

(2004) 10 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 870 of 1992

Maharashtra State Road Transport Corporation	APPELLANT
Vs	
Bhaskar Krishnaji Raut	RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (2005) 2 MhLj 677

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant; Kalpana Deshpande, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner Maharashtra State Road Transport Corporation, has challenged the order dated 27-1-1992 passed by the learned Member, Industrial Court, Nagpur, in Revision (ULPA) No. 5 of 1990. The facts giving rise to the present petition can be briefly stated as under : The present respondent was working as a Conductor on 5-9-1984 and his bus came to be checked at about 1830 hrs. Out of total 65 1/2 passengers, total 19 1/2 passengers were found travelling without tickets. It was found that he received fare amount from all these passengers but tickets were not issued to them. Similarly tickets having advanced punch were seized from five passengers. M.S.R.T.C. cash with respondent was checked and it was found less by Rs. 119.05 paise. On the basis of this checking and facts, a charge sheet of misconduct falling under Clauses 7A, 7C of Schedule A of Disciplinary and Appeal Procedure and Clause 12B of Schedule B thereof was issued to respondent on 21-9-1984. A Departmental Enquiry was thereafter conducted and on 15-12-1986, the Competent Authority for proved misconduct imposed

punishment of dismissal upon said respondent. The respondent challenged this dismissal by filing Complaint (ULPA) No. 340 of 1987 before the First Labour Court, Nagpur. The First Labour Court found that the enquiry held against the respondent by the petitioner was just, fair and proper. It further found that the findings recorded by the Enquiry officer were not perverse and charges are proved. The learned First Labour Court also made reference to the statements made by the complainant in enquiry and on the spot and found that there is no unfair labour practice in the matter and therefore by the order dated 29-9-1989, First Labour Court, Nagpur dismissed the complaint. Aggrieved by this dismissal, the respondent filed a Revision u/s 44 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971/Maharashtra, Act No. 1 of 1972 (hereinafter referred to as MRTU and PULP Act), before the Industrial Court, Nagpur, vide Revision (ULPA) No. 5 of 1990. The learned Industrial Court heard both the sides and found that the First Labour Court was not justified in dismissing the complaint filed by the respondent Conductor. It found that the Enquiry Officer acted as a prosecutor and he put questions by way of cross-examination to the witnesses. The learned Member of Industrial Court thereafter referred to judgment dated 26-2-1988 delivered by the learned Single Judge of this Court in Writ Petition No. 1724 of 1986 and found that the cash was found less with present respondent and if he had not issued tickets after collecting fare, cash would have been found more. It thereafter considered the arguments advanced by the learned counsel for the respondent that the respondent was too eager to issue tickets to all passengers and he thought of recovering the fare after completing the process of issuing tickets. The learned member, Industrial Court found that therefore, the respondent issued tickets without collecting fare and hence cash with him was found less. The learned member thereafter held that the enquiry held by the petitioner against the respondent was not just, fair and proper and held that the misconduct is not proved. It, therefore, directed reinstatement of respondent with continuity of service immediately, however, declined to grant him backwages. This order dated 27-1-1992 has been challenged by the petitioner-employer in the present petition.

2. Writ Petition was admitted and stay was granted on 20-4-1992. However, after hearing both sides on 30-7-1992, said stay was vacated by this Court. Thereafter the petitioner has reinstated respondent and even today, the respondent is continuing in service.

3. Shri Wankhede, learned counsel for the petitioner argues that the Labour Court has properly held that the enquiry was fair and valid. He contends that if these findings were to be upset by the learned Member of Industrial Court in revisional jurisdiction, the Industrial Court ought to have expressly referred to the objectionable questions put by the Enquiry Officer to the respondent to enable this Court or to enable everybody to examine nature of those questions. He contends that there are no such objectionable questions and therefore only Industrial Court has not reproduced any such questions. He states that learned Member of Industrial Court has only given inference about Enquiry Officer that he

has acted as a prosecutor and has cross-examined the witnesses. He submits that in the above background, it was necessary for the learned Member of the Industrial Court to reproduce the objectionable part of deposition recorded by the Enquiry Officer and then to appreciate it by co-relating the same to the controversy involved in the matter. He contends that as this application of mind and thought process is not finding place in the impugned order, the conclusion reached by the Industrial Court about the validity of the Departmental Enquiry is unsustainable. He also points out that the fact that cash was found short with respondent is not that significant. He further argues that the theory not pleaded in his complaint by the respondent has been accepted by the learned Member of the Industrial Court for accepting his defence. He contends that all charges are proved. He urges that there is violation of issue and receipt process and past record of respondent is very bad. He, therefore, states that the impugned order of learned Member of Industrial Court is liable to be quashed and set aside.

4. As against this, Advocate Smt. Deshpande, appearing for the respondent argues that the entire record of ULP Complaint was available with the learned member of Industrial Court while deciding the Revision. The learned Member of Industrial Court has gone through the statement of witnesses recorded by the Enquiry Officer and thereafter has found that the Enquiry Officer has acted as a prosecutor and has put questions by way of cross-examination. She contends that the learned Member of Industrial Court has also found that the passengers are not examined as witnesses in the Departmental Enquiry and that the cash was not found more with the respondent. She argues that this very fact goes to show that the charge of collecting fare and not issuing tickets is not proved. She contends that if said charge is to be proved, it must be shown that cash with respondent was more than the tickets sale reflected by him. She further argues that misconduct itself is not proved and learned Member of Industrial Court has observed that it is not proved at all, the past service record pales into insignificance. She states that employee cannot be punished on the basis of past record.

5. Having heard both sides, I find that the Labour Court found that the enquiry conducted by the petitioner was fair, just and valid and further found that charges are proved. Therefore, the Labour Court dismissed the complaint. The learned Member of Industrial Court has found that the enquiry is unfair. If the enquiry is unfair, dismissal on the basis of such enquiry is unsustainable. The learned Member of Industrial Court was not right in going into the merits of the matter if he found that the enquiry was unfair. Attempt made by the learned Member of Industrial Court to find out whether misconduct is proved or not is therefore, futile, as the basis on which such misconduct is found out itself cease to exist. However, the finding given by the learned Member of the Industrial Court that the enquiry is not fair and valid is without any reasons. The learned Member of Industrial Court should have seen that it was taking a view contrary to the view taken by the First Labour Court. It was therefore, necessary for the Industrial Court to point out as to how the view taken by the Labour Court about

validity of Departmental Enquiry is contrary to law and unsustainable. The perusal of impugned order of the learned Member of Industrial Court shows that the learned Member of Industrial Court has not referred to this finding of Labour Court in its order. Not only this, if the learned Member of Industrial Court wanted to hold that the Enquiry Officer has acted as prosecutor and has cross-examined the witnesses, it was necessary for the learned Member of the Industrial Court to point out which questions put by the Enquiry Officer are objectionable and as to how those questions amount to cross-examination of the witnesses. The learned Member of Industrial Court has not reproduced any questions and has also not commented on nature of any particular question. The observations made by the Industrial Court are of general nature and infact only conclusions have been reproduced without disclosing any thought process. In such circumstances, the said finding cannot be sustained.

6. However, as argued by the learned counsel for the respondent, there may be some questions on record which the learned Member of Industrial Court has seen and on the basis of which this conclusion has been reached by it. It is, therefore, necessary to have a proper appreciation of those questions at the hands of the learned Member of Industrial Court. It is, therefore, apparent that the impugned order passed by the learned Member of the Industrial Court in Revision (ULPA) No. 5 of 1990 on 27-1-1992 is unsustainable and deserves to be quashed and set aside.

7. Smt. Deshpande, learned counsel appearing for the respondent points out that effect of quashing and setting aside this order will mean throwing the respondent out of employment again. She points out that the respondent has joined the services in the year 1972 and by today he has put in 32 years of service and he is now on the wrong side of his life.

8. Considering all the above aspects, it is felt that the respondent should be continued in service as on today even during pendency of Revision before the learned Member of Industrial Court. Hence, the impugned order dated 27-1-1992 is hereby quashed and set aside. Revision (ULPA) No. 5 of 1990 is remanded back to the learned Member of Industrial Court, Nagpur, for fresh decision after giving due opportunity to both sides, in accordance with law. The learned Member of Industrial Court shall decide this Revision as early as possible, in any case within a period of four months from the date of receipt of this order by it. The petitioner shall continue respondent - Conductor in service during the pendency of this Revision and thereafter shall abide by the directions issued by the learned Member of the Industrial Court, in accordance with law.

9. With these directions, Writ Petition is allowed. Rule is made absolute in above terms. There shall be no order as to costs.