
(1991) 12 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 2506 of 1990

Ganikhan

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12
Road Transport Corporations Act, 1950 — Section 45

Citation : (1993) 1 LLJ 62

Hon'ble Judges : H.N. Kantharia, J

Bench : Single Bench

Advocate : A.B. Oka and Sonali Chawda, for the Appellant; V.G. Wankhede, for the Respondent

Judgement

1. The petitioner was working as a Driver with the respondent Maharashtra State Road Transport Corporation at its Bhandara Division at Bhandara under the Divisional Controller. It was alleged against him that on Feb. 23, 1975, while on duty he committed theft of five litres of diesel. He was, therefore, charge-sheeted on April 12, 1975 that he committed misconduct amounting to fraud, dishonesty, misappropriation and theft of the property of the respondent Corporation. Thereafter a domestic enquiry was held against him, as a result of which he was dismissed from services on February 28, 1977. He raised an industrial dispute in the Labour Court at Nagpur. On the evidence adduced before him, the learned Judge of the Labour Court by an Award dated August 5, 1983 was not suited to him by rejecting the reference made to it u/s 10 and with Section 12 of the Industrial Disputes Act. Being aggrieved, the petitioner invoked the supervisory writ jurisdiction of this Court under Art. 227 of the Constitution of India by filing the present writ petition on September 10, 1990.

2. In support of the writ petition, Mr. Oka made three submissions for my consideration viz;

(i) The procedure followed at the domestic enquiry did not confirm to the

principles of natural justice;

(ii) Before passing the order of dismissal, the past record of the petitioner was taken into consideration, but the said past record was not brought to the notice of the petitioner to enable him to explain his past record, and

(iii) Assuming for the sake of argument that misconduct alleged against the petitioner was proved, the punishment was grossly disproportionate to the misconduct proved.

In reply, Mr. Wandhede, appearing for the respondent Corporation, submitted that all that was required to comply with the principle of natural justice was done at the domestic enquiry and assuming for the sake of argument that past record of the petitioner was not taken into consideration, the fact remains that he was proved guilty of committing theft of diesel and that alone was good enough to dismiss him from service. About the punishment, the submission of Mr. Wandhede is that the punishment inflicted on the petitioner was according to appeal Rules framed by the respondent Corporation.

3. In the fact and circumstances of the case, I do not think it is necessary to deal with the first two points made by Mr. Oka that the principles of natural justice were violated at the domestic enquiry and the past record of the petitioner was not brought to his notice before a decision of dismissal was taken against him because this writ petition should succeed on the third point raised by Mr. Oka that assuming for the sake of argument that the misconduct alleged against the petitioner was proved, the punishment inflicted on him was grossly disproportionate to the misconduct proved.

4. Now, admittedly the petitioner was charged for having committed theft of 5 litres of diesel in the year 1975. Regard being had to the cost of diesel prevailing in the year 1975, in my opinion, the diesel committed theft of would be worth less than Rs. 10/-. But the crucial point is, whether for committing theft of property worthless than Rs. 10/-, should the petitioner be visited with the extreme penalty of dismissal from service. It was held by this Court in case of *Vomayya Babu Shetty Vs. Digvijay Spinning and Weaving Mills and others*, that the punishment of dismissal from service for committing theft of half broken brass bush and four small pieces of brass was disproportionate to the misconduct alleged and proved against the workman. Again, this Court had in case of *Mahindra Ltd. v. Akerkar* 1988 (57) FLR 667 had held that the punishment of dismissal of a workman for committing theft of petrol worth Rs. 9.50 p. was disproportionate to the offence and this judgment of the single Judge was confirmed by the Division Bench of this Court in Appeal No.634/88 decided on July 11, 1988. Yet in another case of *National Textile Corporation (South Maharashtra) Limited v. Shramik Janata Union* 1990 II CLR 58 two employees of two Textile Mills were dismissed from service for causing monetary loss of Rs. 42/- to the Management of the Mills by fraudulent means and the Labour Court had granted reinstatement with half back wages which was challenged in this

Court and it was held by the Division Bench that there was no substance in the contention on the point raised by the petitioner, National Textile Corporation, that the order of the Labour Judge was perverse. In the instant case, the petitioner was visited with an extreme penalty of dismissal from service for theft of diesel worth less than Rs. 10/- which was, in my opinion, disproportionate to the charge framed and proved against the petitioner.

5. In this view of the matter, the writ petition succeeds and the same is allowed. The impugned award passed by the Labour Court, Nagpur, rejecting the reference of the petitioner is quashed and set aside. However, the important point is as to what relief the petitioner should be granted. There is no doubt that the petitioner has to be reinstated with continuity of service. The crucial point is whether he should be granted full back wages. Normally in a case like this, I would have held that ends of justice would be served if the petitioner was granted 50% back wages because the loss of 50% of back wages because the loss of 50% of back wages would be sufficient punishment to him to have indulged in an Act of dishonesty of committing theft. But in this case, the matter was pending for 8 years up to the time the Labour Court passed an order and thereafter the petitioner waited for 7 years to file the present writ petition. The respondent Corporation cannot be saddled with the liability of the back wages of these 7 years for no fault of theirs inasmuch as it is the petitioner who delayed the filing of the writ petition for 7 years. In that view of the matter, in my opinion, ends of justice would be served if the petitioner is granted only 25% of the back wages. In the result, the writ petitioner is allowed. The impugned award passed by the learned Labour Judge is quashed and set aside. The respondent Corporation is directed to reinstate the petitioner with continuity of service forthwith and pay to him 25% of his back wages till he is reinstated within a month thereafter, failing which the respondent Corporation would be liable to pay interest at the rate of 18% per annum on the accumulated back wages of the petitioner to the extent of 25%.

6. Rule is accordingly made absolute but with no order as to costs.

7. The office is directed to supply certified copies of this judgment to both sides out of turn as early as possible on payment of usual charges.