
(2014) 06 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 1334 of 2003

Maharashtra State Road Transport Corpn.

APPELLANT

Vs

Sultana Parveen

RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Citation : (2014) 143 FLR 748 : (2014) 4 LLJ 540 : (2014) 4 LLN 609 : (2014) 5 MhLj 647

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : S.C. Mehadia, Advocate for the Appellant; B.M. Khan and A. Rao, AGP, Advocate for the Respondent

Judgement

Z.A. Haq, J.—Heard Mr. Mehadia, learned Advocate for the petitioner, Mr. Khan, learned Advocate for respondent No. 1 and Mr. Rao, learned AGP for respondent No. 2. The petitioner has challenged the order passed by the Labour Court and confirmed by the Industrial Court by which the dismissal of respondent No. 1 from services has been quashed and the petitioner is directed to reinstate respondent No. 1 with the continuity of services and 50% of the backwages.

2. Respondent No. 1 who had been working as Conductor with the petitioner was absent during the period from March, 1990 to January, 1991. According to the petitioner, respondent No. 1 had availed leave of 93 days and remained absent for 99 days during the above-mentioned period, which resulted in hindrance in day to day working of the petitioner/Corporation. The petitioner issued charge-sheet to respondent No. 1, conducted Inquiry and after report of the Inquiry was received against respondent No. 1, show cause notice was issued on 19th June, 1991 and respondent No. 1 was dismissed from the service. Respondent No. 1 had challenged order of his dismissal before the Labour Court. The Labour Court concluded that the findings of Inquiry Officer were not perverse, however, it recorded the finding that the order of dismissal of respondent No. 1 amounted to unfair labour practice and it directed that respondent No. 1 is entitled for

reinstatement with continuity of service and 50% of the backwages. The order passed by the Labour Court was challenged by the petitioner before the Industrial Court in the revision which came to be dismissed. The petitioner being aggrieved by the above order has filed present writ petition.

3. Mr. Mehadia, learned Advocate for the petitioner has submitted that subordinate Courts have come to the conclusion that the findings given by the Inquiry Committee against respondent No. 1 are not perverse and, therefore, the Labour Court had no jurisdiction to interfere with the quantum of punishment. The learned Advocate for the petitioner has submitted that the Labour Court has committed an error of jurisdiction in modifying the punishment and directing the reinstatement with continuity of service and restricting the punishment by not awarding 50% of the backwages. In support of his submission, Mr. Mehadia, learned Advocate has relied on the case reported in *Motivala and Natekar Vs. Shantaram N. Wadekar and Another*, .

4. Mr. Khan, learned Advocate for respondent No. 1 has submitted that though the Labour Court has come to the conclusion that the findings of the Inquiry Committee are not perverse, the Labour Court was justified in directing the reinstatement as it found that the punishment was shockingly disproportionate vis-a-vis charges levelled against respondent No. 1. Mr. Khan, learned Advocate for respondent No. 1 has submitted that the case of the petitioner was that respondent No. 1 was absent from his duty and it resulted in loss to the petitioner. The learned Advocate for respondent No. 1 has pointed out from the order passed by the Labour Court, the finding that absence of petitioner has not resulted in any loss to the petitioner. The submission on behalf of respondent No. 1 is that in view of this finding, the Labour Court was well within its jurisdiction to modify the punishment and to restrict it in denying 50% of the backwages. In support of his submission, Mr. Khan has relied on the following judgments:-

(i) *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*, , (ii) *Kashinath Laxman Gawali Datta Prasad Vs. The General Manager, Hindusthan Aeronautics Ltd. and Others*, (iii) *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others*, .

5. Mr. Khan, learned Advocate for respondent No. 1 has submitted that the Labour Court has committed an error in not granting full backwages consequent to the order of reinstatement.

6. Mr. Rao, learned Assistant Government Pleader appearing for respondent No. 2 has supported the order passed by the Labour Court and the Industrial Court.

7. After the submission on behalf of the respondents were completed, Mr. Mehadia, learned Advocate for the petitioner sought time on the ground that respondent No. 1 has not raised any challenge to the finding of the Labour Court and therefore, reliance placed by the respondent No. 1 on the judgment in *Krushnakant B. Parmar vs. Union of India and another* (supra) is misconceived and he would like to make submissions after preparing on that point.

8. On refusal of the adjournment, learned Advocate for the petitioner submitted that the arguments made on behalf of respondent No. 1 on the basis of the abovereferred judgments cannot be considered, as there is no challenge to the finding of the Labour Court at the behest of respondent No. 1. He further submitted that there are no pleadings in the complaint made by respondent No. 1 before the Labour Court showing that his absence from duty was under compelling circumstances and, therefore, adverse inference has to be drawn against him that his absence was not under compelling circumstances. It is further submitted that respondent No. 1 has not shown that he was not gainfully employed during the period of his dismissal and therefore, he is not entitled for backwages.

9. With the assistance of learned Advocates appearing for the parties and learned Assistant Government Pleader, I have examined the record. One relevant fact, which is required to be considered is that respondent No. 1 was reinstated after the order passed by the Labour Court and he continued in service till he attained the age of superannuation i.e. 30th June, 2001. This Court by order dated 29th September, 2003 had directed issuance of notice before admission and had granted ad interim stay to the effect and operation of the order passed by the Labour Court. By order dated 6th January, 2004 Rule was issued and the interim order granted earlier was continued. Mr. Mehadia, learned Advocate for the petitioner has fairly submitted that though the interim order was in terms of prayer clause (c), however, respondent No. 1 was already reinstated pursuant to the order of Labour Court on 10th June, 1994 and therefore, the interim order granted by this Court was treated as stay to the directions granting backwages to respondent No. 1. It is submitted by learned Advocate appearing for respective parties that after reinstatement of respondent No. 1 he was given promotions on 29th December, 1995 and 12th February, 1999 and superannuated on 30th June, 2001. Mr. Mehadia, learned Advocate for the petitioner has made an alternative submission that in the circumstances even if it is held that the respondent No. 1 is entitled for salary for the period for which he has worked, he is not entitled for backwages for the period for which he has not worked. Considering the submissions made by the learned Advocate appearing for the respective parties, I find that the Labour Court has recorded the finding that respondent No. 1 was absent for more than a week on three occasions which amounted to misconduct as defined under clause 35 of Schedule-A. However, the charge-sheet given to respondent No. 1 does not specifically say that respondent No. 1 was wilfully absent nor there is any finding by Inquiry Committee and the Labour Court that respondent No. 1 was wilfully absent. The Hon''ble Supreme Court in the judgment given in the case of Krushnakant B. Parmar vs. Union of India and another (supra) has dealt with issue of unauthorized absence from duty. In paragraph Nos. 18 and 19 of the above referred judgment, the Hon''ble Apex Court has laid down as follows:--

Paragraph 18:

"Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant".

Paragraph No. 19:

"In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct."

10. Though there are no pleadings of respondent No. 1 that he was absent from duty because of compelling circumstances, in view of the law laid down by the Hon'ble Apex Court in the above mentioned judgment, the disciplinary authority is required to come to the conclusion that absence is wilful and in absence of such finding, the absence will not amount to misconduct.

11. In the judgment given in the case of Kashinath Laxman Gawali Datta Prasad vs. General Manager, Hindustan Aeronautics Ltd. and others (supra) this Court has concluded that the absence from duty amounts to misconduct of technical character as laid down in Item 1(g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

12. In view of this, I am of the view that the Inquiry Committee has failed to discharge its obligation of proving that absence of respondent No. 1 was wilful which necessitates the inflictment of major punishment. Therefore, the order passed by the Labour Court and confirmed by the Industrial Court does not require any interference.

13. As far as the issue of grant of backwages is concerned, respondent No. 1 has not pleaded that he was not gainfully employed during the period when he was dismissed from service. Mr. Mehadia, learned Advocate for the petitioner has submitted that in absence of such pleadings, the award of 50% of the backwages to respondent No. 1 by the Labour Court is unjustified. Mr. Khan, learned Advocate for respondent No. 1 has relied on the judgment given in case of Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others (supra) and has submitted that in fact respondent No. 1 is entitled for full backwages. However, as order passed by the Labour Court is not challenged by respondent No. 1. I am of the view that the submission made by the learned Advocate for respondent No. 1 that no fault can be found with grant of 50% of backwages by the Labour Court and it may not be disturbed, has to be accepted. In view of the above, the petition is dismissed. Rule is discharged. Parties to bear their own costs.