

(2002) 09 BOM CK 0118
In the Bombay High Court
Case No : Writ Petition No. 698 of 1996

Pune Municipal Transport

APPELLANT

Vs

Shankar Laxman Awati and Another

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 44

Citation : (2003) 1 ALLMR 34 : (2003) 1 BomCR 514 : (2003) 97 FLR 1071

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

Bench : Single Bench

Advocate : R.G. Ketkar, for the Appellant; N.A. Kulkarni, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner, Pune Municipal Transport is aggrieved by the orders passed by the Labour Court dated 13th September, 1994 and the order passed the Industrial Court in revision application on 28th September, 1995. Both the courts below have recorded concurrent findings of facts against the petitioner. Both the courts have directed reinstatement of the respondent driver with full backwages and continuity of service. Even before this Court, the order of reinstatement found favour and, therefore, on 7th February 1996, the petitioner was directed to re-instate the respondent workman. It appears that the rule was restricted to the question of backwages to the tune of Rs. 1,44,000/- out of which the petitioner appears to have deposited a sum of Rs. 50,000/- in the Industrial Court, Pune.

2. The respondent joined the services of the petitioner as a driver on 1-11-1971. He was dismissed from service on 17-2-1984 for the alleged acts of misconducts that he had gone to the residence of the Transport Manager and had abused him and that he was under the influence of Alcohol. Before the order of dismissal was issued, it appears that a charge-sheet was given and the enquiry was held in the charges against the respondent. On the basis of the domestic enquiry, the petitioner dismissed the respondent workman from employment.

3. The respondent workman filed a complaint of unfair labour practice before the Labour Court u/s 28 read with section 30 and Item I of Schedule IV of the (M.R.T.U. & P.U.L.P. Act). The parties appeared before the Labour Court and adduced their pleadings and documentary evidence and oral evidence. The Labour Court, recorded a finding on the basis of the material on record that the enquiry held by the petitioner was not fair and proper and the same was vitiated. The main ground on which the Labour Court held the enquiry to be vitiated was that the main witness Shri Momin who was examined in the enquiry left the enquiry in the midst and he was never offered for cross-examination. The second ground was that the report of the Enquiry Officer was not produced before the Labour Court. The Labour Court has enumerated these lapses in the conduct of the enquiry and held that the enquiry was not fair and proper. I cannot find any illegality or infirmity in the said finding recorded by the Labour Court that the enquiry was vitiated for the reasons recorded by the Labour Court. The Labour Court was fully justified in coming to the conclusion that the enquiry was not fair and proper as the delinquent workman was not given opportunity to defend himself. Even thereafter, the petitioner did not avail of the opportunity of proving the misconduct before the Labour Court. The petitioner examined only the Enquiry Officer before the Labour Court, whose evidence was of futility as far as the merits of the misconduct was concerned. There was no witness examined by the petitioner before the Labour Court to prove the misconduct and to justify its action of dismissal. The Labour Court, therefore, has rightly found that the petitioner had failed to justify its action of dismissal of the respondent driver. The Labour Court, recorded a finding that the petitioner had engaged in unfair labour practice as alleged by the respondent in his completion (sic complaint). The Labour Court has followed the normal rule of reinstatement with full backwages and continuity of service. The Labour Court has considered the entire material on record and has come to the conclusion that the charge levelled against the respondent workman was not proved and, therefore, his dismissal amounted to unfair labour practice. The Labour Court, therefore, has directed the petitioner to reinstate the respondent with continuity of service and with backwages for the entire period at the rate of last drawn wages. The Labour Court has not granted the full backwages for the whole period but appears to have restricted the grant of backwages at the rate of last drawn wages i.e. the wages which were drawn by the delinquent workman in February 1984. The Labour Court, indirectly, therefore, appears to have punished the respondent by denying him the larger portion of the backwages. The respondent did not challenge the said order before the Industrial Court and accepted the same. The petitioner, however, was aggrieved by the said order of the Labour Court and, therefore, filed revision application before Labour Court u/s 44 of the M.R.T.U. & P.U.L.P. Act. Even the Industrial Court has gone through the entire material threadbare and has found that the trial Court had not committed any illegality or any perversity in its findings. The Industrial Court has confirmed the order of the Labour Court in the revision as, there was absolutely no error of law and not even an error of fact apparent on the face of the record. The Labour Court appears to have gone into

the entire matter as reflected from its order. The respondent workman has not challenged the order of denial of part backwages even before this Court.

4. In the face of the concurrent findings of facts by both the courts below, it is not possible for me to interfere with the impugned judgment and order of both the Courts. There is absolutely no question of law which is raised in this petition. The entire matter rests on pure question of facts which have been properly appreciated by both the courts below. In my opinion, there is no miscarriage of justice by the courts below. The petitioner was rightly directed to reinstate the workman. The said order of reinstatement also came to be confirmed by this Court at the time of admission and secondly the respondent appears to have been reinstated. It appears that he was reinstated on and from 20th February, 1996 and worked upto 15-11-1999. It appears that subsequently, he remained absent unauthorisedly and was removed from service on and from 7th April, 2000. I have recorded these facts, though they have no bearing on the merits of the present petition. There is no substance in the petition and the same deserves to be dismissed. Rule is discharged.

5. I may however, make one observations in respect of past record of the respondent. I fail to understand how public transport run by the petitioner could tolerate and continue such a driver to drive the public bus in the public road. His service record is extremely bad. He has seven punishments which are for minor misconducts. There are, however, 12 punishments which relate to his commission of accidents while driving the bus. One such accident appears to be of fatal nature. It appears that the respondent driver was habitually rash and negligent in driving. All the 12 instances of accident ought to have been taken very seriously by the petitioner. I fail to understand how the petitioner tolerated such a driver and took risk of continuing him in employment at the cost of the pedestrians and public. The record shows that he was a rash driver and had dashed vehicles as well as human beings. He was lucky to be continued in employment. He was also lucky enough to get reinstatement because of the default of the petitioner before the Labour Court. The petitioner shall be more than careful atleast in respect of drivers.

6. The petitioners have deposited Rs. 50,000/- out of the total amount ordered of Rs. 1,44,000/-. The petitioners are hereby directed to pay to the respondent workman the remaining amount after adjusting the amount of Rs. 50,000/- deposited in the trial Court. The respondent workman is also entitled to withdraw the amount of Rs. 50,000/- deposited in the trial Court, if not already withdrawn.

7. It further requires to be mentioned that the legal department of the petitioner needs to be overhauled and to be managed professionally. Good matters get very badly handled and there is much more attention and professional skill required. The petitioner needs a team of good and competent Advocates to do the work before the trial courts. It might have to spend more towards the professional fees but thereby it would certainly save a lot by way of backwages for years together and the delinquent employees would be kept out to tone up the public

service in the interest of Pune people.

The Registrar is directed to send a true copy of this order to the Pune Municipal Commissioner for action.