

(2008) 04 BOM CK 0103

In the Bombay High Court

Case No : Writ Petition No's. 9339 with 4117 of 2007

Maharashtra State Road Transport Corporation

APPELLANT

Vs

Ambadas Sathiv Hingane

RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 4 ALLMR 42 : (2009) 1 BomCR 393 : (2008) 5 MhLj 208

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : G.S. Hegde, instructed by G.S. Hegde and Asso. in W.P. No. 9339 of 2007 and A.P. Vanarase, in W.P. No. 4117 of 2007, for the Appellant; A.P. Vanarase in W.P. No. 9339 of 2007 and G.S. Hegde, instructed by G.S. Hegde and Asso. in W.P. No. 4117 of 2007, for the Respondent

Judgement

D.Y. Chandrachud, J.—Two petitions have been filed under Articles 226 and 227 of the Constitution of India, one by the employer - Maharashtra State Road Transport Corporation and the second by the workman. Both the petitions will be governed by this order. The petitions have been taken up for hearing and final disposal and Learned Counsel have been heard by consent.

2. The workman in question, was a conductor employed by the Maharashtra State Road Transport Corporation. A charge-sheet was issued on 31st March, 2003 on an allegation of misconduct. The misconduct alleged is that the workman was on duty on 29th March, 2003 on the Baramati Bhigwan route when the bus came to be checked by the checking squad at Shetfal. However, of the nine passengers who were travelling in that bus, it was found that three alighted at Shetfal and six passengers remained. From three passengers who were travelling from Baramati to Bhigwan, the workman recovered Rs. 30/- by issuing tickets of Rs. 10/- each. Those tickets were found to have been reissued and the workman committed misappropriation of Rs. 30/- by giving same tickets to other three passengers. The workman issued tickets to other three passengers who

were travelling from Baramati to Pimple at the rate of Rs. 8/- per passenger. The aforesaid tickets were also reissued, resulting in a misappropriation of monies due and owing to the Corporation. The Departmental Enquiry resulted in a finding that the misconduct was established. After the enquiry, a notice to show cause was issued to the workman to explain why the Enquiry Report should not be accepted and the penalty should not be imposed. At that stage, the workman filed a complaint unfair labour practices. The services of the workman came to be terminated after the dismissal of the complaint.

3. The Labour Court by its order dated 18th September, 2006 came to the conclusion that the allegation of misconduct was established by the documentary evidence including the tickets which were produced on record, the evidence of the workman himself and the evidence of the reporter which the Labour Court observed was not shaken in the course of cross-examination. The evidence of the reporter was found to be corroborated by the documentary evidence such as the Cash Check Form and it was established that the workman had resold tickets to various passengers. The complaint was accordingly dismissed.

4. The workman carried the matter in revision to the Industrial Court. The Industrial Court held that the charges against the workman were serious and that the misconduct of having misappropriated the amount due to the employer by reselling old tickets to the passengers was established. The order passed by the Labour Court was consequently regarded as just, proper and legal. Having so observed, the Industrial Court noted that during the pendency of the revisional proceedings, the services of the workman were protected by an interim order until 30th October, 2006. However, the interim order of the Industrial Court had not been served on the employer. The order of dismissal was passed on 12th October, 2006 and was served by the employer on the workman on 13th October, 2006. Though the Industrial Court held that the interim order protecting the services of the workman was not served on the employer, it proceeded to surmise that it was quite possible that the workman must have told the authorities at the time when the order of dismissal had been served on him that he had obtained an interim order of protection. In these circumstances, the Industrial Court, while dismissing the revision, held that the workman shall be deemed to be in service until 20th March, 2007 when the revision was decided and will be entitled to the benefit of service including wages and allowances as if his services were not terminated.

5. The order of the Industrial Court has been called into question, both by the workman and by the employer. It would be appropriate to take the challenge preferred by the workman to the order of the Industrial Court. On behalf of the workman, reliance has been placed on a scheme purported to have been floated by the then Vice President and Managing Director of the Maharashtra State Road Transport Corporation. A copy of the scheme is placed on the record. A circular was issued which states that in the event that any employee is found to have misappropriated the funds of the Corporation on account of the sale of tickets

and it was the first act of misconduct at the time, the employee who has admitted his guilt would be liable to be taken back in service subject to his reimbursing 50% of the amount misappropriated or Rs. 5,000/-. For the second offence, the amount to be reimbursed would be 75% of the amount misappropriated or at least Rs. 10,000/-. Counsel appearing on behalf of the employer submitted that subsequently the circular had been withdrawn. However, it has been urged on behalf of the workman that at the material time the circular was in operation and the workman should be given the benefit thereof.

6. It is impossible for the Court in the exercise of the jurisdiction under Article 226 of the Constitution of India to do anything of the kind. The circular purports to condone acts of misappropriation. It is inconceivable that any public body can condone a misappropriation of its funds particularly in the light of the judgment of the Supreme Court taking a strict view of acts of misconduct on the part of the bus conductors and those vested with fiduciary duties in State Transport Undertaking. But, be that as it may, the circular cannot be read as conferring a vested right on any employee who has been found to be involved in a misappropriation of funds to reinstatement in service despite a penalty imposed in a disciplinary enquiry.

7. The next submission urged on behalf of the workman was that no evidence was adduced of the examiner during the course of departmental enquiry proceedings. Here again, the submission cannot be accepted because, the sufficiency of evidence cannot be reappreciated in the writ jurisdiction under Articles 226 and 227 of the Constitution of India. Once the allegation of misconduct is founded on some evidence the sufficiency of that evidence is to be decided by the disciplinary authority.

8. In the present case, both the Labour Court as well as the Industrial Court have concurrently held that the allegation of misconduct was supported both by oral and documentary evidence on record. This finding cannot be disturbed and this Court would not be justified in substituting its own opinion for that of the fact finding authority. In any event, there is no error apparent on the face of the record. The Writ Petition filed by the workman will have therefore, to be dismissed.

9. A Now, insofar as the Writ Petition filed by the management is concerned, the Industrial Court has accepted the position that the interim order by which protection was granted to the services of the workman, was not served on the management. If that be so, and this case having been accepted by the Industrial Court, there was absolutely no warrant or justification for the Court to direct that the workman shall be deemed to be in service until 20th March, 2007 and that he would be entitled to all consequential benefits, including wages and allowances. This part of the order suffers from a clear and patent legal perversity and would have to be quashed and set aside.

10. In the circumstances, Writ Petition 4167 of 2007 instituted by the workman shall stand dismissed. Writ Petition 9339 of 2007 instituted by the management shall stand allowed and the following direction contained in the order of the Industrial Court shall stand quashed and set aside, namely:

2. In spite of order dt. 12-10-2006 issued by the respondent for dismissal of the complaint, he shall be deemed to be in service till today and shall be entitled for all benefits of service including wages and allowances as if his services are not at all terminated.

3. Though this revision petition is dismissed, the abovementioned protection to the service of the complainant shall be in force for one month i.e. 20-4-2007.

11. In the circumstances of both the cases, parties shall bear their own costs.