffers from any illegality particularly when the Corporation had given full

opportunity of hearing to the Respondent-employee by issuing a chargesheet and by calling upon the him to Submit his written explanation. In the enquiry the Corporation had adduced good evidence to disprove the School Certificate produced by the Respondent employee. The Head Mistress of the School of which the alleged School Leaving Certificate was produced denied that it was the Certificate issued by her School. According to the learned Advocate for the Respondent-employee, the Certificate which was shown was not the Certificate which he had actually produced at the time of his employment. It was the contention of the employee that what he had produced as a School Leaving Certificate was not produced and that what was produced as his certificate was not produced by him. There is absolutely no merit in the said contention. Even in the explanation submitted by the Respondent-employee this is not the case made out by him. He had no doubt merely stated in his reply, in the cross-examination in the enquiry, that the said document was not produced by him but it was some other document which was produced by him as School Leaving Certificate.

6. In the aforesaid circumstances when the Petitioner had held a fair and legal enquiry which was admitted to be fair, proper and legal the scope of interference with the order of the Petitioner is narrowed. In the present case the Petitioner-Corporation has proved the misconduct of the Respondent-employee to the hilt by examining the Head Mistress of the School who denied the issuance of the School Certificate on which much reliance was placed by the Respondent-employee. The Petitioner-Corporation has proved the misconduct, and therefore, such an order cannot be made lightly interfered with unless a strong case of malafides is made out. In my opinion the Labour Court ought not to have interfered with the Order of dismissal which was subsequently converted into a milder Order of simple removal from employment. The Labour Court has taken a view that there was a delay in initiating the action against the Respondent-employee. We must bear in mind that the Corporation employ more than one lac employees. It is well known that like the State such huge organization also moves slowly. As soon as it was found by the Petitioner-Corporation that there was something wrong with the School Leaving Certificate on their routine inquiry they have initiated the action wherein the Respondent employee was given full opportunity. Merely because there is some delay in initiation of disciplinary action it will not wipe out the allegation of misconduct which is proved by the Corporation to the hilt. The Corporation has fully proved the act of production of false and bogus School Leaving Certificate. Secondly the Respondent-Employee had relied on another birth date certificate issued by the Municipal Council. In that Certificate the birth date mentioned was 19.6.1935. Both these Certificates prove each other to be false and bogus. In any case the Petitioner Corporation has proved the act of misconduct of the employee. There was hardly any scope for the Labour Court to have interfered with the order of dismissal in such matter. There is no allegation of malafides or victimisation against the Petitioner Corporation. In any case a proved misconduct is anti thesis of victimisation. The

Labour Court has interfered with the Order passed by the Petitioner only on the ground of delay in initiation of the action. In any opinion that cannot be a ground to upset a decision of the Petitioner otherwise legal and void.

7. Shri Sonwalkar the learned advocate for the Respondent-employee has relied on a Judgment of the Division Bench of this Court reported in 2002 (4) MLJ 365. He has relied on this Judgment on the point of delay in initiation of the proceedings. It was a case of caste scrutiny wherein the Division Bench has interpreted what is the reasonable period to initiate the action. The facts are entirely different in the said Judgment and therefore, it will not apply in the present case.

8. The Labour Court has gone into the evidence before the enquiry held. The Labour Court has examined the statements made by the witnesses in the enquiry. The Labour Court has also observed that the Certificate produced by the Respondent employee was not denied in the enquiry. The Labour Court has held that the charge was proved in the enquiry and that the conclusion or the finding of the Inquiry Officer were not perverse but were flowing from the evidence and material on record. In these circumstances it cannot be said that the action of the Petitioner Corporation was in anyway vitiated. The fact that the Respondent employee had produced a false and bogus School Leaving Certificate is established beyond any doubt in the proceedings before the enquiry as also before the Labour Court. It further appears that the past record of the employee was also not good. There were 20 acts of misconducts to his credit in the past record.

9. Considering all the facts and circumstances there is absolutely no reason for me to interfere with the order of punishment of dismissal. The Labour Court has certainly erred in interfering with the order of punishment by awarding reinstatement with 50% backwages in such a case. The Labour Court has certainly committed an error of law in granting reinstatement with 50% backwages to the Respondent employee in the facts and circumstances in the present case where the act of misconduct is fully proved in a domestic enquiry which is not under challenge by the Respondent employee. In these circumstances the Petition succeeds and the rule is made absolute in terms of prayer Clause (a). No orders as to costs.

10. The Respondent employee appears to have expired. It further appears that he did not collect his legal dues. The Petitioner Corporation is hereby directed to compute his legal dues such as gratuity and Provident Fund and all other legal dues payable to the Respondent employee and send the same to the widow of the Respondent employee within four weeks from the letter of consent which would be sent by the widow of the Respondent employee that she was fully entitled to receive the said legal dues on behalf of the other legal heirs of the Respondent employee.

11. Parties to act on an ordinary copy of this order duly authenticated by the

Sheristedar of this Court.