

(2000) 07 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 2396 of 1990

Gajanan Thakre

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44

Citation : (2001) 3 LLJ 704

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

Bench : Single Bench

Judgement

R.J. Kochar, J.—The petitioner was employed by the Respondent Corporation as a conductor from 1981. He was served with a charge-sheet dated February 23, 1984 under the provisions of the Discipline and Appeal Procedure framed by the Corporation. It was alleged against him that he was guilty of misconduct under the Clauses 7-A, B, C, 12- B and 22. The charges related to collection of fare from the passengers and not issuing tickets to them and Rs. 6.25 Ps. were found short in the cash counted at the time of inspection of the bus. He was called upon to furnish his written explanation which the petitioner did by his letter dated April 17, 1984 denying the charges levelled against him. He flatly denied that he had ever collected any fare from the alleged passengers and, therefore, no tickets were issued to them enroute the journey. He also denied the fact that the cash was checked on the spot of checking but according to him it was done at a subsequent point of the journey at Gangakhed bus stand. He further supports his plea of non-collection of the fare from the passengers by saying that in that case cash would have been in excess and not short by Rs. 6.25 Ps. Not satisfied with the explanation submitted by the petitioner the Respondent Corporation decided to hold a domestic inquiry in the charges levelled against the petitioner. It appears from the record that the inquiry was adjourned from time to time at the instance of both the petitioner as well as the Corporation for one or the other reasons. On July 8, 1985 the Inquiry Officer appears to have

proceeded ex parte against the petitioner as he was not present in the inquiry, inspite of receipt of such intimation by the petitioner on July 6, 1985, as observed by the Inquiry Officer in his findings. It appears from the Inquiry Officer's report that on that day he had recorded the statement of one witness Shri V.C. Rathod, Assistant Traffic Inspector, who appears to have given his version of what had transpired on the day of the incident of checking or inspecting the bus which was conducted by the petitioner. According to the said witness, he had submitted his report dated February 21, 1984 which appears to have been produced before the Inquiry Officer. He had also stated that his colleague Shri Sahajrao had submitted cash checking report which was also produced by the witness Shri Rathod and identified the report of Shri Sahajrao. Shri Rathod had also produced before the Inquiry Officer statements of the passengers recorded by him on the spot. It appears from the record that the inquiry officer graciously thought it proper to adjourn the inquiry in the interest of the principles of natural justice and to give an opportunity to the petitioner to attend the inquiry on the next date i.e. on September 19, 1985. It appears from the record of the inquiry proceedings that on September 19, 1985 the petitioner was present in the inquiry and he made a statement to the Inquiry Officer that his written explanation submitted to the chargesheet should be treated as his defence statement and that he did not desire to make any further statement and did not desire to adduce oral evidence. On the aforesaid statement of the petitioner the Inquiry Officer appears to have cross examined him. The inquiry appears to have been closed at that end and was followed by the show cause notice dated October 25, 1985 issued to the petitioner on the basis of the report of the Inquiry Officer, requiring the petitioner to show cause why the punishment of dismissal should not be imposed on him. By his letter dated October 31, 1985 the petitioner submitted his reply to the said show cause notice and made a grievance that the inquiry was not in accordance with the provisions of rules of natural justice and the ex parte inquiry was not fair and proper and that he had no opportunity of defending himself and cross examining the witness examined in his absence on that day as he was on duty. He further asserted in his reply that he had not committed any act of misconduct and that he could prove his innocence. He repeated his case that if he had not issued tickets after receiving the fare from the passengers the cash balance would have been in excess and not short. Finally he requested the disciplinary authority to give him an opportunity to produce the passengers to prove his case that he had not collected any fare from the passengers. He requested for an opportunity of hearing before taking any decision to penalise him. It appears that the reply to the show cause notice had no effect as it was followed by an order of dismissal dated November 16, 1985.

2. Being aggrieved by the said order of dismissal he filed an appeal before the First Appellate Authority provided under the rules. He failed at the stage of the first appeal. He did not file second appeal as per the rules but he filed a complaint of unfair labour practice u/s 28 read with Item 1 of Schedule IV of the

M.R.T.U. and P.U.L.P. Act challenging the order of dismissal and praying for reinstatement with full back wages and continuity of service. The petitioner had examined himself before the Labour Court in support of his case while it appears that no one stepped in the witness box on behalf of the Corporation. By a judgment and order dated July 6, 1989 the Labour Court held that the domestic inquiry against the petitioner was vitiated being in contravention of the principles of natural justice as Shri Rathod, the witness of the Corporation, was examined ex parte and was not offered to the petitioner for cross examination. It was also observed by the Labour Court that the petitioner was not given any opportunity to defend himself in the inquiry. It appears from the reasoning of the Labour Court that he accepted the logic of the petitioner that if he had collected the fare from the passengers the cash would have been in excess and not in short by Rs. 6.25 Ps. The Labour Court also observed that before passing the order of dismissal the disciplinary authority had not considered the reply of the petitioner and held that the inquiry officer was not justified to hold the petitioner guilty as he was not given a fair chance of hearing in the matter. For all the aforesaid reasons the Labour Court allowed the complaint filed by the petitioner and declared that the Respondent had engaged in an unfair labour practice by dismissing the petitioner from employment and, therefore, the Labour Court directed the Respondent Corporation to reinstate the petitioner with full back wages and continuity of service from December 21, 1985.

3. The Respondent Corporation carried the decision of the Labour Court before the Industrial Court, Maharashtra at Aurangabad by filing a revision application u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971. By its judgment and order dated March 9, 1990 the learned Member of the Industrial Court was pleased to allow the revision and to quash and set aside the order of the Labour Court dated July 6, 1989 and to dismiss the complaint of the petitioner.

4. Being aggrieved by the aforesaid order of Industrial Court the petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India challenging its propriety, validity and legality on various grounds, including the powers and jurisdiction of the Industrial Court u/s 44 of the Act.

5. I have heard both the learned advocates for their respective parties. I have also carefully examined the proceedings. At the outset I am inclined to agree with Shri Reddy, the learned advocate for the petitioner that the Industrial Court has crossed its limits of the supervisory jurisdiction conferred on it u/s 44 of the Act. It is by now very well established by a catena of judgments of this Court that the parameters of the supervisory jurisdiction are in a very narrow compass. In the case of *Shree Talkies, Kamptee v. Industrial Court, Maharashtra, Nagpur Bench, Nagpur and Ors.* 1970 L.I.C. 1354 u/s 85 of: the Bombay Industrial Relations Act, 1946, the Division Bench of this Court has observed, as under:

"8. This, however is not sufficient to dispose off these special civil applications. Section 85 of the Bombay Act confers on the Industrial Court power of superintendence over the Labour Courts. This power of superintendence appears

prima facie to be unlimited and the language of Section 85 is almost identical with the language of Article 227 of the Constitution. Now the scope of the power of superintendence has been well settled and in view of the language of Section 85 of the Bombay Act it will be only reasonable to hold that the Industrial Court possesses powers to interfere with the orders of the Labour Courts, provided any errors apparent on the face of the record are evident from any orders passed by such Labour Courts and not in findings of facts recorded by them. In these cases, the Labour Court has, in terms, recorded a finding of fact saying that the claimant was proved to have abandoned his job left the services of the petitioner of his own accord. As against that, the Industrial Court has proceeded to assess the evidence itself and proceeded to record a finding saying that it could not believe that the claimant could have abandoned his job of his own accord. In view of the limited scope of interference provided u/s 85 of the Bombay Act, it must, therefore, be held that the Industrial Court had no jurisdiction to interfere with the findings of fact recorded by the Labour Court and as such, the order passed by the Industrial Court is liable to be set aside."

In the case of Vithal Gatlu Marathe Vs. Maharashtra State Road Transport Corporation and Others, u/s 44 of the M.R.T.U. and P.U.L.P. Act the law has been very well crystallised and settled that the power under the supervisory jurisdiction of the Industrial Court is extremely narrow and restricted and that the Industrial Court has no jurisdiction to reappreciate, reappraise and reassess the evidence recorded by the Labour Court. The Industrial Court, in its supervisory capacity, cannot substitute its own opinion for the opinion formed by the Labour Court on the basis of the evidence before it unless there is an error of law apparent on the face of record and unless the conclusions are so perverse that no reasonable man would ever come to such conclusions. In the case of Mahila Grihha Udyog Lijjat Papad 1983 I LLN 643 a Division Bench of our High Court explained the jurisdiction of the Industrial Court u/s 44 of the Act to the effect that it can exercise its powers of superintendence only in cases where errors are apparent on the face of the record evident from the orders passed by the Labour Court and not in findings of facts recorded by it and that the Industrial Court cannot embark upon a fresh reappreciation of evidence as if it was sitting as a Court of Appeal on facts. In another similar case of Hindustani Prachar Sabha and Others Vs. Dr. (Miss) Roma Sengupta and Another, BHARUCHA, J. (as then he was) crystallised the power u/s 44 to be the power which does not include the power to review the evidence. In the last of the cases V. C. Marathe (supra), the Division Bench has categorically observed, as under Vithal Gatlu Marathe Vs. Maharashtra State Road Transport Corporation and Others, :

"1. Heard learned Counsel for the appellant as well as the learned Counsel for the Respondents. Perused the judgments of the Industrial Court and also the Labour Court. The Industrial Court was moved against the judgment of the Labour Court u/s 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The provisions of Section 44 are

almost in pari materia with the provisions of Article 227 of the Constitution of India. This is not so much a revisional jurisdiction, but jurisdiction of superintendence. It has been settled for about four decades that in exercise of this jurisdiction of superintendence and supervision, the Court cannot go to appreciate or re-appreciate the materials on record. It may be that in a given case or cases, we have, in our anxiety to do justice, have done so on occasions. But that is a different matter.

2. After hearing the strenuous arguments of Mr. Sawant for Respondent Nos. 1 and 2, we have not been able to persuade ourselves to agree that in exercise of limited jurisdiction u/s 44 of the said Act, the Industrial Court can re- appreciate evidence and overturn findings of fact however erroneous those findings may be.

3. It is apparent from the judgment of the Industrial Court that it has overturned the judgment of the Labour Court on findings of facts based on reappraisal of evidence. This, we do not think to be permissible to any Court having such circumscribed jurisdiction. We must accordingly hold that the Industrial Court was wrong in exercising such jurisdiction and overturning the findings and decision of the Labour Court. We accordingly set aside the order of the Industrial Court and confirm the decision of the Labour Court. Accordingly, appeal is allowed, but without any order as to costs. Issuance of certified copy of this order is expedited."

6. Even a glance at the judgment of the Industrial Court would show that it has usurped the powers and jurisdiction of the Labour Court as a Trial Court and has crossed the defined limits of supervisory jurisdiction. The Industrial Court has re-appreciated, reassessed and reappraised the whole evidence, not only recorded before the Labour Court but also the material in the proceedings of the Inquiry Officer. The learned member of the Industrial Court has come to very astonishing conclusions as a result of his probe in the facts of the case. The first such startling conclusion of the Industrial Court is that though the petitioner was furnished with the copy or the statement of Shri Rathod the petitioner would have very well made a request to the Inquiry Officer that he wanted to cross examine Shri Rathod because his statement was recorded in his absence and since he did not do so no prejudice was caused to him. According to the Industrial Court the finding recorded by the Labour Court that the inquiry was vitiated on the ground that the petitioner was not given an opportunity to cross examine Shri Rathod, the Labour Court fell in error. He called the error as "legal error" necessitating interference at his instance in his supervisory jurisdiction. It is elementary that the Inquiry Officer has to comply with all the principles of natural justice and the rules of holding a domestic inquiry. It is not for the delinquent to request the Inquiry Officer to comply with the principles of natural justice at every stage. By and large in the matters under the Industrial Law the employees or the workmen facing the domestic inquiries are illiterate, uneducated and not informed of the legal provisions of the law relating to the domestic inquiries. They cannot be expected to know that when on an earlier

occasion some statement was recorded he had a right to cross examine the witness by requesting the Inquiry Officer to recall the said witness whose statement was recorded in his absence. The petitioner was employed as a conductor and was not an educated person nor was he well informed or a legally trained person to know such niceties of the law of evidence or the law of the domestic or departmental inquiries. It was the bounden duty of the Inquiry Officer, when he had adjourned the inquiry after recording the statement of Shri Rathod ex parte on July 8, 1985, to have made it clear to Shri Rathod to remain present on the next date i. e. July 19, 1985 to be cross examined by the petitioner. There is nothing on record to show that the said Shri Rathod was present in the inquiry on July 19, 1985. Secondly, there is nothing on record to show that the inquiry officer had fairly acquainted the petitioner about his right to cross examine Shri Rathod and that he had asked the petitioner whether he wanted to cross examine him. Shri Rathod was never offered for cross examination to the petitioner. There is no question of the petitioner to have insisted before the inquiry officer to cross examine Shri Rathod. It was the primary duty of the Inquiry Officer to have directed Shri Rathod to remain present on the next date of the inquiry and it was further his primary duty to have offered Shri Rathod to the petitioner for cross examination. The Inquiry Officer should have particularly told the petitioner to cross examine Shri Rathod on the basis of the statement, a copy of which was given to the petitioner. It is pertinent to note that the petitioner was on duty on July 8, 1985 as the Assistant Traffic Inspector had ordered him to work due to rush of work and that he could not inform the petitioner to attend the inquiry at Parbhani. In fact, the said Officer has fairly submitted in his explanation that the Depot Manager was on leave and because the bus stand incharge was transferred and he alone was to work and there was rush of work, note regarding the petitioner's inquiry could not be made. From this it is clear that the petitioner could not attend the inquiry as he was directed by his superior to be on duty due to rush. This aspect, according to me, is of crucial importance as it was beyond the control of the petitioner to remain present in the inquiry as he was required to be on duty. In these circumstances, the petitioner cannot be blamed and he cannot be penalised for attending his duty on the date of the inquiry. There was full justification for the petitioner to have remained away from the inquiry. It is surprising how the Inquiry Officer has observed that the petitioner had remained absent in the inquiry intentionally. This observation of the inquiry officer is belied by the letter dated July 8, 1985 addressed by the Assistant Traffic Inspector to the Divisional Traffic Superintendent, Parbhani. In these circumstances, the Inquiry Officer was not at all justified in proceeding exparte against the petitioner. According to me, the Labour Court was right in its conclusion that the inquiry was vitiated as Shri Rathod was not offered for cross examination to the petitioner and that he was punished solely on the basis of the ex parte statement of Shri Rathod. I fail to understand how the learned member of the Industrial Court has come to the startling conclusion that there was no prejudice caused to the petitioner as Shri Rathod was not offered for cross examination. The learned

member was not empowered to have such a deep probe in the matter and in the facts of the case. Nonetheless, having ventured so he ought to have considered the fact that the petitioner was dismissed on the statement of Shri Rathod as the Inquiry Officer had based his findings on the sole statement of the said witness who was not present before the Inquiry Officer on July 19, 1985 for cross examination by the petitioner. There is absolutely no doubt that a grave prejudice is caused to the petitioner as he came to be dismissed from employment in the aforesaid circumstances. If this was not a prejudice to the petitioner I shudder what else it could be.

7. The learned Member of the Industrial Court has also commented on the findings of the Labour Court that the ex parte statement of Shri Rathod could not be taken as the substantive piece of evidence as it was not subjected to cross examination. The learned member of the Industrial Court has criticised the conclusion of the Labour Court by saying that the doctrine of criminal jurisprudence was not applicable in the domestic inquiries. Though it is truism to say so, I fail to understand how the learned member of the Industrial Court has applied the said test to the present case and the conclusions of the Labour Court. What the Labour Court has contemplated was that a pure and simple ex parte statement without being tested by cross examination could not be said to be a substantive piece of evidence. It is not that when a Magistrate, while convicting an accused and sentencing him to imprisonment alone has to follow the rules of evidence scrupulously. The learned member of the Industrial Court appears to have lost sight of a very crucial and pertinent fact that the end of the domestic inquiries culminates in the economical death sentence of the charge sheeted employees. More care and scrupulous test is necessary even in the field of industrial jurisprudence where the valuable jobs of the employees are at stake. The yardsticks applied in the criminal cases may not be applied as strictly in the domestic inquiries but considering the end result of the inquiries we cannot afford to relax, in any manner, such yardsticks when the penalty of economic death in the form of dismissal of the charge sheeted workman is the imminent result of such inquiries. The learned member of the Industrial Court has unnecessarily brought in the said discussion as the Labour Court was simply examining the veracity of the evidence in the form of ex parte statement of the witness before the Inquiry Officer. According to me, the conclusion of the Labour Court in that respect was correct and the Industrial Court ought not to have interfered with the same merely because it held some different view or opinion. On this count also the interference by the Industrial Court was without jurisdiction u/s 44 of the Act.

8. There is third erroneous observation made by the learned member of the Industrial Court that the Labour Court inquiring into the case of an unfair labour practice was not expected to sit as an appellate authority on the decision of the Inquiry Officer and that the Labour Court had to see only broadly (?) whether the inquiry was conducted by following the principles of natural justice or not. The learned member of the Industrial Court has further criticised the judgment of the

Labour Court by saying that the Labour Court had subjected the papers of the domestic inquiry to scrutiny like appellate Court. Firstly, from the judgment of the Labour Court I do not find any such attempt made by the Labour Court to scrutinise the inquiry proceedings as an appellate authority. The Labour Court has, indeed, broadly, as the learned member of the Industrial Court says, examined the record of the inquiry and has found that the Inquiry Officer had recorded ex parte statement of one witness and that he was not offered for cross examination on the next day and that on the basis of such statement the petitioner was dismissed. This is the primary jurisdiction of the Labour Court to find out from the record whether the inquiry suffers from any violation of rules of natural justice. It is the primary jurisdiction of the Labour Court to find out whether the order of dismissal or discharge suffers from any vice of mala fides, victimisation and violation of principles of natural justice in the conduct of the inquiry, whether the punishment was shockingly disproportionate, etc. To test the order of dismissal or discharge on the touchstone of all the items mentioned in Item 1 of Schedule IV of the Act is the legislative mandate on the Labour Court and if the Labour Court performs its duty in that manner it cannot be said that it was acting as an appellate authority.

9. The next equally erroneous conclusion of the Industrial Court is that it was for the petitioner to tell the inquiry officer that he wanted to examine the passengers as witnesses. Indeed, it is for the Inquiry Officer to explain the procedure of the Inquiry to the delinquent workman before him. It is the primary duty of the Inquiry Officer to inform the delinquent that he could cross examine the witness examined by the management and, thereafter, he could make his own defence statement and he also could examine witnesses on his behalf. Even if the workman does not specifically say so it is for the Inquiry Officer to turn to the delinquent workman and ask him whether he wanted to examine any witness in support of his case. The Inquiry Officer is not at all supposed to keep quiet deliberately and take advantage of the ignorance of the delinquent workman. The Industrial Court has failed to appreciate this simple aspect in the domestic inquiries and the elementary principles of natural justice. In reply to the show cause notice the petitioner did request the disciplinary authority that he should be allowed to examine the passengers. His request was not acceded and he was straightaway dismissed from employment. It is surprising how the Industrial Court has ventured to surmise that even if the passengers were examined their statements would not have been believed. How could he read the mind of the Inquiry Officer without reading the statements of the passengers who were yet to be examined?

10. In view of the aforesaid discussion, which I was constrained to have in view of the total erroneous conclusions of the Industrial Court, I conclude that the impugned judgment and order of the Industrial Court, setting aside the judgment and order of the Labour Court, is without jurisdiction and beyond the limits of the supervisory powers conferred u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971. The Industrial Court ought not to have interfered with the fact finding judgment given

by the Labour Court. According to me, there was no error of law apparent on the record. The conclusions recorded by the Labour Court are based on evidence and material on record. I, therefore, quash and set aside the judgment and order of the Industrial Court dated March 9, 1990.

11. Though I have quashed and set aside the impugned judgment and order of the Industrial Court, the matter does not come to an end. The law is very well settled that when the inquiry is set aside as vitiated being in contravention of the principles of natural justice and in breach of the rules the Labour Court cannot straightaway direct reinstatement of the workman. In such circumstances, the Labour Court has to remind the employer about his right to lead evidence before the Labour Court on the merits to justify the action of dismissal. Normally, the Labour Court should frame an issue in respect of the legality and propriety of the inquiry and the findings and thereafter the next stage would arise if the inquiry is set aside being violative of the principles of natural justice. It is true that it is for the employer to pray for an opportunity at the earliest stage seeking permission to justify its action by placing before the Court the required material, additional or otherwise. In the present case, no doubt, the respondent corporation has failed to do so in its written statement. At a very late stage in the revision before the Industrial Court it prayed for an opportunity to prove the misconduct by leading evidence on merits before the Labour Court. According to me, the Labour Court ought to have framed one issue in respect of the inquiry and ought to have reminded the employer in respect of his right to justify the action taken by it by producing such additional material which it had. There is no bar or embargo on the powers or jurisdiction of the Labour Court to remind the employer to lead evidence in the Court to prove the misconduct and to justify its action by placing on record such additional relevant material, if any, after the enquiry is held to be not fair and proper. There is no illegality if the Labour Court acts in such an open manner. I am fortified by the observations of the Supreme Court in the case of *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow* and another, . The Supreme Court observed, as under *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow* and another, :

"7. In the aforementioned case the Tribunal came to the conclusion that the inquiry was conducted in violation of the principles of natural justice and was, therefore, vitiated, and the award was pronounced rejecting the application of the management u/s 33(2)(b) for approval of the action terminating the service of the employee. The employer challenged the award in a writ case before the Calcutta High Court on the ground that the Tribunal was under a duty to call upon the management to lead evidence in support of the correctness or merits of the order of punishment, which was not done. It was not a case of prayer having been made by the employer which was rejected. This aspect has been specifically mentioned in the judgment and it was further observed that before the learned single Judge who heard the writ case no plea was raised about any denial of opportunity to the Respondent company "to lead evidence in proof of charges after the domestic inquiry was found to be defective." The Writ Petition was

dismissed by the learned single Judge and the employer company preferred a Letters Patent Appeal which was allowed by a Division Bench observing that after holding that the domestic inquiry was defective, it was incumbent upon the Tribunal to give an opportunity to the employer to lead evidence to prove the charges and as this was not done, the award was vitiated in law. This Court, in appeal, disagreed with the Division Bench of the High Court and reversed the judgment. It was held that if an opportunity is sought by the employer to adduce additional evidence to substantiate the charges of misconduct, the Tribunal or the Labour Court, as the case may be, should grant the opportunity. "But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges." It was pointed out that there was neither a pleading in which any claim for adducing additional evidence was made "nor any request was made before the Industrial Tribunal till the proceedings were adjourned for making the Award and till the Award was made." The judgment relied upon does not support the proposition formulated before us that in absence of a prayer the Tribunal is debarred from reminding the employer of his right to adduce additional evidence to substantiate the charges. We do not find any valid ground for accepting the stand of the appellant taken before us. The entire argument of the learned counsel is founded on the decision of this Court in Chakravarti's case which is clearly distinguishable. As has been stated earlier, in that case the Court was not called upon to consider the point as urged before us and the judgment repeatedly made it clear that what was under consideration was whether a duty has been cast in law on the Labour Court or the Tribunal to afford an opportunity to the employer in absence of a request and the question was answered in negative leading to the conclusion that,

"... If there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings."

8. Analysing the situation, it appears that by asking the Respondent to justify the punishment by adducing additional evidence, the Tribunal merely reminded the employer of his rights and the employer promptly availed of the opportunity. We do not find any illegality in the course adopted which could vitiate the Award. The first point is, therefore, rejected."

If this procedure is followed, the entire dispute can be decided at the trial stage itself. In the present case, the Labour Court has not followed such an advisable procedure in all fairness to the Respondent Corporation. Had the Labour Court followed this procedure it would have been even in the interest of the petitioner delinquent employee, as he also would have got the opportunity of cross-examining the Corporation witness Shri Rathod and the Corporation could have also produced other material by examining other witnesses, if any, in rebuttal the petitioner also would have got an opportunity to examine his own witnesses, including the passengers, whom the petitioner wanted to examine. The second aspect of such a procedure would be beneficial to both the parties at that stage

itself as the matter being fresh both the parties would possibly have witnesses available while at the remote and belated stage, after a period of five years, ten, years or 15 years, most of the witnesses would not be available at all and if available their memory might fail due to lapse of decades. In the aforesaid circumstances, though the Respondent Corporation had prayed for an opportunity before the Industrial Court and though I am inclined to send the matter back to the Labour Court, I feel, by doing so, I will be doing injustice to both the parties, who cannot be blamed on account of the passage of time. The petitioner was dismissed in the year 1985 for the incident which had taken place in the year 1984. Most of the witnesses and even the alleged passengers would not be available to either. It will, therefore, be a futile exercise to remand the matter back to the Labour Court for fresh trial. At this stage, I have myself carefully examined the material on record, as it is. Considering the whole case of the Corporation at its best I do not find that the petitioner is guilty of the charges levelled against him. The charges are neatly summarised in the report of the Inquiry Officer as under:

"1) A group of 3 passengers was found deboarding the bus without tickets. From the said passengers the conductor had collected Rs 4.50 at the rate of Rs. 1.50 each, towards the fare, but had not issued tickets to them.

2) One passenger was found travelling without ticket from Khadka to Bhisegaon. The conductor had collected from the said passenger Rs. 0.90 paise at the time of boarding towards the fare, but had not issued tickets to him.

3) Similarly, one passenger was found travelling without ticket from Saikheda to Bhisegaon.

4) S.T. cash with the conductor was checked and it was found short by Rs. 6.25."

I find much force in the say of the petitioner delinquent employee that if he had received the fare of Rs. 6.25 Ps from the above passengers without issuing to them the proper tickets in that case there would not have been a shortage of Rs. 6.25 ps in cash but the cash would have been in excess by Rs. 6.25 Ps. To this crucial question there was no answer from either the Inquiry Officer or from the disciplinary authority or even from Shri Joshi, the learned advocate for the Corporation. He tried to explain that "some times when caught the conductors throw away the money." Obviously, no reasonable man would ever accept such an absurd explanation. Besides, neither Shri Rathod nor Shri Sahajrao has said that the petitioner had thrown away some money, exactly Rs. 6.25! I find no substance in the charge that the petitioner had not issued the tickets to the passengers after receipt of the fare amount from them.

12. As I have already quashed and set aside the order of the Industrial Court, which had quashed and set aside the order of the Labour Court whereby the petitioner was directed to be reinstated with full back wages and continuity in service, in view of my order the judgment and order of the Labour Court is restored as legal, proper and valid. The petitioner is, therefore, directed to be

reinstated with continuity of service. Shri Reddy, the learned advocate for the petitioner very fairly and gracefully submitted that if his client was reinstated he was prepared to forego fifty per cent of the back wages. Shri Joshi, the advocate for the Respondent, has vehemently opposed any grant of back wages. According to me, neither the petitioner nor the Corporation can be blamed for the lapse or passage of more than 15 years in the litigation. The petitioner was very young when he was dismissed fifteen years back. Shri Reddy, however, points out that he can still work for a period of about fifteen years or so if he is reinstated. Since I am granting reinstatement with continuity in service the petitioner would stand benefitted at the time of his retirement in getting his terminal benefits. Though Shri Reddy has fairly offered to be satisfied with fifty per cent back wages I am not inclined to grant even that relief to the petitioner as I am granting him the valuable relief of reinstatement with continuity in service in the peculiar facts and circumstances of this case and in the interest of justice. The Respondent Corporation shall reinstate the petitioner within one month from today and shall fix him in the appropriate stage of the pay scale, considering the annual fitment of the petitioner from the date of dismissal and place him at the appropriate stage of the pay scale. It is clarified that the petitioner shall not get any benefit of continuity of service such as leave wages, bonus. He shall, however, be given his proper seniority in service. The petition is allowed to that extent. Rule is made absolute partly.

13. Since the petitioner is not getting any back wages and since the Corporation is saving a huge amount of back wages I am inclined to award to the petitioner a sum of Rs. 10,000/- by way of solatium. The Corporation shall pay the said amount in the first week of his reinstatement. Shri Joshi, the learned advocate for the Corporation, fairly makes a statement that the Corporation shall issue the order of reinstatement pursuant to this judgment and order within one week from today.