
(2000) 06 BOM CK 0029
In the Bombay High Court
Case No : A.S.C.J. W.P. No. 2580 of 1989

Maharashtra State Road Transport Corporation	APPELLANT
Vs	
Kantrao Dabhale	RESPONDENT

Date of Decision : 22-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17B
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (2000) 86 FLR 813 : (2001) 3 LLJ 993

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Judgement

R.J. Kochar, J.—The petitioner, a statutory Corporation, established under the Road Transport Corporation Act of 1950, has filed the present petition under Article 227 of the Constitution of India challenging the judgment and order dated August 16, 1989 passed by the learned Member of the Industrial Court, Maharashtra at Aurangabad. The undisputed facts are as follows:

2. The Respondent-employee was employed under the petitioner Corporation as a Conductor. By a charge sheet dated June 2, 1982 it was alleged against him that he had committed an act of misconduct under Clauses 12(b) and 35 of the Disciplinary and Appeal Procedure for dishonesty, fraud and misappropriation of the Corporation's money. It was alleged against him that he had issued tickets to two passengers who had boarded at Latur for less denomination than required for the journey. It was, therefore, alleged that he had misappropriated the Corporation's money and had committed an act of dishonesty and fraud. The Respondent employee was called upon to submit his explanation.

3. By his written explanation the respondent employee had denied the charges and explained that he had issued the tickets as per the request of the passengers and that he had not committed any act of dishonesty, fraud or misappropriation

of the Corporation's money.

4. It appears that the incident had taken place en route the destination of the bus. It further appears that the inspecting squad had checked the bus surprisingly and found that the two passengers who were travelling by the bus had tickets of lesser denomination than they ought to have been given. The checking party had recorded spot statements of the passengers in the presence of the respondent employee. Since the employee had denied the charges an inquiry was instituted by the petitioner Corporation. The respondent employee participated in the inquiry and had cross examined the Corporation's witnesses. In the inquiry the checking inspector had produced the statements recorded by him as given by the passengers. He produced the whole material before the inquiry officer. It appears that the respondent employee was all along insisting that the Corporation should call the passengers as witnesses in the inquiry. It further appears that the inquiry officer did not accept the request of the employee and proceeded further in the matter. I may further mention here, as a matter of fact, that even the respondent employee did not examine those passengers as his witnesses. On the basis of the material on record the inquiry officer concluded that the respondent employee was guilty of the charges levelled against him. The petitioner Corporation, on the basis of the findings and the report of the inquiry officer, passed an order of dismissal dated May 19, 1984 which was finally given effect to on May 11, 1985. Aggrieved by the aforesaid order of dismissal the Respondent employee filed two internal appeals as provided under the Discipline and Appeal Rules and failed in both these appeals as the same were dismissed.

5. Being aggrieved by the final orders passed by the appellate authorities the respondent employee filed a complaint of unfair labour practice before the Labour Court under Item I, Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. He challenged the action of dismissal on the ground that the inquiry held against him was not fair and proper as the concerned passengers were not examined in the inquiry. The Labour Court has recorded its findings that the inquiry was not in violation of the principles of natural justice merely because the two concerned passengers were not examined in the inquiry as requested by the respondent employee. The Labour Court further observed that the respondent employee could have examined them as his defence witnesses. In the aforesaid circumstances the Labour Court gave its findings that the inquiry officer had not committed any violation of the principles of natural justice. The Labour Court after recording the evidence of both the parties framed six issues and answered the same against the respondent employee in every respect. The Labour Court has recorded its reasons while answering every issue on the basis of the evidence and material on record. The Labour Court has appreciated the evidence and examined all the aspects of the matter. The Labour Court has held that there was no act of victimisation and that the act of misconduct alleged against the respondent employee was proved on the basis of the material on record before the inquiry officer. The Labour Court has also held that there was no breach of

any principles of natural justice in the inquiry and that the employee was given full opportunity of hearing in the inquiry. He turned down the contention of the respondent employee that the inquiry was vitiated as the concerned two passengers were not examined in the inquiry. After considering the pleadings and the material before the inquiry officer and the report and findings of the inquiry officer and further after examining and scrutinising the evidence recorded by it, the Labour Court has come to its own definite conclusions that the Corporation had not committed any act of unfair labour practice or any act of victimisation and held that the order of dismissal was legal and proper. He has positively held that the act of misconduct was proved in the inquiry. He has also held that the punishment of dismissal, as imposed by the petitioner Corporation, was legal and proper and that in view of the serious act of proved misconduct the punishment was not shockingly disproportionate. The Labour Court has also given a reason that the Corporation was running on the revenue of collected fare and if such mischiefs are lightly considered then the Corporation would be put to heavy loss. The Labour Court has also given a very valid reason when it has observed that "when a person is reposed confidence and he breaches the confidence then he should not be permitted to again be given the chance to do the same thing." The Corporation employs a large number of conductors and it wholly depends on the revenue collected by them in this transport business. The amount misappropriated by such conductors usually is small one but if a large number of conductors are allowed to misappropriate even such small amounts daily or frequently then the Corporation would surely be in a financial crisis. A judicial note can be taken about the financial crises existing in the Corporation at present. In these circumstances such acts of misappropriation by the conductors, even of a small amount, must be viewed seriously as the Corporation depends and survives on such daily collections of the revenue. In view of the peculiar circumstances and the business, the Corporation has to wholly depend and rely on the conductors for collection of its revenue. The conductors cannot be allowed to swindle or misappropriate any amount, may be of small fraction. I, therefore, agree with " the findings and conclusions of the Labour Court that the punishment of dismissal of the Respondent-conductor in the present circumstances is not shockingly disproportionate. According to me, it is commensurate with the serious act of misconduct levelled against him. I have carefully gone through the reasoned judgment of the Labour Court and I do not find any illegality, infirmity or perversity in the judgment and order of the Labour Court.

6. It is surprising that in its exercise of supervisory jurisdiction u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971 the learned Member of the Industrial Court has interfered with the reasoned order of the Labour Court after reappraising and appreciating the whole evidence and material before the Labour Court. The learned Member of the Industrial Court has come to an entirely different finding which is not permissible under the narrow supervisory jurisdiction conferred on it u/s 44 of the Act. This position is very well established by the catena of decisions

on this point:

" Mahila Griha Udyog (Lijjat Papad) 1983 I LLN 643

Hindustani Prachar Sabha and Others Vs. Dr. (Miss) Roma Sengupta and Another,
Vikas Textiles Vs. Sarva Shramik Sangh,

Vithal Gatlu Marathe Vs. Maharashtra State Road Transport Corporation and Others, "

In the case of Marathe (supra) the Division Bench has given the essence of the law on the point and, therefore, I cannot resist my temptation to reproduce the whole judgment itself here Vithal Gatlu Marathe Vs. Maharashtra State Road Transport Corporation and Others, :

"1. Heard learned counsel for the appellant as well as the learned counsel for the respondents. Perused the judgments of the Industrial Court and also the Labour Court. The Industrial Court was moved against the judgment of the Labour Court u/s 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The provisions of Section 44 are almost in pari materia with the provisions of Article 227 of the Constitution of India. This is not so much a revisional jurisdiction, but jurisdiction of superintendence. It has been settled for about four decades that in exercise of this jurisdiction of superintendence and supervision, the Court cannot go to appreciate or reappreciate the materials on record. It may be that in a given case or cases, we have, in our anxiety to do justice, have done so on occasions. But that is a different matter.

2. After hearing the strenuous arguments of Mr. Sawant for Respondent Nos. 1 and 2, we have not been able to persuade ourselves to agree that in exercise of limited jurisdiction u/s 44 of the said Act, the Industrial Court can re-appreciate evidence and overturn findings of fact however erroneous those findings may be.

3. It is apparent from the judgment of the Industrial Court that it has overturned the judgment of the Labour Court on findings of facts based on reappreciation of evidence. This, we do not think to be permissible to any Court having such circumscribed jurisdiction. We must accordingly hold that the Industrial Court was wrong in exercising such jurisdiction and overturning the findings and decision of the Labour Court. We accordingly set aside the order of the Industrial Court and confirm the decision of the Labour Court. Accordingly, appeal is allowed, but without any order as to costs.

4. Issuance of certified copy of this order is expedited."

7. Shri Bhapkar, the learned advocate for the respondent employee has fairly accepted this established legal position. The Industrial Court has wrongly usurped the appellate powers of an Appellate Court which legally it could not do so. It was not even a revisional Court but u/s 44 of the Act it is vested with powers of superintendence over the Labour Court. It had no powers and

jurisdiction to reappreciate and reappraise the evidence and the material on record of the Labour Court. It had no powers and jurisdiction to come to a different conclusion on the same material than what the Labour Court had come to. The order of the Labour Court does not suffer from any illegality and there is no error of facts or even law on the fact of the record. The Industrial Court cannot substitute its own view of the matter. In the circumstances I am not able to sustain the order of the Industrial Court. The same is illegal and perverse. It is without jurisdiction and, therefore, it deserves to be quashed and set aside.

8. However, the matter does not end here. By an order dated June 27, 1990 in Civil Application No. 2263 of 1989 this Court had passed an order directing the petitioner Corporation to allow the respondent employee to rejoin the services on or before July 15, 1990. It appears that this Civil Application was filed by the respondent employee praying for a relief purportedly u/s 17-B of the Industrial Disputes Act, 1947. He claimed wages during the pendency of this petition as the order of reinstatement was stayed by this Court. It appears that instead of claiming any monthly wages on the basis of the provisions of Section 17-B of the Industrial Disputes Act, 1947 it was suggested on his behalf that he should be allowed to work and earn his monthly wages. This was a healthy suggestion made by him. The petitioner being a public Corporation and a custodian of public money it was proper on its part to have allowed him to rejoin his service so that he was earning his monthly wages after working instead of getting monthly wages without any work. On the basis of the said good suggestion this Court had directed the petitioner Corporation to allow the respondent employee to resume his work and earn his monthly wages. Pursuant to the said order it appears that the respondent employee was put back in service. It further appears that since then he has been working. I want to make one thing clear that though the respondent employee had filed the above Civil Application claiming relief u/s 17-B of the Industrial Disputes Act, 1947, it appears that neither the petitioner Corporation nor the respondent employee brought it to the notice of the learned Judge that the impugned order was passed under the provisions of the M.R.T.U. and P.U.L.P. Act, 1971 wherein there was no provision of granting any wages during the pendency of a writ petition on par with Section 17-B of the Industrial Disputes Act, 1947 when a Labour Court/Industrial Tribunal passes an award of reinstatement and when such award gets stayed by the higher Courts. Such an order, directing the petitioner Corporation to pay wages to the concerned employee, could not have been passed had this point been brought to the notice of the learned Judge at that time. In any case, such an order, of course, could be passed by this Court under Article 226 or 227 of the Constitution of India independently considering the facts and circumstances of the case in exercise of its discretionary jurisdiction.

9. The respondent employee is in the employment of the petitioner-Corporation pursuant to the said order passed by this Court in its discretion. From 1990 the respondent employee appears to be in employment and nothing adverse was pointed out to me by the learned advocate against him. In view of this

subsequent development, it would not be in the interest of justice to throw the employee out of employment. However, for the serious acts of misconducts proved to have been committed by the respondent employee some punishment will have to be imposed on him. Fortunately for the respondent employee presently he is in service. It is possible that he might have learnt a lesson of his life and since there is no positive statement made before me on behalf of the petitioner Corporation whether he indulged in such acts I presume that he might be behaving properly. I, therefore, propose to modify the order passed by the Labour Court, as under:

Instead of dismissing the complaint, I confirm the order passed in the above Civil Application directing the petitioner Corporation to allow the petitioner to join his service. It will not be proper and in the interest of justice for the petitioner Corporation to discontinue the respondent employee now. I, therefore, direct the petitioner Corporation to continue the respondent employee in employment as a conductor. I, however, deny him back wages for the period from the date of dismissal till his reinstatement by the petitioner Corporation. The respondent employee would be entitled to get the benefits of continuity in service but he will not be entitled to get any back wages for the aforesaid intervening period. The respondent employee was allowed to withdraw an amount of Rs. 5.000/- from his General Provident Funds Account by this Court. The said amount is required to be adjusted from the said account and the petitioner Corporation will do the needful in that respect.

10. In the result, the rule is partly made absolute in the aforestated terms with no order as to costs.