
(2001) 02 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 922 of 1991

Maharashtra State Road Transport Corporation	APPELLANT
Vs	
Syed Azgar Ali	RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:

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

Citation : (2001) 2 BomCR 626 : (2001) 90 FLR 394

Hon'ble Judges : S.D. Gundewar, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant; B.M. Khan, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Gundewar, J.—By this writ petition, the petitioner Maharashtra State Road Transport Corporation, Akola (hereinafter referred to as the M.S.R.T.C.) seeks to challenge the order dated 30-10-1990 passed by the learned Member, Industrial Court, Nagpur in Revision (U.L.P.) No. 63/1986.

2. A few facts leading to the present dispute, in brief, are under:

The respondent Syed Azgar Ali was working as conductor with the petitioner. On 4-1-1984, he was on duty as a conductor on the City Bus No. 7519 which was going from Akola City to Airport. This bus came to be checked near Shioni Stop by the Flying Squad of the petitioner, and at that time, there were in all 33 passengers consisting of 30 adults and 3 children in the bus. Out of them, three passengers were not having tickets though the respondent had recovered 60 ps. from each of them towards fare. The Checking Officer recorded the statement of those passengers and that of the driver of the said bus. The respondent, however, declined to give statement before the Checking Officer. It appears that there was manhandling of the Checking Officers at the time when they started recording the statements of ticketless passengers allegedly at the instance of the

respondent and, therefore, a report came to be lodged by the Checking Officer at Police Station, Civil Lines, Akola. The charge sheet was then served upon the respondent and the departmental enquiry was held. After an enquiry the Enquiry Officer found the respondent guilty and ultimately he came to be dismissed from service.

3. Being aggrieved by the dismissal, the respondent filed the complaint u/s 28 read with Schedule IV, Item 1 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as the M.R.T.U. & P.U.L.P. Act) mainly on the ground that he was not given appropriate opportunity to defend his case and the principles of natural justice were not adhered to. It was also contended by the respondent in the said complaint that he had issued tickets to all the passengers, which fact is supported by the Way-Bill, but neither the Checking staff nor the Enquiry Officer considered the same. It was further contended by the respondent that the punishment awarded to him was unduly harsh and disproportionate to the alleged guilt.

4. The Labour Court dismissed the complaint by its order dated 25-3-1986. This was challenged by the respondent before the Industrial Court, Nagpur in Revision, which has been allowed by the Industrial Court vide its order dated 30-10-1990 and Industrial Court ordered reinstatement of the respondent with continuity in service and full back wages. Being dissatisfied with the said order passed by the Industrial Court, Nagpur the petitioner has filed the present petition.

5. Heard Shri V.G. Wankhede, the learned Counsel for the petitioner and Shri B.M. Khan, the learned Counsel for the respondent.

6. It is submitted by Shri Wankhede, the learned Counsel for the petitioner that the learned Member of the Industrial Court erred in allowing the revision and setting aside the order passed by the Labour Court observing that the Enquiry Officer had not examined the ticketless passengers. Though the Enquiry Officer had not examined ticketless passengers, the Industrial Court was not justified in discarding the evidence of Shri Y.R. Deshmukh and A.D. Pawar as their evidence, in clear terms, points out to the guilt of the respondent. For this he has placed reliance on a decision in State of Haryana and Another Vs. Rattan Singh, .

7. I have carefully gone through the said decision wherein the Apex Court has held that the evidence of the Inspector could be held to be sufficient for proving the charge against the employee in such cases. In view of this, according to Shri Wankhede, the Industrial Court was not justified in not applying the principle laid down by the Apex Court in the aforesaid decision and submitted that on this very ground, the impugned order passed by the Industrial Court is liable to be quashed by allowing the present petition. This submission made by Shri Wankhede cannot be accepted. It is, no doubt, true that the Apex Court, in its decision (cited supra) has held that in a given case the evidence of the Inspector

though the ticketless passengers are not examined, can be held to be sufficient for proving the guilt of an employee. However, the question remains to be considered as to whether in the case at hand the evidence of Inspector or an Enquiry Officer could not have been held to be sufficient for proving the alleged guilt of the respondent ?

8. A perusal of the impugned order passed by the Industrial Court clearly indicates that the learned Member of the Industrial Court has carefully considered the oral as well as documentary evidence in detail and has given several reasons for not believing the same and came to the conclusion that the evidence of an Enquiry Officer, unless corroborated by some other independent evidence, was not worthy of credence and it is in this context, the Industrial Court found that the ticketless passengers could have been examined to corroborate the version of an Enquiry Officer. In this view of the matter, the principle, as applied by the Industrial Court, cannot be said to be faulty. Here, it is pertinent to mention that the Industrial Court has noticed from the entries in the Way-Bill that the number of passengers to whom the tickets were shown to have been issued in the Way-Bill, tallied with the number of passengers found in the bus except one adult and one child, and observed that in the absence of any clear, cogent and specific evidence, it cannot be said that any of the passengers found in the bus at the time of checking was without ticket. Shri Wankhede, the learned Counsel for the petitioner was unable to state as to how this observation made by the Industrial Court is incorrect or erroneous.

9. Further, I myself have also perused the entries in the Way-Bill and on perusal of the same, I find that the aforesaid observation made by the Industrial Court cannot be said to be incorrect or improper. The entries in the Way-Bill, in my view, support the case of the respondent and falsify the defence of the petitioner.

10. In fact, in writ jurisdiction, it is not within the domain of this Court to assess the evidence. It is for the revisional Court to appreciate and consider as to whether a particular piece of evidence is worthy of credence or not and in my opinion, the Industrial Court did the said job aptly and correctly by considering the entire evidence on record in its proper perspective. In view of this, I find that there is no scope for interfering with the impugned order passed by the Industrial Court.

11. For the reasons stated hereinabove, the impugned order passed by the Industrial Court, in my opinion, is just and proper and it does not require any interference at the hands of this Court.

12. During the course of arguments, it has been brought to my notice by the learned Counsel appearing for both the parties that the respondent was terminated on 28-1-1985 on the basis of the enquiry report and was then reinstated as per the directions of the Industrial Court vide the impugned order on 1-5-1991 and, therefore, I hold that the respondent is entitled to claim back wages from 28-1-1985 to 30-4-1991, and the petitioner is liable to pay the same

to him without delay since his services came to be terminated w.e.f. 23-2-2000 on medical grounds.

13. In the result, therefore, the writ petition is dismissed with no order as to costs. Interim stay of back wages stands vacated. The petitioner is directed to comply with the impugned order without delay. Rule stands discharged.