

(2011) 02 BOM CK 0103

In the Bombay High Court

Case No : Letters Patent Appeal No. 475 of 2010 in Writ Petition No. 5186 of 2005

Hidayatali Sayyed

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

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

Citation : (2011) 3 ALLMR 195 : (2012) 1 BomCR 236 : (2011) 129 FLR 767 : (2011) LLR 521 : (2011) 2 MhLj 949

Hon'ble Judges : V.K. Tahilramani, J;S.A. Bobde, J

Bench : Division Bench

Advocate : A.S. Dhore, for the Appellant; A.S. Mehadia, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—Heard Shri Dhore, learned Counsel for the Appellant 2 and Shri Mehadia, learned Counsel for the Respondent. Admit. By consent the appeal is heard finally forthwith.

2. This Letters Patent Appeal is directed against the judgment and order dated 03.08.2010 passed by the learned Single Judge whereby the order of the Industrial Court dated 05.09.2005 came to be upheld. By order dated 05.09.2005, the Industrial Court, Chandrapur, set aside the judgment dated 28.10.2003 passed by the Labour Court in Complaint ULP No. 136 of 1998, granting reinstatement with continuity but without back wages.

3. The brief facts of this case are as under:

The Appellant was working as a Bus Conductor with Maharashtra State Road Transport Corporation. On 21.07.1994, the Appellant was on duty as a Bus Conductor on the bus plying from Aheri to Sironcha. The Bus came to be checked by the checking squad at Rangaiyapalli and it was found that 21 passengers were

travelling in the bus without ticket. An enquiry 3 from the passengers revealed that the Conductor has received the fare amount from these 21 passengers but had not issued tickets to them. Hence, the Appellant was served with charge sheet and after conducting departmental enquiry, he came to be dismissed. Thereafter, the Appellant employee preferred complaint u/s 28 read with item I of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, alleging unfair labour practice on the part of the Respondent - employer while dismissing him from service. The Labour Court by judgment and order dated 28.10.2003 directed reinstatement of the complainant on his former post with continuity of service but without back wages.

4. The Respondent - Corporation challenged the judgment and order before the Industrial Court. The Industrial Court set aside the order of Labour Court. The learned Single Judge rejected writ petition preferred by the Appellant -employee against the order of the Industrial Court. Hence, this appeal.

5. The learned Counsel for the Appellant submitted that these 21 passengers had boarded the bus at Rangaiyapalli and within a few minutes, the checking squad entered the bus. He submitted that thus in this short period of time it was not possible for the Appellant to issue tickets to these 21 passengers. Moreover, he submitted that there was no checking of M.S.R.T.C. cash with the Appellant which, according to him, was essential in this case. As far as first ground is concerned, it is noticed that the Appellant has taken two diametrically opposite stands in his reply to the charge sheet and before the Labour Court. The stand taken by him before the Labour Court is that the passengers boarded the bus at Rangaiyapalli and the checking staff checked the bus a few minutes thereafter, in that short period of time, it was not possible for him to issue tickets, hence the passengers were ticket less. As far as this stand is concerned, it is noticed that according to the Appellant, he did not accept any money from any of the passengers as there was no time to do so. However, it is seen that in the reply dated 19.09.1994 submitted to the charge sheet, he has stated that there were total 542 passengers in the bus and none of them were without ticket. In his reply, he has further contended that because of old enmity, he has been falsely implicated. However, as far as these allegations of enmity are concerned, the Appellant has not bothered to substantiate the same by leading any evidence. As observed earlier, this stand taken in departmental proceedings is not at all in consonance with his other stand before the Labour Court that as there was no time, he did not issue tickets to the passengers and had the M.S.R.T.C. cash was checked, it would have shown that no additional cash was with him. In his complaint, the Appellant has stated that the alleged without ticket passengers boarded the bus at Rangaiyapalli and within a distance of 2025 feet, the bus was checked by the checking squad, hence, it was physically impossible for him to issue tickets within that short time and distance. This change in stance falsifies his stand that due to paucity of time, it was not possible for him to issue tickets and he had not received the money for the tickets.

6. As far as checking of MSRTC cash is concerned, it is seen that immediately after the checking staff entered the bus and demanded the ticket tray from the Appellant, instead of giving the ticket tray, the Appellant ran out of the bus with ticket tray and he returned back after some time and then it was noticed that the ticket tray was not containing the way bill issued to him. The charge sheet states that he had torn ten tickets of Rs. 4.25 denomination and those torn tickets were seized by the checking officers. The M.S.R.T.C. cash is required to be checked in the light of records of ticket sale and way bill. However, in the present case, verification or cross examination was not possible on account of conduct of the Appellant.

7. The case of the Respondent is supported by the statements of the passengers travelling in the bus, who have stated that they had handed over the money for the tickets to the Appellant. Corroboration is also found by the statement of bus Driver Masudkhan, who has supported the story of checking staff. There is no material to show that the Appellant had any enmity with Masudkhan.

8. In reply, the learned Counsel for the Appellant has stated that it is necessary to examine the passengers on whose statement reliance is placed by the Respondent - Corporation. The Appellant claimed that he protested that wrong statements of the passengers were recorded on the spot and as there was no time, he could not issue tickets, however, he has falsified himself by stating in his reply that there was not a single without ticket passenger in his bus when it was checked.

9. In the decision of the Supreme Court in the case of State of Haryana and Another Vs. Rattan Singh, , it is observed that in domestic enquiry, the strict rules of evidence under the Indian Evidence Act may not apply. All materials which were logically probative for a prudent mind are permissible. It is specifically observed that the courts below misdirected themselves in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before a valid finding could be recorded. The above 8 observations were made in view of the ground that none of the 11 passengers had been examined.

10. In the decision of the Apex Court in Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane,

, it was held that the examination of the passengers of the vehicle from whom the amount was collected by the Conductor was not necessary. In Anr. decision of the Apex Court in North West Karnataka Road Transport Corpn. Vs. H.H. Pujar, , it was held that the dismissal of Conductor could not have been set aside merely because cash bag with him was not checked or the statement of without ticket passengers was not recorded. As already observed above, here, the existence of without ticket passengers has been sufficiently established on record and the Petitioner himself has taken mutually inconsistent stand in that respect.

11. The learned Single Judge of this Court in the decision in Maharashtra State

Road Transport Corporation Vs. M.G. Shetkar, , has held that it is not always necessary to examine the passengers and the statements recorded on the spot can be considered in the enquiry. Another Single Judge of this Court in the decision in Sangram Jaibhai Vs. Maharashtra State Road Transport Corporation and Divisional Traffic Superintendent (D.T.S. Default), (Competent Authority) S.T. Division, , has taken a view that it is not always necessary that the statements of the passengers should be recorded in the departmental enquiry and the report of the checking staff can be accepted and acted upon. In view of the aforesaid judgments delivered by the Apex Court and by this Court, it can safely be held in the present case that the non-examination of the passengers and no checking of the cash bag with the conductor cannot vitiate the ultimate order of dismissal.

12. The charges against the Appellant are:

- (i) Failure on the part of the conductor to issue tickets to the passengers without reasonable cause and thereby allowing the passengers to travel without ticket;
- (ii) Failure on the part of the conductor to issue tickets after collecting the fare;
- (iii) failure on the part of the conductor to issue tickets within the time prescribed from time to time.
- (iv)

To substantiate this charge, the material relied upon is the statements of the passengers travelling in the bus who have stated that they had paid to the Appellant fare amount but he had not issued tickets to them. The statement of bus driver is also relied upon.

13. The three charges against the Appellant which are reproduced above are all of grave and serious nature. There is enough material to show that the Appellant permitted the passengers to travel without ticket and there is sufficient material to show that he has not issued tickets within the time specified, to the passengers. The third charge is that he has not issued tickets for fare amount as collected. There is sufficient material to sustain the finding that all these charges are proved 11 against the Petitioner. Even assuming that any one charge has not been established against the Appellant, as far as the remaining charges are concerned, there is sufficient material to sustain the charges, hence it is a positive finding arrived at for which there is sufficient material. There is nothing on record to suggest that witnesses examined in enquiry had any axe to grind against the complainant and there could also have been no reason for passengers travelling in the bus to state falsely that the passenger had paid fare amount to conductor but conductor did not issue them tickets. Non examination of such without ticket passengers, according to us, is not a criteria, or a factor to reject the findings of enquiry officer and it could also not be a reason to come to a conclusion that serious charge of misconduct of misappropriation alleged is not proved. Question of charge of misappropriation to be proved beyond reasonable doubt does not arise in enquiry proceedings and it is also not necessary that

such proof of fact has to be established beyond reasonable doubt. Concept of theory of beyond reasonable doubt is not applicable to enquiry proceedings.

14. Moreover, it is noticed that on six earlier occasions, the Appellant had committed similar types of misconduct and on those occasions fine ranging from Rs. 20 to 60 was recovered from him on three occasions and on three other occasions punishment of stoppage of increment was inflicted. Though this record was before the Labour Court, the Labour Court observed that the punishment has to be tempered with mercy and erring workman deserves an opportunity to reform himself. The learned Single Judge was right in observing that in view of the past record of the Appellant, such a view could not have been taken by the Labour Court. He was also right in observing that the Labour Court did not consider the material before it in correct perspective.

15. Thus, in view of the above facts, no case is made out for interference. Letters Patent Appeal is dismissed.