

(2018) 07 BOM CK 0144

In the Bombay High Court

Case No : Writ Petition No. 983 OF 2002

Mahadeo Shripati Khot

APPELLANT

Vs

Divisional Traffic Superintendent (Default), Competent
Authority Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 27-07-2018

Acts Referred:

Citation : (2018) 07 BOM CK 0144

Hon'ble Judges : S.C.GUPTA, J

Bench : Single Bench

Advocate : Rajas Naik, Umesh Mankapure, G.S. Hegde, C.M. Lokesh

Judgement

1. This petition challenges a revisional order passed by the Industrial Court at Solapur. The Industrial Court was considering in the revision a reinstatement order passed by the Labour Court at Sangli in favour of the Petitioner herein, who was the original complainant before the Labour Court in a complaint of unfair labour practice under Item 1 of Schedule IV of the MRTU & PULP Act. It was the case of the Petitioner, who was working as conductor with the Respondent Corporation that he was illegally terminated from service. The Labour Court partly allowed the Petitioner's complaint and granted him reinstatement with continuity of service, but without back wages. That order was purportedly on the footing that though the Petitioner was found guilty of misconduct in a duly conducted enquiry, the punishment of dismissal awarded to him was disproportionate to the charges proved against him. The revisional court found that the misconduct was sufficiently serious and warranted the punishment of dismissal. It, accordingly, allowed the revision application and set aside the impugned order of the Labour Court. Being aggrieved, the

Petitioner has approached this court by the present writ petition.

2 The petitioner was working with the Respondent's corporation since December 1988. On 31 October 1991, whilst he was on duty on a bus running

from Subhash Nagar to Sangli Bus Stand, a passenger, who had boarded the bus at Ram Mandir Stop and who was to travel upto the last destination,

i.e. Sangli Bus Stand, was found without ticket. The ticket checker formed an opinion that the passenger had paid the fare but was not issued ticket.

The ticket, which was purportedly not issued, was of Rs.1.25. A charge-sheet was thereupon given to the Petitioner and a departmental enquiry was

held, in which he was found guilty of the charge of not issuing ticket despite collecting fare. The Petitioner was thereafter dismissed on the proven

charge. The dismissal was challenged by the Petitioner before the Labour Court in the present complaint of unfair labour practice under Item 1 of

Schedule IV of MRTU & PULP Act, 1971. The Labour Court found the enquiry to be duly and fairly conducted. The Court was, however, of the

view that considering the value of the ticket, which was purportedly not issued by the Petitioner, the punishment of dismissal awarded to him was

shockingly disproportionate considering the nature and gravity of the charge and his past record. The Labour Court, accordingly, set aside the

dismissal and ordered reinstatement with continuity of service, but without any back wages. The corporation carried the matter in revision before the

Industrial Court at Kolhapur. The Industrial Court was of the view that when misappropriation was proved, whether for a large or a small amount,

there was no question of showing any uncalled for sympathy and reinstating the employee in service; and there was no question of considering past

record in case of proven misappropriation. The court held that whereas it was the discretion of the employer to consider any such past record in an

appropriate case, it was not for the Labour Court to substitute the penalty imposed by the employer in such cases on the basis of past record. It,

accordingly, allowed the revision application and set aside the impugned order of the Labour Court.

3 Mr. Hegde, learned Counsel for the Respondent's corporation, relies on disciplinary rules termed as 'Discipline & Appeal Procedure' of Maharashtra

State Road Transport corporation ('D & A Procedure'). Relying on these rules, learned Counsel submits that failure to issue a ticket to a

passenger by a conductor despite recovery of fare comes within subclause (c) of clause 7 of Schedule 'A' to the procedure, which sets out acts of

misconduct. Learned Counsel submits that if misconduct under item 7(c) is proved, the only punishment prescribed in the applicable D & A Procedure

is discharge or dismissal from the services of the corporation. It is only in case of minor lapses or delinquencies, which are contained in other items,

namely, Items 1 to 3, 5 and 6 or 8 to 11 or 13 to 38 or 40 to 41, or 43 to 56 of Schedule 'A', that minor punishments such as warning, reprimand, fines

could be awarded. Learned Counsel relies on the judgments of the Supreme Court and Gujarat High Court in the cases of Karnataka State Road

Transport Corporation Vs. B.S. Hullikatti¹ IR 2001 S.C. 930 and Gujarat State Road Transport Corporation Vs. Vishnubhai P. Patel² 2005 2 GLH 630

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Relying on these cases, it is submitted that bus conductors engaged by State Road Transport Corporations act in a fiduciary capacity and if they either

do not collect proper fare or after collecting such fare, do not issue tickets, they commit a serious misconduct. Learned Counsel submits that any case

of non issuance of ticket, despite receipt of fare, would tantamount to grave misconduct. Learned Counsel submits that any punishment given in the

matter must not only be a punishment to the employee concerned, but also a deterrent to others, since they are dealing with public money. Learned

Counsel sums up by submitting that these misconducts have to be viewed seriously and dealt with by iron hand.

4 Before we consider the punishment awarded by the corporation in the present case, let us have a look at the misconduct alleged against him. In the

first place, the allegation is based on a statement given by a passenger, who was found without ticket a little before the place of his destination. (The

inspection was carried out when the bus was reaching city post, which was just before Sangli Bus Stop, his final destination.) He gave a written

statement to the ticket checker that "he did not have a ticket because no ticket was issued to him by the conductor." His case was that at the

very place at which he had boarded the bus, namely, Ram Mandir Stop, he gave a two rupee note to the conductor; the latter returned fifty paise to

him, but did not issue any ticket. The ticket checker thereupon got issued an unpunched ticket of Rs.1.50 to the passenger and made a report to the

corporation that the conductor had failed to issue ticket despite receipt of fare from the passenger. No doubt, the passenger was examined in the departmental enquiry conducted before the Enquiry Officer. However, what he claimed in the enquiry was that he had originally paid Rs.1.25 for the ticket which was the exact fare for the journey but no ticket was issued to him. He later on paid Rs.2 and was refunded a change of 50 ps., against which he was issued an unpunched ticket in the presence of the ticket checker. Apart from his bare statement, which was clearly contrary to his written complaint originally made before the ticket checker, there is nothing on record to show that the conductor infact did not issue any ticket despite receiving the fare. The ticket checker, for his part, claimed in his report made to the corporation that since the passenger had paid Rs.2 to the conductor and the ticket was of Rs.1.25 ps., the conductor was bound to refund Rs.0.75 ps. and issue the ticket to the passenger. This presumably on the basis of the statement made by the passenger himself. As for the cash inspected by the ticket checker on the person of the conductor, the amount was found less by 45 ps. In his examination, however, the ticket checker claimed that when he had calculated the amount, it was found to be in excess of Rs.1.05. In other words, there is no consistency even as far as the ticket checker's evidence is concerned. On this evidence, the conductor was not only found to be guilty of a serious misconduct of having misappropriated a princely sum of Rs.1.25, but was dismissed from service.

5 When the matter went to the Labour Court on the conductor's complaint, the Court appears to have merely applied its mind to the manner in which the departmental enquiry was conducted in the present case. The court found that the charge was properly explained to the delinquent employee; the departmental enquiry was duly held; the ticket checker as well as the passenger had been examined; and the complainant was given adequate opportunity to cross examine both witnesses. The Court observed that there was no complaint on the part of the employee that any witness had been examined behind his back or his request to cross examine or adjournment had been rejected. The court found that, in the circumstances, there was no procedural defect in the enquiry proceedings and no violation of principles of natural justice. Simply on the basis of this conclusion, the court allowed the whole exercise to pass muster. What the court appears to have missed was to consider whether the misconduct alleged against the Petitioner was

proved on the basis of the evidence placed before the Enquiry Officer or the court. Without reflecting on the conclusion drawn by the Enquiry Officer

on the basis of the evidence before him, the court simply considered the case of (i) observance of natural justice, (ii) victimization and (iii) termination

for a patently false reason. On these questions, it held against the employee. When the matter went before the revisional court, surprisingly, the

revisional court practically refused to go into the question of appreciation of evidence. The court noticed that the complainant in the present case had

not filed any counter revision challenging the finding of the Labour Court in this behalf. The court simply noted that findings of the Enquiry Officer

were based on some evidence and could not be said to be perverse. On this basis, the court held point No.2, concerning the correctness of the findings

of the Enquiry Officer, in the negative and then applied its mind only to the quantum of punishment, whether proportionate or disproportionate.

6 The above narration clearly indicates that there has been a complete failure of justice in the present case. The charge, in the first place, made

against the delinquent conductor was on the basis of statement made by a passenger, who was found without ticket. It could well be that he did not

pay any money or get a ticket issued and was saving his skin when the ticket checker caught him without ticket. His statement had to be viewed with

circumspection. The passenger's own statements originally made before the ticket checker and later on in the enquiry exhibited a clear and

fundamental contradiction. The ticket checker's versions also did not match. And no corresponding amount was found in excess with the conductor.

The charge of misappropriation of Rs.1.25 was held to be proved on the basis of this material and the hapless conductor was deprived of his livelihood

by dismissing him from service. It is one thing to say that a clear case of misappropriation by a public servant who holds a position of trust vis-à-vis

public funds should be dealt with by iron hand, but quite another to say that on the basis of flimsy material such as this the harshest penalty of dismissal

should be levied on the principle that public servants must be above board. The very D & A Procedure, on which reliance is placed by Mr. Hegde,

which provides for punishment of discharge or dismissal, and nothing less, for the misconduct included in Item No.7(c) of Schedule 'A', makes it very

clear that whilst awarding such punishment, the competent authority must ensure that the guilt of the employee charged is conclusively proved on the

basis of available evidence and specific instructions issued from time to time by the administration are scrupulously followed. As I have noted above, it can hardly be said that the guilt of the employee charged here was even remotely proved before the Enquiry Officer on the basis of available evidence. Conclusive proof was a far cry. And yet, none of the lower courts properly went into the question of proof, either sufficient or conclusive. The Labour Court, as noted above, did not go into that question at all; it merely satisfied itself as to the nature of the enquiry, whether fair and proper and whether exhibited a case of victimization or termination on a patently false reason. It never considered whether on the basis of available evidence, the delinquent employee's guilt was proved at all, much less conclusively. The revisional court, for its part, refused to go into that question presumably on the footing that the employee had not filed any crossÂrevision challenging the original order of the Labour Court. The complainant employee need not have filed any revision of his own. It was perfectly open to him to justify the order of the Labour Court, namely, award of reinstatement with continuity of service, on the basis of grounds otherwise available to him including any ground which was not considered by the Labour Court. He could certainly question the propriety of the finding of the Enquiry Officer. The revisional court, in the premises, simply contended itself holding, practically on a sole oneÂliner, that the finding of the Enquiry Officer was supported by some evidence and could not be termed as perverse. In the facts of the case, that was hardly an appropriate measure of judicial review to be employed by the revisional court, which was the final court on facts.

7 In Karnataka State Road Transport Corporation's case (supra), cited by learned Counsel for the Respondent, the court was concerned with a case where the conductor concerned had shortcharged fare from as many as 35 passengers. The conductor's case before the court was that he did not know what the correct fare was. The court disbelieved him since he had been in service for nearly 22 years. Though the amount shortcharged from each of these passengers was insignificant, the court found that the act was of clear dishonesty or, at any rate, gross negligence, making the conductor unfit to be retained in service as a conductor. This judgment was followed by Gajarat High Court in the case of Vishnubhai P. Patel (supra). In that case, tickets were issued to passengers over again and substantial additional cash was found on the respondent conductor. The observations of the

court concerning the nature of misconduct committed by the conductor charged with public money have to be viewed in this light.

8 Besides, whilst examining the impugned order of the Labour Court on punishment awarded to the Petitioner, the Industrial Court clearly misdirected itself in law by holding that the past record may only be considered by the management whilst awarding punishment and not by the Labour Court so as to substitute the punishment awarded by the management.

9 In the premises, there is clearly no merit in the impugned order of the Industrial Court. The court has misdirected itself in interfering with the order of reinstatement passed by the Labour Court and applied wholly improper yardsticks and principles.

10 Rule is accordingly made absolute by quashing and setting aside the impugned order of the Industrial Court dated 31 October 2001 and restoring the order of the Labour Court of reinstatement with continuity of service but no back wages. The RespondentÂcorporation shall, however, pay back wages to the Petitioner with effect from the date of the original order of the Labour Court, i.e. from 24 February 1993, and till the date of his superannuation, that is to say, till 31 May 2014, along with all terminal benefits payable to him on the basis of continuous service. Â

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