

(2008) 07 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 1751 of 1997

General Secretary, BEST Workers" Union

APPELLANT

Vs

General Manager, BEST Undertaking

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Citation : (2008) 5 BomCR 633 : (2008) 119 FLR 67 : (2008) 3 LLJ 825 :
(2008) 6 MhLj 73

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Sangita Lodkar, instructed by Neeta Karnik, for the Appellant; S.K. Talsania and D.G. Dhanure, instructed by M.V. Kini and Company, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—This petition is directed against the judgment and order passed by the Industrial Court, Maharashtra at Mumbai in Appeal (IC) No. 2 of 1996 by which the Industrial Court has allowed the appeal filed by the respondent by setting aside the order of the Labour Court and confirming the order passed by the respondent.

2. The petitioner was appointed as a Bus Driver at Worli Depot, Mumbai. He was subjected to charge-sheet under Standing Order 20(j) on the ground that because of his rash and negligent driving, an accident took place on 29th June, 1993 and one pedestrian was killed. The domestic enquiry was conducted on the basis of the said charge-sheet and in the departmental enquiry it was proved that the petitioner was negligent in driving and accordingly he was removed from service. The departmental appeal filed by the petitioner was also dismissed by the appellate authority. The petitioner thereafter sent an approach letter dated 6th July, 1994 but of no avail. The petitioner thereafter approached the Labour Court by way of application (BIR) No. 180 of 1994 on the ground that domestic enquiry was not fair and proper and that he was wrongly dismissed from service

by the management. The Labour Court, after considering the evidence on record, came to the conclusion that the domestic enquiry was held in a proper manner. However, the Labour Court found that the punishment of dismissal is on higher side. On the aforesaid finding about punishment being shockingly disproportionate, an order of reinstatement was passed in favour of the present petitioner with continuity of service but without backwages by the 12th Labour Court, Mumbai, dated 13th February, 1995.

3. The respondent being aggrieved by the said order, preferred an appeal u/s 84 of the BIR Act, 1946 against the aforesaid order of the Labour Court being Appeal (IC) No. 2 of 1996. The Industrial Court allowed the said appeal by setting aside the order of the Labour Court by holding that when a misconduct of a serious nature is established, the Labour Court should not have adopted such an approach by way of interfering with the order of punishment and by passing the order of reinstatement. The Tribunal also found that if the petitioner is to be reinstated in service, it may give licence to others placed in similar circumstances to go on committing accidents. The Industrial Court accordingly found that a soft approach cannot be taken in such type of cases. The Industrial Court allowed the appeal by setting aside the order of the Labour Court and upholding the decision of the management in dismissing the services of the petitioner. It is the aforesaid order which is impugned in this petition.

4. The learned Counsel for the petitioner has vehemently argued that when the Labour Court has passed an order of reinstatement by holding that the punishment in question is shockingly disproportionate, the appellate authority should not be interfered with such a discretionary order passed by the Labour Court. It is further submitted by her that the concerned workman is willing to be reinstated by giving up backwages and that once the Labour Court passed an order of reinstatement by holding that the punishment is on a higher side, the Appellate Court should not be interfered with such an order. The learned senior Counsel appearing for the respondent has submitted that the Industrial Court has considered the matter from its proper perspective and looking to the serious misconduct of the petitioner by driving the vehicle in a rash and negligent manner which has resulted into a serious accident, this is not a fit case in which any sympathetic consideration should have been applied by reinstating the workman in service. It is further submitted that looking to the nature of the duty, the driver of the public utility service should have been more vigilant and careful and should not have driven the vehicle in a rash and negligent manner which resulted into death of an innocent pedestrian.

5. I have heard both the learned Counsel and gone through the record of the case. It is required to be noted that so far as disciplinary proceeding against the petitioner is concerned, the disciplinary authority, after considering the evidence on record, came to the conclusion that the petitioner herein was rash and negligent in driving the bus. The petitioner was given appropriate opportunity in the domestic enquiry to defend his case. Even the appellate authority of the

respondent upheld the decision of the disciplinary authority. It is required to be noted that even the Labour Court has also accepted the said finding of the disciplinary authority holding the present petitioner guilty of the misconduct in question. Now the question which requires consideration is whether can it be said that the punishment order inflicted by the management is shockingly disproportionate or is on a very high side. In this connection, the nature of duty which was assigned to the petitioner is also required to be taken into consideration. The petitioner was assigned the work of driving the bus of a public utility service. A driver of a bus which carries passengers is supposed to take extra care while driving the vehicle in order to see that the pedestrians who are walking on the street or road can safely walk or cross the road. Not only that, the life of many passengers travelling in the bus is in the hands of such a driver. It is the duty of the driver of such a public utility undertaking to take extra care and careful while driving the vehicle as life of passengers is also in his hand. While considering the nature of duties it is required to be considered whether the punishment inflicted by the management can be said to be shockingly disproportionate to the misconduct proved against an employee. The petitioner because of his rash and negligent act killed an innocent pedestrian who lost his life. In the aforesaid circumstances it was found by the Industrial Tribunal that the act of the petitioner was of a grave negligence and such type of misconduct, therefore, cannot be taken lightly. Normally, while interfering with the quantum of punishment, the Labour Court is required to consider the nature of duties which is assigned to a particular workman and thereafter appropriate balance is required to be kept in mind as to whether the order of dismissal is required to be replaced by any other suitable punishment. Once a misconduct is proved, the next question about replacing the punishment on the ground that the punishment is shockingly disproportionate is required to be examined with proper precaution and care.

6. In the instant case, it can never be said that the misconduct of the concerned workman is not of a grave nature and that the order of punishment is required to be interfered with by the Court. As pointed out earlier, a driver of a public utility service is required to be more careful. Not only that, even the drivers of vehicles should be careful to see that innocent passengers are not required to suffer or no untoward incident or casualty occurs because of rash and negligent driving of the driver. Considering the present circumstances where so many road accidents are occurring every day and many innocent people are losing their lives, the Court of law should not be liberal in such type of cases by giving one more opportunity to such a driver as ultimately if such a negligent driver is reinstated in service, there are chances of recurrence of such type of accidents and such type of eventuality is to be avoided by not reinstating such a rash and negligent driver in service. In any case, this is not a fit case in which it can ever be said that the punishment awarded by the management is on a higher side or shockingly disproportionate in any manner.

7. Considering the aforesaid aspects of the matter, in my view, the Labour Court

was not at all justified in interfering with the said award of punishment by substituting the order of dismissal passed by the management on the ground that the workman should be deprived of backwages only. In fact, the Labour Court has not even substituted the punishment properly as denial of the backwages itself cannot be said to be a punishment thereof when the Labour Court has accepted the finding of the domestic enquiry that the misconduct is proved. In my view, therefore, the Industrial Court has rightly interfered with the aforesaid order of the Labour Court. Under the circumstances, I do not accept the argument of the learned Counsel for the petitioner that the Industrial Court should not have interfered with the award of the Labour Court in appeal by allowing the appeal.

8. The Industrial Court was perfectly justified in setting aside the order of the Labour Court by allowing the appeal. Under the circumstances, no fault can be found with the order of punishment passed by the management in view of the facts and circumstances of the case as well as in view of the misconduct alleged against the concerned workman and which is proved in the domestic enquiry. I, therefore, do not find any substance in this petition. Even otherwise, this is not a case in which this Court would like to interfere in its extraordinary jurisdiction under Articles 226 and 227 by interfering with the order of the appellate Court. The petition is accordingly being devoid of any merit is dismissed with no order as to costs. Rule is discharged.