
(2012) 03 BOM CK 0211

In the Bombay High Court

Case No : Writ Petition No. 1186 of 2007

Maharashtra State Road Transport Corporation

APPELLANT

Vs

Arun Kapade

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Citation : (2012) 4 ALLMR 765 : (2012) 135 FLR 1047

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—This Writ Petition was called on 20.3.2012 when Shri V.G. Wankhede, the learned Counsel appeared for the petitioner-employer. However, none appeared for the respondent-employee. Hence, it was adjourned to 21.3.2012. On 21.3.2012, this Court heard Shri V.G. Wankhede, the learned Counsel for the petitioner-employer. None was present for the respondent-employee. Hence, the matter was adjourned till 22.3.2012. Today, when the matter is called out, Shri V.G. Wankhede, the learned Counsel appears for the petitioner-employer. None appears for the respondent-employee. The matter is, therefore, heard finally. The Labour Court, Amravati, has allowed the Complaint (ULP) No. 62 of 2003 filed by the respondent-employee, by its judgment and order dated 19.7.2006. The order of dismissal from service on 26.6.2003 has been set aside and the respondent-employee is held entitled to reinstatement continuity in service with full back wages. The Industrial Court, Amravati has dismissed the Revision (ULP) No. 62 of 2006 filed by the petitioner-employer, by its judgment and order dated 4.10.2006. Hence, this Writ Petition by the petitioner-employer.

2. The respondent-employee was charged for not issuing tickets to six passengers though the fare was collected from them. The fare @ Rs. 6/- per

passenger and hence total amount of Rs. 36/- was collected by the respondent-employee. The Labour Court held that the enquiry conducted against the respondent-employee was not fair and proper and hence, granted permission to the petitioner-employer to prove the misconduct before the Labour Court. The petitioner-employer examined two witnesses in support of its case namely (i) Bhaurao Bajirao Kshirsagar, Traffic Inspector and (ii) Chandrakant Mahadeo More, Assistant Traffic Inspector. The Bus was checked on 5.6.2001 at Yawali-Fata on Amravati to Warud Road. The statements of passengers were recorded at Hiwarkhed by the Assistant Traffic Inspector and the statement of the respondent-Conductor was also recorded. The Labour Court has held that the statements of these two witnesses are not corroborated. It has been held that the respondent-employee was in the process of issuance of tickets as the passengers boarded at Morshi and, therefore, it cannot be said that the fare was recovered and tickets were not issued. The Industrial Court has concurred with the findings with the findings recorded by the Labour Court.

3. With the assistance of Shri V.G. Wankhede, the learned Counsel appearing for the petitioner-employer, I have gone through the judgments and orders delivered by the Courts below. The Traffic Inspector and the Assistant Traffic Inspector who had been examined, have deposed that they have recorded the statements of the passengers at Hiwarkhed and also the statement of the respondent-Conductor who has signed the statement. They have stated that out of 26 passengers, six passengers were without ticket/s and they have given a statement that they had paid fare @ Rs. 6/- for each passenger at the time of boarding the Bus at Morshi. In view of this, the Courts below have erred in holding that corroboration was required to the statements by the Assistant Traffic Inspector and the Traffic Inspector who have checked the Bus and recorded the statements.

4. The defence of the respondent-employee was that he was in the process of issuing tickets to the passengers. However, undisputedly there was breach of rule of issue and start. The respondent-employee ought to have issued the tickets when he collected the fare and then should have allowed the Bus to start. This question is no more *res integra* in view of the decision of this Court in the case of Divisional Controller, Maharashtra State Road Transport Corporation, Division Office, Amravati vs. Babusha Mehboobsha, reported in 2006 III CLR 451. In view of this, there being undisputedly breach of rule of issue and start, the statement of the Conductor that he was in the process of issuance of tickets, cannot be accepted.

5. The learned Counsel has brought to my notice the defaults committed by the respondent-employee on eleven occasions, which include instances of collecting the fare without issuing tickets and, therefore, the punishment of dismissal from service cannot be held to be disproportionate. For the reasons stated above, Writ Petition is allowed. The judgment and order dated 19.7.2006 passed by the Labour Court, Amravati in Complaint (ULP) No. 62 of 2003 along with judgment

and order dated 4.10.2006 passed by the Industrial Court, Amravati in Revision (ULP) No. 62 of 2006 are hereby quashed and set aside. Complaint (ULP) No. 62 of 2003 filed by the respondent-employee is dismissed with no order as to costs.