

(2007) 07 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 2747 of 1995

Domaji Marotrao Ubale

APPELLANT

Vs

Maharashtra State Road Transport

RESPONDENT

Date of Decision : 04-07-2007

Acts Referred:

Citation : (2007) 6 ALLMR 52 : (2008) 1 BomCR 767

Hon'ble Judges : Chaudhari A.B., J

Bench : Single Bench

Advocate : Chandrakant Jagdale, for the Appellant; V.G. Wankhede, for the Respondent

Final Decision : Dismissed

Judgement

Chaudhari A.B., J.—By the present writ petition, the petitioner has questioned the validity of the judgment and order dated 24.7.1992, passed by the Labour Court, Nagpur and confirmed in Revision by the Industrial Court, Maharashtra (Nagpur Bench), Nagpur, refusing to grant back wages to the petitioner though there was an order directing his reinstatement in service.

FACTS:

2. The petitioner, who was working as a helper with the M.S.R.T.C. was charged for committing theft of a "Drive Shaft". An enquiry was held into the charge levelled against him and at the same time a criminal case was also filed against him upon the F.I.R. lodged by the employer. In the departmental enquiry, the charge was proved. As a result of the petitioner having been found guilty, the respondent dismissed him from service by order dated 13.2.1987. That dismissal was challenged before the Labour Court by filing complaint. The Labour Court held that the charge levelled against the petitioner of commission of theft was proved, but it found that the punishment that was effected on the petitioner was shockingly disproportionate. The Labour Court, held that it would subserve the ends of justice, if the back wages are refused. The Labour Court, therefore,

directed reinstatement of petitioner but without back wages. Not satisfied with the judgment of the Labour Court, the petitioner filed revision before the Industrial Court and claimed full back wages on the ground that order of reinstatement must follow the order of back wages. The Industrial Court dismissed the revision. Hence, this writ petition.

Arguments:

3. Shri Jagdale, learned Counsel for the petitioner argued that the courts below ought not to have refused to award back wages when they found that the punishment of dismissal from service was shockingly disproportionate. He further argued that the petitioner suffered due to mistake of the employer in dismissing him from service in hot haste and, therefore, he was unemployed from 31.2.1987 till his reinstatement on 13.3.1993. He, therefore, submitted that the petitioner was entitled to back wages for the said period.

3.1 Per contra, Shri Wankhede, learned Counsel for the respondent submitted that the misconduct having been found to have been proved by the courts below, as a matter of fact the dishonest conduct of the petitioner was such that the courts below could not have ordered even reinstatement. He submits that at any rate, since M.S.R.T.C. has not challenged the judgment and since the M.S.R.T.C. on humanitarian ground accepted the judgment of the courts below and reinstated the petitioner, the award of back wages would have added premium to the act of misconduct of the petitioner.

Consideration:

4. Having heard learned Counsel for the parties and having gone through the entire record, I find that the courts below have consistently found that the petitioner was guilty of the charge levelled against him for commission of theft of "Drive Shaft". In the wake of the concurrent finding of fact on this aspect, one thing is clear that the petitioner was found guilty of the commission of theft of the articles of his own employer. The misconduct of theft or dishonest conduct by the employee as provided in the Standing Orders is a serious misconduct and is punishable with major punishment. In the instant case, however, both the courts below have taken humanitarian view of the matter and saved the petitioner from economic death. As a result of the said approach of the courts below, the petitioner is in service. For all these reasons, therefore, I do not find that the courts below have committed any error in refusing to award back wages to the petitioner. The finding recorded by the Labour Court that refusal of back wages would be sufficient punishment for the misconduct which was proved is legal, correct and proper. The writ petition is, therefore, dismissed. No order as to costs.