

(2014) 03 BOM CK 0138

In the Bombay High Court

Case No : Writ Petition No. 3194 of 2002

Maharashtra State Road Transport Corporation

APPELLANT

Vs

Manik Parasram Rathod

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Citation : (2014) 4 LLJ 531

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

Bench : Single Bench

Advocate : Tushar Darda, for the Appellant; C.V. Jagdale, for the Respondent

Final Decision : Partly Allowed

Judgement

R.K. Deshpande, J.—The challenge in this petition is to the judgment and order dated 11.02.2002 passed by the first Labour Court at Nagpur in Complaint ULP No. 400 of 1998. The Labour Court has set aside the termination and directed reinstatement of the complainant with continuity in service and full back wages. In Revision ULP No. 82/2002, the Industrial Court has maintained the order of the Labour Court and has dismissed the revision by its judgment and order dated 1st July, 2002. Hence, the employer is before this Court. The only question involved is whether the findings recorded by the Enquiry Officer holding the complainant guilty of rash and negligent driving were perverse or not? Both the courts below have concurrently held that the finding recorded by the Enquiry Officer are perverse.

2. On 3rd March, 2014, this Court has passed an order as under;

Shri Tushar Darda, the learned counsel for the petitioner.

None appears for the respondent.

It seems that the respondent was the Bus Driver and was dismissed from service after holding an enquiry and proving of the charge of rash and negligent driving. This has been set aside by the Labour Court, and the Industrial Court has

confirmed the said order.

The only evidence is of one Shri Chaure, which was relied upon during the course of the enquiry, and he was not an eye-witness to the incident. The Courts below have concurrently held that the findings were perverse. In view of this, the learned counsel for the petitioners to address this court as to whether there was any material available on record to substantiate the charge of misconduct alleged and as to the entitlement of the respondent to full back wages, as has been ordered by the Labour Court.

List this matter tomorrow i.e. on 4-3-2014.

3. The learned counsel for the petitioners could not point out any evidence except the evidence of Shri Chaure, recorded during the course of enquiry. Shri Chaure was not an eye witness to the incident. There is nothing on record to show that any prosecution was launched for rash and negligent driving against the complaint. In view of this, I do not find any reason to interfere in the findings of fact recorded by both the courts below, holding that the findings are perverse.

4. So far as the question of back wages is concerned, Shri Jagdale, the learned counsel appearing for the complainant-employee has relied upon the recent decision of the Apex Court in case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, . In para 38.3, the Apex Court has held as under;

Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same and substantially similar emoluments.

5. It is apparent that there is no statement made by the complainant in his complaint that he was not in gainful employment or was getting wages lesser than the wages he was getting during the course of employment with the petitioner Corporation. The order of payment of full back wages cannot, therefore, be sustained. The petitioner would be entitled to continuity in service with all consequential benefits except the back wages as if the respondent was never dismissed from service. In the result, the writ petition is partly allowed. The order of the Industrial Court to the extent it awards full back wages is

hereby quashed and set aside. The decision of the courts below setting aside the order of termination of the complainant from service does not call for any interference. Needless to say that the complainant shall be entitled to all other consequential benefits as if he was never terminated from service.