
(1995) 03 BOM CK 0052

In the Bombay High Court

Case No : Appellate Civil Jurisdiction Writ Petition No. 942 of 1989

Pandurang Kashinath Wani

APPELLANT

Vs

Divisional Controller, M.S.R.T.C., Dhule and Others

RESPONDENT

Date of Decision : 16-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices

Act, 1971 — Section 28, 44

Citation : (1996) 1 LLJ 540

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Articles 226 and 227 of the Constitution of India is directed against an order of the Industrial Court, Nasik, dated 7.10.1988 made in a joint order in Revision Application (ULP) No. 106 of 1988 and Revision Application (ULP) No. 125 of 1988, under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the Act).

2. The First Respondent is the Divisional Controller, Maharashtra State Road Transport Corporation, Dhule and the Second Respondent is the Maharashtra State Road Transport Corporation which does the business of transport of passengers by its buses. The petitioner was employed in the service of the Second Respondent as Bus Conductor from 25.4.1968. On 27.3.1985 the Petitioner was working as Conductor on a bus of the First Respondent plying from Hanumantapada to Sakri. When the Inspector checked the passengers for their tickets and also the weigh-bill, ticket tray and the cash in the money bag of the Conductor, the following irregularities were noticed : (1) one passenger who was travelling from Kakarpada to Shrisole had paid his full fare, but had been issued a used ticket of the previous trip (2) two and half passengers travelling from Sawarpada to Jamzira were found issued two tickets of Rs. 1.20, though the tickets were used tickets from the previous trip (3) one passenger from

Hanumantapada to Shrisole was issued a used ticket after collecting the full fare from him; (4) an amount of Rs. 11.30 was found to be unexplained cash excess in the money bag; (5) inspection of the money bag also disclosed that it contained one ticket of 90 paise, five tickets of Rs. 1.50, one ticket of Rs. 1.80, three tickets of Rs. 5.60 and one ticket of Rs. 1.20 all of which were used tickets which had been punched with an appropriate entry and exit stage numbers; (6) the waybill had not been properly filled up and when the explanation was sought from the Petitioner, he refused to give an explanation and (7) the way-bill had not been properly filled up and the punching of tickets was also wrong. Finding that the Petitioner's explanation for these irregularities was unsatisfactory, the Petitioner was charged with misconducts under the applicable Service Regulations vide charge-sheet dated 1.5.1985. The Petitioner gave a reply to the said charge-sheet and contended that he was not guilty of the misconduct alleged against him. A detailed enquiry was held by the Enquiry Officer-Cum-Competent Authority who found the Petitioner guilty of the charges alleged against him. Though the petitioner was in service for 18 years, it had been noticed that on two similar occasions he had indulged in an identical misconduct of reissuing used tickets and pocketing the money. Considering all circumstances, the Competent Authority of the First Respondent decided to dismiss the Petitioner from service and the Petitioner was dismissed from service by an order dated 25.1.1986.

3. The petitioner challenged his dismissal before the Labour Court, Dhule, by his complaint (ULP) No. 42 of 1986 under the provisions of Item 1 of Schedule IV read with section 28 of the Act. By its order dated 20th April 1988, the Labour Court, Dhule, rejected the case of the Petitioner about the invalidity of the domestic enquiry conducted by the First Respondent and held that the domestic enquiry conducted by the First Respondent was fair, legal and consonant with the principles of natural justice and that the findings arrived at by the Inquiry Officer were not perverse. The Labour Court, however, held that the punishment awarded to the Petitioner was shockingly disproportionate and, therefore, amounted to an unfair labour practice, amounted to an unfair labour practice. Consequently the Labour Court directed reinstatement of the Petitioner by giving him fresh service without continuity of service and back wages. Being aggrieved by the order of the Labour Court both the Petitioner and the First Respondent moved the Industrial Court by Revision Application (ULP) No. 106 of 1988 and Revision Application (ULP) No. 125 of 1988, respectively, u/s 44 of the Act. By the impugned order, the Industrial Court Nasik set aside the order of the Labour Court as being unjustified and contrary to law, dismissed the revision application of the Petitioner, allowed the revision application of the First Respondent and dismissed the complaint of the Petitioner. Being aggrieved by the said order, the Petitioner is before this Court by the present writ petition.

4. Mr. Kochar learned Advocate appearing for the petitioner raised three contentions (1) That the domestic enquiry was contrary to the principles of natural justice and that the Labour Court and Industrial Court erred in not

accepting the said contention 92) that the findings of the Inquiry Officer-Cum-Competent Authority were perverse in that even if all facts alleged in the charge-sheet were proved they do not constitute misconducts within the meaning of the relevant Standing Orders and, lastly, (3) the punishment was shockingly disproportionate.

5. Though it is normally not the function of this Court in writ jurisdiction to re-appreciate the evidence in view of the fact that the Labour Court's finding on the first issue as to the legality and validity of the domestic enquiry was somewhat terse, not indicating the facts which were considered, I permitted Mr. Kochar to take me through the proceedings of the domestic enquiry so that the grievance could be examined. Even after meticulously scanning the inquiry report on record, I am unable to accept the contention made. The Petitioner was given an opportunity to reply to the charge-sheet. He was present at the inquiry where the witnesses of the First Respondent were examined in his presence and he was given an opportunity to cross-examine them. He was also permitted to lead his evidence in his support and required to answer such questions which the Inquiry Officer put. Prima facie, I see nothing in the Inquiry which could have been considered contrary to the principles of natural justice. Mr. Kochar made two points. He urged that some of the statements of the passengers recorded contemporaneously were used as evidence at the inquiry without actually producing the passengers affirming the said statements for cross-examination. This, according to him, was breach of the principle of natural justice. I am unable to agree. Each statement of the passenger clearly showed that the statement itself as recorded in the presence of the petitioner who made an endorsement at the footing of each statement and also put his signature. I am unable to accept the contention that the statements were taken behind the back of the petitioner. It is doubtless true that the passengers were not called at the domestic inquiry and permitted to be cross-examined. But that is hardly a circumstance warranting an inference of breach of natural justice. The Supreme Court in *State of Haryana and Another Vs. Rattan Singh*, has pointed out that in a domestic enquiry that strict and sophisticated rules of evidence under the Evidence Act may not apply and all materials which are logically probative for a prudent mind are permissible. The Supreme Court specifically considered an identical question in that case of a Transport Authority in Haryana. In that case a bus conductor of the Transport Undertaking had been charge-sheeted for not collecting due fares from certain passengers. On the basis of statements of the passengers which were used at the inquiry without actually examining the passengers. The Supreme Court declined to hold that the said circumstance by itself amounts to a breach of principles of natural justice and pointed out that it could not be said that merely because statements of passengers were not recorded by the Inspector of the Flying Squad, the order that followed was invalid. In am, therefore, unable to accept the contention of Mr. Kochar that as the passengers, whose statements were recorded were not examined at the inquiry, it would per se vitiate the inquiry. Mr. Kochar urged faintly that as the Petitioner had been

cross-examined in the enquiry, the inquiry was bad. With the assistance of Mr. Kochar, I have scanned the questions that were put to him at the inquiry in the so-called cross-examination and I am not satisfied that they would indicate any bias on the part of the Inquiry Officer to prove the guilt of the delinquent employee or that they demonstrate prejudice. In my view, the questions are clarificatory in nature and indicate to attempt on the part of the Inquiry Officer to explore the true circumstances. This contention also must fail.

6. Next, Mr. Kochar urged that the Inquiry Officer's finding are perverse inasmuch as the facts alleged against the Petitioner, even if held to be proved, did not constitute misconduct. This, in my view, is a two-fold argument. The circumstances were that the conductor was found in flagrant breach having issued re-issued tickets to the passengers, the statements of the passengers clearly affirm this and the evidence on record clearly bears this out. The Petitioner was also found with sufficient stock of used tickets in his money bag, for which the explanation he gave, to say the least, was fanciful and unsatisfactory. In my view, the facts proved against the petitioner at the inquiry would sufficiently fall within the head of misconduct alleged against him by the charge-sheet. The argument of perversity of finding must, therefore, fail.

7. The only argument which seems to have been seriously canvassed before the Labour Court was, that the punishment was grossly disproportionate to the misconduct. Here, I find that the Labour Court has slightly misdirected itself. The only situation under Item 1, Schedule IV of the Act which could have empowered the Labour Court to hold that there was unfair labour practices and interfere with the punishment meted out to the petitioner was the one contemplated under clause (g). In order to make out a misconduct under clause (g), it would have to be shown that the misconduct proved against the delinquent was of a minor or technical character, that the order of dismissal had been passed without having regard to the nature of that particular misconduct or past record of the employee and it is only upon a cumulative assessment of all these factors that the Labour Court can say that the order is shockingly disproportionate punishment so as to amount to an unfair labour practice under Clause (g) of Item (1) of Schedule IV of the Act. In the instant case, I do not find any such circumstances held proven even by the Labour Court. The reasoning as to the findings on Issues 4 to 7 made by the Labour Court were perfunctory and amounted to total disregard to the past record of the employee, over-emphasizing the length of service of the employee to the utter exclusion of the bad past record. This, in my view, was clearly a misdirection in law by the Labour Court curable by the Industrial Court u/s 44 of the Act. The Industrial Court has rightly pointed out that the order of punishment had taken notice not only of the length of service of the petitioner, but also of the serious nature of the misconduct and the previous record of the Petitioner for identical misconduct. The Industrial Court, in my view, was therefore fully justified in setting aside the order made by the Labour Court and in allowing the revision application of the First Respondent. I find that there is no scope for interference with the order made by the Industrial Court.

8. I am informed by Mr. Kochar that because the Petitioner had been dismissed from service for an act of misconduct involving dishonesty in connection with the Employer's business or property, it is likely that the entire amount of gratuity payable to him under the provisions of Payment of Gratuity Act may be refused and, if it is done, it would be extremely harsh upon the Petitioner-employee. Though I am not inclined to disturb the order of the Industrial Court, I would recommend to the First Respondent to show some mercy to the Petitioner and find a way to paying him at least his earned gratuity for a period of his service.

9. In the result, I find no merit in the petition. The order of the Industrial Court does not call for any interference in writ jurisdiction. The writ petition fails and is hereby dismissed. Rule is discharged with no order as to costs.