

(2024) 02 BOM CK 0063
In the Bombay High Court
Case No : Writ Petition No. 6275 Of 2009

Maharashtra State Road Transport Corporation

APPELLANT

Vs

Prakash Vasant Hardikar

RESPONDENT

Date of Decision : 22-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 227
Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 44

Citation : (2024) 02 BOM CK 0063

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Pinky Mohanlal Bhansali, Vinod L. Desai

Final Decision : Partly Allowed

Judgement

Sandeep V. Marne, J

1. Maharashtra State Road Transport Corporation has filed this petition challenging the Judgment and Order dated 16 January 2009 passed by the Industrial Court, Kolhapur dismissing Petitioner's Revision Application (ULP) No. 87 of 2007 and confirming the Judgment and Order dated 20 February 2007 passed by the Judge, Labour Court, Ratnagiri in Complaint (ULP) No. 13 of 2002. By its order, the Labour Court had directed reinstatement of the Respondent in service from the date of dismissal with continuity and full backwages.

2. Respondent was employed as Conductor in the Petitioner-State Transport Corporation since 1980. He was deployed on ST bus on Pachambe-Rajivali-Sangameshwar Route on 24 January 2002. The ST bus was checked at Aravali Railway Stage No.7 by the checking team, which found that two passengers were possessing two tickets of Rs.4/- which were already sold on 22 January 2002. Upon checking the ST cash of the Respondent, it was revealed that he had excess cash of Rs.53/-. A Memorandum of Chargesheet was issued to the Respondent on 22 January 2002. He was placed under suspension during 4

February 2002 to 23 March 2002. Domestic enquiry was conducted into the charges, in which the Respondent apparently admitted the charges levelled against him. The Enquiry Officer submitted a report holding the Respondent guilty of the charges. On the basis of the report of the Enquiry Officer, a show cause notice dated 5 April 2002 was issued to the Respondent proposing to impose penalty of dismissal from service. The Respondent replied the show cause notice on 9 April 2002. After considering his reply, Order dated 10 April 2002 was passed by the Disciplinary Authority imposing the penalty of dismissal from service.

3. The Respondent approached the Labour Court, Kolhapur by filing Complaint (ULP) No. 82 of 2002 challenging the dismissal Order dated 10 April 2002. The complaint was resisted by the Petitioner-Corporation by filing Written Statement. The Labour Court allowed the complaint by Judgment and Order dated 31 August 2005 and directed Respondent's reinstatement with full backwages. Petitioner approached the Industrial Court, Kolhapur by filing Revision (ULP) No. 52 of 2006, which came to be partly allowed and the complaint was remanded for fresh decision.

4. It appears that Respondent filed purshis before the Labour Court at Exhibit-C-17 admitted the validity of enquiry conducted against him. The Labour Court however held on 29 September 2006 that the finding of guilt recorded by the Enquiry Officer was perverse and granted opportunity to the Petitioner to lead evidence to prove the charges. Accordingly, Petitioner examined Shashikant Baburao Kholase as its witness. The Labour Court thereafter passed Judgment and Order dated 20 February 2007 allowing the complaint and set aside the penalty of dismissal imposed on the Respondent directing his reinstatement with continuity and full backwages.

5. Petitioner filed Revision Application (ULP) No. 87 of 2007 under the provisions of Section 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act (MRTU & PULP Act) challenging the Labour Court's decision dated 20 February 2007. The Industrial Court however proceeded to dismiss the revision filed by the Petitioner by Judgment and Order dated 16 January 2009. It appears that Petitioner reinstated Respondent on 22 June 2009 and filed the present Petition in July 2009 challenging the decisions of the Labour Court and Industrial Court. This Court stayed the impugned Order by Order dated 22 January 2010. The Petition was thereafter admitted by Order dated 29 November 2010 and interim relief was granted in terms of prayer clause (b) thereby staying the Judgment and Order dated 20 February 2007 passed by the Labour Court and 16 January 2009 passed by the Industrial Court. Later, this Court clarified by Order dated 10 September 2012 that since Respondent was already reinstated in service, the stay granted by this Court would be only to the extent of backwages. This is how Respondent continued to serve with the Petitioner-Corporation during pendency of the petition. He attained the age of superannuation in February 2017 and has retired from service on 28 February

2017.

6. Ms. Bhansali, the learned counsel appearing for Petitioner-Corporation would submit that the Labour Court has erred in setting aside the penalty of dismissal from service imposed on the Respondent. That he admitted the charge of selling already sold tickets to two passengers as well as possession of excess cash during the course of enquiry. That therefore it was not even necessary for the Petitioner-Corporation to lead any evidence to prove the charge which was already admitted by the Respondent. She would submit that nonetheless, the charge was once again proved before the Labour Court by leading evidence. That the concerned passenger clearly informed the checking team that they were issued tickets by the Respondent which were produced by them before the checking team. The charge of selling already sold tickets was thus conclusively proved against the Respondent. That the Labour Court has erroneously held that the passengers showed old tickets to the checking team as they might have misplaced the correct tickets issued by Respondent. That the said finding is based on surmise unsupported by evidence on record. That mere issuance of 12 tickets from ticket tray of Respondent cannot lead to an automatic presumption that all those tickets were issued to the passengers, who were found in the bus at the time of checking. That there is a possibility of two passengers alighting from the bus to whom tickets were correctly issued. Alternatively, there is a possibility of Respondent deliberately removing the two tickets from his tray upon entry of checking team in the bus with a view to escape being caught. That the charge of possession of excess cash was also proved against the Respondent.

7. Ms. Bhansali, would submit that the Respondent has indulged in serious misconduct of misappropriation. That the punishment of dismissal was imposed not only to punish the Respondent for commission of serious misconduct but also to set an example for other employees for deterring them from committing similar misconduct. That the Orders passed by the Labour and Industrial Court would set a wrong precedent, which would encourage other employees of the ST Corporation to indulge in similar misconduct. She would therefore pray that the orders passed by the Labour and Industrial Court be set aside.

8. Mr. Desai, the learned counsel appearing for the Respondent would oppose the petition and support the orders passed by the Labour and Industrial Court. That the two Courts have rendered concurrent findings in favour of the Respondent and this Court would be loathe in interfering in the said concurrent findings. That there is no perversity in the findings recorded by the Labour or Industrial Court. Relying upon the Judgment of the Apex Court in Harjinder Singh V/s. Punjab State Warehousing Corporation, 2010-II-LLJ-277(SC), he would submit that this Court, while exercising jurisdiction under Article 227 of the Constitution of India, must bear in mind the legislative intent of social welfare legislations like labour laws and interpret the same in view of the goal set up in the preamble of the Constitution.

9. Mr. Desai would further submit that there were 12 passengers at the time of

checking of the bus and it was proved that Respondent had issued 12 tickets. That therefore the charge of selling already sold tickets to two passengers was completely baseless. So far as the charge of excess cash is concerned, it has come in evidence that one of the passengers had handed over currency note of Rs.50/- for purchase of ticket of Rs.4/- and that the Respondent was to return the amount of Rs.46/- to that passenger. That said amount of Rs.46/- was indeed paid by the Respondent to the passenger thereby reducing the excess cash to only Rs.7/-. That the two already sold tickets were issued two days prior to the incident on 22 January 2002 by another Conductor, Shri. Parthare and ticket Nos. 498024 and 498025 sold from the tray ticket of the Respondent was not found with any passenger. That the Labour Court has therefore rightly drawn an inference that the said two passengers deliberately produced the tickets purchased two days ago on account of misplacing the correct tickets issued by Respondent.

10. Mr. Desai would further submit that it is well settled law that once termination is found illegal, payment of full backwages must be granted. In support of his contention, he would rely upon the judgment of the Apex Court in the case of Tapash Kumar Paul V/S. B.S.N.L. (2014) 15 SCC 313 and of this Court in Laxmi V/s. Permanent Magnets 2012 (3) Mh.L.J. 956 and Taranjit Singh Bagga V/S. M.S.R.T.C., Amravati 2008 (3) Mh.L.J. 743. He submits that the order of backwages cannot be interfered in a writ petition and in support he would rely upon judgment of this Court in Sanjeevan Gramin Vaidyakiya and Samajik Sahayata Pratishthan and Ors. Vs. Gorakhnath Popat Bandhane and Ors. 2012 (5) Mh.L.J. 789 and Syndicate Bank V/s. Mr. Vinod Kumar Amin 2015 (3) ALL.M.R. 682. That this Court cannot act as an Appellate Court and reappraise the evidence, which is already appreciated by the Labour and Industrial Courts and in support of this contention, he would rely upon judgment of the Apex Court in case of Surya Dev Rai V/s. Ram Chander Rai and Ors. 2003 6 SCC 675.

11. Mr. Desai would accuse Petitioners of exhibiting conduct which, according to him, is far from bonafide. That they did not disclose the factum of Respondent's reinstatement w.e.f. 22 June 2009 in the petition. That though Respondent is entitled for gratuity for 37 years of service, the same is not paid to him and after intervention of this Court, the Petitioner has computed gratuity only by taking into consideration 30 years of service. That his 300 days' of accumulated leave encashment is also not paid on account of pendency of the present petition. That pendency of the petition is treated as a tool to harass Respondent by illegally withholding his retirement benefits. That for such conduct exhibited by the Petitioner, the petition cannot be entertained and deserves to be dismissed. In support of his contention, he would rely upon the judgment of the Apex Court in State of Kerala V/S. M. Padmanabhan Nair, 1985(1) SCC 429.

12. Rival contentions of the parties now fall for my consideration.

13. Respondent faced two charges of (i) selling two already sold tickets to two passengers travelling in ST bus in which he was deployed as a Conductor and (ii)

detection of Rs.53/- excess in ST cash. In the domestic enquiry, apparently Respondent admitted the charges. This is clear from an averment in the complaint (ULP) No. 82 of 2002 which reads thus:

"In the enquiry, the Complainant bonafide admitted the charges levelled against him. Thereafter, domestic enquiry was held against the Complainant."

14. Since Respondent admitted the charges in the enquiry, it was not necessary to lead any evidence to prove them. However, for reasons which are not apparent at this juncture, the Labour Court had held the findings of the Enquiry Officer to be perverse by its Order dated 29 September 2006. The enquiry was held to be proper by the Labour Court. I therefore fail to understand as how the findings of the Enquiry Officer could have been held as perverse if the charge was admitted by Respondent. Be that as it may. It appears that the Order dated 29 January 2006 attained finality and Petitioner examined the witness, Shashikant Baburao Kolase before the Labour Court to prove the charges. The said witness adduced evidence before the Labour Court in tune with the findings recorded by the Enquiry Officer. This is clear from observations of the Labour Court in para-11 of its judgment.

15. The factum of two passengers being detected with tickets of Rs.4/- issued on 22 January 2002 is not in dispute. The bus was checked on 24 January 2002 and therefore all passengers were supposed to possess tickets which were issued on 24 January 2002. The two passengers asserted before the checking team that they were issued the very same two tickets which were produced by them before the checking team. Once two passengers are detected with tickets already sold on 22 January 2002, the charge should ideally be held to be proved against the Conductor as he did not take the defence in the enquiry that he was yet to issue any tickets to those passengers. The factum of issuance of tickets of those two passengers is admitted by the Respondent and therefore since the tickets in their possession were sold tickets of 22 January 2002, the charge of selling sold tickets to passengers automatically gets proved. The Labour Court has however held that the said two passengers were issued correct tickets on 24 January 2002 by Respondent, which they misplaced and deliberately produced the tickets sold to them on 22 January 2002 with a view to escape from getting caught for travelling ticketless. I fail to understand as to how the Labour Court could have recorded this finding in absence of any evidence that the said two passengers had either travelled on 22 January 2002 or came in possession of such sold tickets by any other means. On the contrary, the passengers asserted before the checking team that the tickets received by them from Respondent were the same tickets which they produced before the checking team.

16. Another factor on the basis of which the charge of selling already sold tickets is held to be disproved by the Labour Court is the factum of 12 tickets being issued on 24 January 2002 from Respondent's tray. Since the 12 passengers were detected and since 12 tickets were found to be issued from the Respondent's tray, an inference is drawn that he had issued 12 tickets to the said

12 passengers. However, there is no explanation as to how two sold tickets were found in possession of two passengers. The Enquiry Officer held that there was possibility of two passengers alighting the bus before arrival of checking team. The said inference drawn by the Enquiry Officer is not altogether illogical, especially in the light of admission of charge by Respondent. Considering the overall conspectus of the case and particularly admission given by Respondent before the Enquiry Officer, it is difficult to hold that the charge of selling already sold tickets levelled against him has not been proved by cogent evidence.

17. So far as the second charge of possession of excess ST cash is concerned, even if Respondent's theory of returning of Rs.46/- to a passenger is to be accepted, still he was detected with cash in excess of Rs.7/-, which more or less matches the cost of two tickets of Rs.4/- each. I am therefore of the view that the Labour court has erred in arriving at the conclusion that the charges levelled against the Respondent were not fully established. The test of proof of charge in a domestic enquiry is preponderance of probability. It is not necessary to prove a charge beyond reasonable doubt. Once it is proved that the two passengers were possessing already sold tickets, the charge can be held to be proved on the touchstone of preponderance of probabilities. It is not necessary that all possibilities must be ruled out for the purpose of holding the charge to be proved. Respondent never came up with a case that the two passengers had travelled on 22 January 2001 or that they came in possession of tickets sold on 22 January 2001 by any other means. In such circumstances, assertion by passengers of receipt of two tickets by Respondents (sold on 22 January 2001) clearly proves the charge levelled against him. The findings recorded by the Labour Court are thus completely perverse. The Industrial Court ought to have interfered in those findings in exercise of revisionary powers under Section 44 of the MRTU & PULP Act.

18. What remains now is to deal with the various judgments cited by Mr. Desai.

(i) Judgment of the Apex Court in Harjender Singh (supra) is relied upon in support of his contention that labour laws, being social welfare legislations, must be interpreted to promote social justice. There can be no dispute to this proposition. In the case before Apex Court, no perversity was noticed in the findings of the Labour Court and therefore it is held that grant of lumpsum compensation in lieu of reinstatement and backwages was not warranted. The Judgment therefore has no application to the present case.

(ii) The Judgment of the Apex Court in Surya Dev Rai (supra) is relied upon in support of contention of restrictive scope of High Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. I have arrived at the conclusion that the findings recorded by the Labour Court are perverse and are unsustainable. The order passed by the Labour Court suffers from patent illegality where the charge is erroneously held to be disproved despite availability of sufficient evidence on record coupled with admission given by the Respondent during the course of enquiry. In my view, therefore this Court is justified in

interfering with the perverse findings recorded by the Labour Court, especially when the Industrial Court has failed to correct the error in exercise of revisionary jurisdiction under Section 44 of the MRTU & PULP Act.

(iii) The Judgment of this Court in Tapash Kumar Paul (*supra*) is relied upon in support of proposition that once termination is found illegal, backwages must follow. In the present case, I have held that the charges against the Respondent are proved and that the penalty imposed upon him is justified. Therefore, there is no question of any grant of backwages to the Respondent. The judgment will therefore have no application to the facts and circumstances of the present case.

(iv) The judgment of this Court in Sanjeevan Gramin Vaidyakiya (*supra*) and Syndicate Bank (*supra*) are relied upon in support of contention that order of backwages cannot be interfered by a High Court in a writ jurisdiction. In my view, since dismissal of the Respondent is found to be justified, there is no question of award of backwages to him.

18. Though I have arrived at the conclusion that the charge against the Respondent of selling sold tickets is proved, the Respondent has apparently worked after his reinstatement on 22 June 2009 till his superannuation on 22 February 2007. He has already discharged his duties and drawn wages during the said period. I am therefore not inclined to restore the penalty of dismissal on the Respondent considering the peculiar facts and circumstances of the present case. However, the intervening period from his termination (10 April 2002) till his reinstatement (22 June 2009) cannot be treated as duty for any purposes and this is the least penalty that Respondent must suffer for having indulged in serious misconduct of misappropriation by selling already sold tickets to the passengers. Therefore, though I am not inclined to restore the penalty of dismissal from service on the Respondent, he cannot be granted any benefit of continuity and backwages or eligibility of service in respect of the period from 10 April 2002 to 21 June 2009. The said period will have to be treated as a *dies non* for all purposes.

19. Mr. Desai has complained about non-release of retirement benefits of Respondent on account of pendency of the present petition. It appears that gratuity and leave encashment amounts are not released to Respondent. Ms. Bhansali has justified such action on behalf of Petitioner submitting that in the event of present Petition being allowed, Respondent would not have been entitled for payment of gratuity and leave encashment. I have not restored the penalty of dismissal, on account of which Respondent would be entitled to draw the retirement benefits, albeit by excluding the period from 10 April 2002 to 21 June 2009. In *M. Padmanabhan Nair (supra)* relied upon by Mr. Desai, it is held that pension and gratuity are valuable rights and delay in settlement or disbursement thereof must be visited with penalty of interest. In my view, the issue of payment of pensionary benefits to the Respondent is not the subject matter of this Petition as the said issue is not decided by the Labour and Industrial Court. However at the same time, it would not be prudent to drive Respondent to

another round of litigation for payment of retirement dues and interest thereon. Since his retirement benefits of gratuity and leave encashment are withheld on account of pendency of this Petition, interest thereon is required to be paid to Respondent, whose dismissal is not restored. It would be therefore appropriate to award interest of 8% p.a. to Respondent on the gratuity and leave encashment from the date of retirement i.e. 28 February 2019 till the date of payment.

19. I am therefore of the view that the orders passed by the Labour Court and Industrial Court directing payment of backwages are indefensible. Writ Petition accordingly partly succeeds. I proceed to pass the following order :

(i) The Judgment and Order dated 20 February 2007 passed by the Judge, Labour Court, Ratnagiri in Complaint (ULP) No. 13 of 2002, as well as the Judgment and Order dated 16 January 2009 passed by the Member, Industrial Court, Kolhapur in Revision (ULP) No. 87 of 2007 are set aside.

(ii) Though the penalty of dismissal from service imposed on Respondent, though is justified, is rendered ineffective on account of Respondent's reinstatement in service on 22 June 2009 and continuation till superannuation upto 28 February 2007. However he shall not be entitled to any backwages for the period from 11 April 2002 to 21 June 2009.

(iii) Period of service rendered by Respondent upto 10 April 2002 and thereafter from 22 June 2009 to 28 February 2019 shall be treated as duty for all purposes. However, the intervening period from 11 April 2002 to 21 June 2009 shall not be treated as duty for any purposes.

(ii) The Respondent's gratuity, leave encashment and any other retirement benefits be released within 8 weeks from today, by computing his service from the date of initial appointment till 10 April 2002 and from 22 June 2009 to 28 February 2019, along with interest @8% p.a. from 28 February 2019 till the date of payment.

20. With the above directions, the Writ Petition is partly allowed. Rule is made partly absolute.