

(2000) 03 BOM CK 0105

In the Bombay High Court

Case No : Writ Petition No. 1047 of 1992

Maharashtra State Road Transport Corporation

APPELLANT

Vs

M.G. Shetkar

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44

Citation : (2000) 4 ALLMR 481 : (2000) 3 BomCR 854 : (2000) 2 BOMLR 719 : (2000) 86 FLR 694

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

Bench : Single Bench

Advocate : R.M. Sawant, G.P, for the Appellant; N.N. Bhadrashete, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner is a statutory Corporation established for the purpose of transportation of mainly passengers and goods by buses throughout the State of Maharashtra and also outside the State to provide transport facilities to the public. The respondent was employed as a conductor by the Petitioner Corporation from 1965. On 5-2-1984 he was on his duty as a Conductor on the route Udgir to Deoni via Kamalawadi. It appears from record that his bus was checked by the petitioner's Checking Party and it was found that at Stage No. 5 one lady passenger who had boarded the bus at Kamalawadi for Deoni had paid an amount of Rs. 0.60 ps. at the boarding point to the respondent for her ticket fare, but she was not issued ticket by the respondent-conductor. It was also alleged that a Group of five childrens who were to be charged half the fare had boarded the bus at Kamalawadi for Deoni and had paid Rs. 1.50 ps. towards their bus fare to the respondent at boarding point and that no tickets were issued to them at the boarding point or thereafter, but he had hurriedly issued tickets only after seeing the Checking Party. It was also alleged against the respondent-conductor that the Way-Bill which he was supposed to complete did not reflect the issuance of the aforesaid tickets to the passengers. It was also alleged that

he had hurriedly issued tickets and therefore, one excess ticket of 30 paise came to be issued. It is an admitted position that the cash found in the hands of the respondent was checked and was found short by Rs. 5.40 ps. It further appears that the checking party had recorded statements of those passengers on the spot. On the basis of the aforesaid incident as reported by the Checking Party a charge sheet was issued on 9-2-1984 to the respondent conductor and he was dismissed on 29-7-1984 after a domestic enquiry held by the petitioner Corporation in the charges levelled against him.

2. Being aggrieved by the said order of dismissal dated 29-7-1984 and after completion of internal appeals which were also dismissed, the respondent conductor filed a complaint of Unfair Labour Practice before the Labour Court at Solapur which was subsequently transferred to the Labour Court at Latur. The dismissal order was challenged under Item 1(a), (d), (f) and (g) of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The hub of the complaint filed by the respondent-conductor was that he had not committed any act of misconduct and that he was falsely implicated in the case to victimise him as he was an active trade union worker. He further made a grievance that the Checking Party had given a false report that he had issued tickets after noticing the Checking Party. It was his contention that no passenger was found without any ticket. As far as the point of the enquiry is concerned the Labour Court came to the conclusion that there was no legal evidence before him to find the conductor guilty of the charge of dishonesty etc. mainly because it was an admitted position that no passengers were found by the Checking Party without any tickets. This is an admitted position that the conductor had issued tickets to all the passengers in the bus. It was the case of the Checking Party that the tickets were issued to the aforesaid two passengers when the conductor had seen the Checking Party. In support of this contention it was pointed out that the way bill did not reflect the issuance of such tickets. The Labour Court has considered the entire evidence before the Enquiry Officer and recorded a finding that the conclusions of the Enquiry Officer in respect of the guilt were perverse as the concerned passengers were not examined in the enquiry. This was the only ground on which the Labour Court concluded the findings to be perverse. The Labour Court has interfered with the order of dismissal on the ground of punishment to be harsh and shockingly disproportionate, and directed reinstatement of the respondent conductor with 75% of back wages. He had denied to the respondent-conductor 25% of wages for his failure to record issuance of the tickets in the way bill, a lapse on his part. According to the learned Judge the conductor gave scope for suspicion and therefore, he should suffer. This order of the Labour Court dated 30-1-1986 was carried by the petitioner in Revision u/s 44 of the Act before the Industrial Court. The Industrial Court by its judgment and order dated 31-7-1992 confirmed the Order of the Labour Court and dismissed the Revision Application. The Industrial Court has recorded its reasons for doing so in its power of superintendence.

3. I have carefully gone through both the judgments. The respondent-conductor was superannuated on 20-2-1997. He is no more in employment. Though, I am

not able to agree with the findings of the Labour Court that the enquiry suffers from an infirmity as the concerned passengers were not examined before the Enquiry Officer. The Labour Court lost sight of an important fact that the Report of the Checking Party which had recorded on the spot was already before the Enquiry Officer- The statements of the passengers were produced before the Labour Court and both the Officers who had formed the Checking Party were examined before the Enquiry Officer and they had proved the relevant documents including the statements of the passengers recorded by them on the spot. It was not necessary for the petitioner Corporation to have examined the passengers independently in the enquiry. The Corporation was not expected to chase the passengers to bring home the guilt of the respondent conductor. There was enough material before the Enquiry Officer to record the findings on the basis of such material before him as an Enquiry Officer. The report of the Checking Party which including the spot statements of the passengers form good material for the Enquiry Officer to come to his own conclusions. According to me, therefore it is not always necessary to examine the passengers in such matters. In any case the net result of the report of the Checking Party was that no passengers were found without tickets. It is therefore, beyond any manner of doubt that the conductor had issued tickets to all the passengers, the grievance of the Checking Party that he had issued tickets hurriedly after seeing Checking Party is not sufficient to dismiss the conductor on a very weak ground that the way bill did not reflect the issuance of the tickets. Admittedly the conductor was at the last stage of the destination and before finally submitting the way bill he would have definitely checked to complete the bill and handed over the accounts to the concerned personnel. Under the circumstances I am not in a position to interfere with the findings of the Labour Court that no misconduct was established and that the punishment of dismissal is in the given facts and circumstances of the case is shockingly disproportionate. Nonetheless, even for a small lapse on the part of the respondent conductor the Labour Court has inflicted upon him a punishment to deprive him of 25% of back wages which according to me was more than sufficient. The respondent conductor has not challenged the said part of the order of the Labour Court and had accepted the same by causing himself a loss of 25% of back wages. The Labour Court as well as the Industrial Court, both have considered all the facts and circumstances of the case and have correctly recorded their finding in favour of the respondent conductor. I do not find any serious illegality or any serious infirmity in the impugned judgments and orders of the courts below. I therefore, dismiss the petition. Rule is discharged. No order as to cost.

4. The petitioner Corporation has paid a sum of Rs. 50,000/- to the respondent-conductor under the directions from this Court at the time of admission. The petitioner-corporation is hereby directed to finally compute the back-wages arising from this petition and pay the same within four weeks from today after adjusting the aforesaid amount of Rs. 50,000/- which was paid to him earlier.

5. Certified copy is expedited.

6. Parties to act on ordinary copy of this order duly authenticated by the Sheristedar of this Court.

7. Petition dismissed.