

(2005) 09 BOM CK 0112
In the Bombay High Court
Case No : Writ Petition No. 285 of 2005

Maharashtra State Road Transport Corporation	APPELLANT
Vs	
Ramesh Narayan Sanap and Another	RESPONDENT

Date of Decision : 13-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 44

Citation : (2006) 1 ALLMR 513 : (2006) 1 MhLj 568

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

Bench : Single Bench

Advocate : S.C. Mehadia, for the Appellant; C.V. Jagdade and A.G.P., for the Respondent

Judgement

B.P. Dharmadhikari, J.—In this writ petition filed under Articles 226 and 227 of Constitution of India, the petitioner employer Maharashtra State Road Transport Corporation has challenged the order dated 13-4-2004 passed by Labour Court, Wardha in Complaint U.L.P. No. 28/1998 granting respondent No. 1 relief of full backwages and holding that his dismissal from services vide order dated 5-11-1998 constituted unfair Labour practice. The respondent-employee could not be given reinstatement as he attained the age of superannuation during pendency of Complaint. This order of Labour Court has been upheld by Industrial Court on 28-9-2004 in Revision U.L.P. No. 71/2004.

2. I have heard Advocate Mehadia for petitioner Corporation, Advocate Jagdale for respondent No. 1 employee and learned AGP for respondent No. 2. Rule made returnable forthwith. Heard finally by consent.

3. It appears that respondent No. 1 was given a chargesheet on 1-4-1998 for abusing one Shri Chotekhan on 21-2-1998. Respondent No. 1 was working as vehicle inspector while said Shri Chotekhan was working as Asst. Labour Officer.

On the basis of that chargesheet, regular departmental inquiry was conducted against him and inquiry officer submitted his report holding respondent No. 1 to be guilty and proposing punishment of dismissal from services in view of gravity of misconduct. The charge was respondent No. 1 abused Shri Chotekhan while on duty. It is stated that on 21-2-1998, at about 3 o'clock in the afternoon respondent No. 1 was abusing in loud voice said Shri Chotekhan. Ultimately after considering the reply submitted by respondent No. 1 to show cause notice after inquiry report was served upon him, the respondent No. 1 was dismissed from services on 5-11-1998. Respondent No. 1 filed complaint u/s 28 read with Schedule IV Item 1 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 before the Labour Court at Nagpur. It was his defence that Shri Chotekhan addressed him in indecent language and misbehaved with him. The complaint was opposed by petitioner and the Labour Court found that departmental inquiry held against respondent No. 1 was fair and proper. It also found that findings recorded by inquiry officer were not perverse. However it found that punishment of dismissal was shockingly disproportionate considering the nature of charges levelled against respondent No. 1. It therefore quashed and set aside the order of dismissal and granted him relief of backwages till the date on which he would have superannuated had he continued in service. This order was challenged by petitioner in revision u/s 44 of above Act before Industrial Court, Nagpur and the said Court maintained the order of Labour Court.

4. Advocate Mehadia for petitioner states that misconduct having been proved, it was not open to Labour Court to interfere with the quantum of punishment. He contended that punishment is the domain of employer and in the facts of present case, past service record of respondent No. 1 apart from other misconducts, revealed 2 similar misconducts. In support of his contention he has relied upon the judgment of Hon''ble Apex Court reported at New Shorrock Mills Vs. Maheshbhai T. Rao, and Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.,

5. Advocate Jagdale for respondent No. 1 contended that Shri Chotekhan was essential witness in the matter and he was not examined in departmental inquiry. He further contended that the previous two occasions pointed out in his past service record are incorrect. He states that on one occasion fine of Rs. 10/- only was inflicted and Service Rules (Discipline and Appeal Procedure) do not permit filing of any departmental appeal if amount of such fine is less than Rs. 50/-. He further states that the second occasion mentioned in his service record is incorrect because the Labour Court has found him not guilty for that misconduct and he was granted relief by it which has been accepted by his employer. Advocate Jagdale states that only a show cause notice for dismissal was served upon respondent No. 1 for alleged misconduct and it has been quashed by Labour Court. He states that no punishment has been and could have been inflicted upon respondent No. 1 for alleged misconduct. He also relies upon two judgments of Hon''ble Apex Court reported at 2002 Bom LC425 between Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and reported at A.I.R. 1984

SC 914 between Ved Prakash Gupta v. Delton Cable India (p.) Ltd. He also places reliance upon unreported judgment delivered by me on 11-10-2004 in W. P. 933 of 1992 between present petitioner and one Abdul Rasid s/o Sk. Farid. It is his contention that the respondent had already superannuated from services and he was patient of paralysis when he was in service. In such circumstances, he contends that no interference is called for in writ jurisdiction against the concurrent orders and findings of both the Courts below.

6. It will be first appropriate to find out how Hon''ble Apex Court has considered this issue and then to approach the facts of present case in that perspective.

7. In New Shorrock Mills Vs. Maheshbhai T. Rao, , the Hon''ble Apex Court has considered the case of a workman who was only a Badli workman and he was found guilty of abusing Deputy Manager and threatening that mill officers would not be safe outside the mill and he might murder some of them. This misconduct was preceded by other misconducts/punishments in the past and though workman was given chances to improve, he did not improve. It is in this background that the Hon''ble Apex Court held that punishment of dismissal for such workman was not shockingly disproportionate. In Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , the Hon''ble Apex Court has again held that dismissal of workman for use of abusive language cannot be held to be disproportionate. The Hon''ble Apex Court has held that discretion u/s 11-A of Industrial Disputes Act can be used when punishment is so disproportionate that it disturbs the conscience of Court or there exists some mitigating circumstances which require reduction of punishment. The Hon''ble Apex Court found that language used by workman was filthy and Hon''ble Court itself felt that such language cannot be tolerated by any civilized society. It further found that such abusive language was used not only once but twice by concerned workman in presence of his subordinates. It found that the defence of provocation raised on behalf of workman was taken for the first time before it and there was no such defence either in departmental inquiry or before Labour Court. It found that defence there was that the workmen did not remember abusing the engineer concerned. These two cases are cited by petitioner employer.

8. Coming now two cases cited by respondent No. 1, in 2002 Bom LC 425 between Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya, from facts it is apparent that the concerned employee was dismissed from service for assaulting General Supervisor who became unconscious and was required to be hospitalised. The Division Bench of Calcutta High Court granted him relief of reinstatement with full backwages. However, from paragraph 3 of this ruling, it is apparent that the Hon''ble Apex Court issued notice limited only to question of backwages and Hon''ble Apex Court has confined the arguments and consideration only to issue of backwages. Ultimately, the order of Division Bench was modified and employer was directed to pay only 50% backwages. Thus the adequacy or otherwise of the punishment of dismissal was not the issue looked into by Hon''ble Apex Court and hence, this ruling is of no assistance. In Ved

Prakash Gupta Vs. Delton Cable India (P) Ltd., the Hon"ble Apex Court found that dismissal for abusing some worker and officer of management was unjustified, particularly in the absence of any previous adverse remarks against such workman. Perusal of paragraph 13 of his judgment reveals that, only one independent witness was examined by management and the Labour Court found that he did not support the management. It also found that Inquiry Officer did not call any of the relevant persons to ascertain the truth in the matter. It also found that workman was not given list of its witnesses by management. It is in this background that the Hon"ble Apex Court found that the conclusions reached by Labour Court about concerned workman not getting full opportunity of defence did not require any interference. There was no earlier adverse remarks against workman and, therefore, it has been held that punishment awarded was shockingly disproportionate. The Hon"ble Apex Court has also observed that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimisation or unfair Labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of management by the workmen within the premises of factory. Thus, the observations are again restricted to the facts and circumstances before it by Hon"ble Apex Court. In (unreported in W.P. 933/1992) judgment delivered by me on 11-10-2004 in case between present petitioner and one Abdul Rasid s/o Sk. Farid, respondent-employee therein was charge-sheeted for assault and also for indiscipline and behaviour subversive to discipline. It was found that the charge of assault was not proved and said charge was the most grave and serious charge in the entire charge-sheet. It is in this background that this Court has considered the effect of not considering past service record of employee. It was the case in which such past service record was not produced by employer either before the Labour Court or before the Industrial Court. Thus, this Court has considered effect of not producing and not considering such past service record when punishment inflicted is not for grave and serious misconduct. It is in this background that the order of Industrial Court granting employee relief of reinstatement but denying him 50% backwages on account of 2 proved charges was upheld. Thus, this judgment also does not consider the issue of effect of past service record on quantum of punishment where misconduct of grave and serious nature is established in departmental inquiry and accepted by Labour or Industrial Court.

9. When, the facts of present case are looked into, it is apparent that the reporter who lodged the report of incidence dated 21-2-1998 himself stated before Inquiry Officer that respondent No. 1 and Shri Chotekhan had verbal exchange between themselves in relation to office work and both of them abused each other. Other witnesses have also stated that Shri Chotekhan told respondent No. 1 that respondent No. 1 was paralysed and half of his work was done by his helper and respondent No. 1 wanted only to roam around. It also appears that respondent No. 1 also lodged complaint against Shri Chotekhan for

insulting and abusing him. Though inquiry officer has recorded the finding that respondent No. 1 abused Shri Chotekhan and also lodged false complaint against him and though the Courts below have affirmed this finding as not perverse, still the fact remains that there was some hot exchange between Shri Chotekhan and respondent No. 1 which ultimately resulted into respondent No. 1 abusing Shri Chotekhan. The exact abuses uttered by respondent No. 1 are also not reproduced in inquiry report. It is not the case of petitioner that the abuses were filthy. These facts which are available on record distinguish this case from the other cases in which Hon"ble Apex Court has upheld the punishment of dismissal for abusing. There appears to be some provocation to respondent No. 1 and also a mitigating circumstances in this case. Respondent No. 1 was patient of paralysis and has attained the age of superannuation on 31-10-2002 itself. Perusal of past service record of respondent No. 1 reveals that he was departmentally punished at least on 7 earlier occasions. Though in record there are total 8 misconducts shown for last one no punishment was/has been inflicted and only show cause notice for dismissal was issued. It appears that said show cause notice was quashed and set aside by Labour Court and hence, there are only 7 earlier misconducts. One of them is for indisciplined behaviour while on duty and for it, respondent No.1 was fined Rs. 10/- only on 24-7-1979. The argument that Discipline and Appeal Procedure does not provide for remedy of appeal against such fine is of no assistance to respondent No. 1. Apart from this, there are five other misconducts to his credit. Hence, this is not the matter in which respondent No. 1 can be permitted to go scot-free. I therefore, modify the order of grant of full back wages from 5-11-1998 till 31-10-2002 as passed by Labour Court and direct petitioner employer to pay him 50% amount of backwages for said period.

10. The order of Labour Court dated 13-4-2004 is accordingly partially modified. The dismissal of respondent No. 1 by order dated 5-11-1998 is held to be unfair labour practice but respondent No. 1 shall be entitled to only 50% of backwages from date of dismissal till his retirement date. Writ petition is thus partially allowed. Rule made absolute above terms. No costs.