
(2002) 09 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 678 of 1996

Pune Municipal Transport

APPELLANT

Vs

Subhash Shankarrao Khupase

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 33(2)

Citation : (2003) 1 BomCR 664 : (2003) 97 FLR 952

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

Bench : Single Bench

Advocate : R.G. Ketkar, for the Appellant; S.R. Nargolkar, for the Respondent

Judgement

R.J. Kochar, J.—The Pune Municipal Transport is aggrieved by the impugned Awards and orders passed by the Labour Court in reference I.D.A. No. 108 of 1988. By Part I Award, the Labour Court has held the enquiry held against the respondent conductor vitiated and illegal and improper. The Labour Court also held that the findings were perverse. After recording the said findings on 22nd January, 1991, the Labour Court proceeded further with the matter by allowing the petitioner to adduce evidence to justify its action of dismissal of the respondent workman. It appears that the petitioner adduced evidence by examining the checker of the bus viz., Shri Baig to justify its action of dismissal. The respondent workman did not enter into the witness box either before the Labour Court or before the Enquiry Officer. The Labour Court appears to have not been satisfied with the enquiry and the findings of the Enquiry Officer and also with the evidence adduced by the petitioner before the Labour Court in support of the order of dismissal. The Labour Court has given reasons in both the Awards. In the Part I Award, the Labour Court has held the enquiry vitiated mainly on the ground that the complete enquiry papers were not produced and whatever record was produced was not authenticated as true copy. It appears that the original enquiry proceedings were not produced before the Labour Court. Even on the basis of the material on record, the Labour Court was not satisfied

with the conclusion of the Enquiry Officer that the charge of misappropriation and dishonesty on the part of the respondent conductor was established.

2. I have gone through the typed copies of the enquiry proceedings produced in this petition. I am of the opinion that there was sufficient material in the enquiry to hold the respondent conductor guilty of the charge of not issuing tickets after receipt of fare from the passengers and issuing unpunched tickets with a dishonest intention to resell or reuse the same.

3. Shri Ketkar, the learned Advocate for the petitioner, however, has fairly accepted the position that he was not knowing which papers were produced and which papers were not before the Labour Court. In the aforesaid circumstances, it will not be just and proper on my part to upset the Part I Award of the Labour Court declaring the enquiry illegal, improper and vitiated. The Labour Court was the best Judge of the facts which appeared before it on record. I am, therefore, not inclined to upset the Part I Award in respect of the enquiry and the findings of the Enquiry Officer. As far as the Award Part II is concerned, the Labour Court is further justified in criticising the evidence recorded before it on behalf of the petitioners. I am not at all happy with the manner in which the petitioner conducted the matter before the Labour Court. It was absolutely simple and easy for the petitioner to have produced the original enquiry papers or could have filed the copies of the proceedings as true copies. There is absolutely no doubt that the entire enquiry proceedings with the report of the Enquiry Officer must be produced before the Labour Court and not truncated documents of the proceedings to rely upon. The Labour Court was rightly at loss to find out what papers were missing which perhaps would have helped the delinquent workman in the enquiry. It is possible to level charge against the management that some documents which would have gone against the management and which would have favoured the delinquent workman, were deliberately withheld by the management from the Enquiry Officer or from the Labour Court. To avoid such serious charge it is a duty of the employer to produce the whole proceedings of the enquiry including the report of the Enquiry Officer before the Labour Court. The petitioner has not performed this simple act which it was supposed to do. Even before the Labour Court, the petitioner could have justified its action of dismissal by adducing proper evidence. The petitioner ought to have produced whatever material was before the Labour Court in the enquiry in support of the charges against the respondent. Even before this Court, the petitioner has not cared to produce the evidence recorded before the Labour Court. In the aforesaid circumstances, it is not possible for me to interfere with the Awards, Part I and part II given by the Labour Court.

4. The Labour Court has granted reinstatement with 50% backwages to the respondent. At the time of admission of the petition, this Court had not granted stay of the direction of reinstatement and had restricted the stay to the question of backwages. Secondly, therefore, it is an admitted fact that the petitioners have reinstated the respondent and he is still in employment. The Labour Court

has denied him 50% backwages so that he could be punished for his bad past record, with a hope to see that the respondent would improve in future. Though the Labour Court has used the language of depriving the respondent workman of 50% backwages by way of punishment, what the Labour Court has contemplated is exercise of powers u/s 11-A of the Industrial Disputes Act, 1947 to put condition for reinstatement.

5. The hopes of the Labour Court appeared to have been totally belied as even the aftermath of the respondent workman is equally bad. In the past, he had 34 punishments, some of them serious. After the Award, the Labour Court thought that denial of 50% backwages would act as good lesson for him to improve his conduct in future. The Labour Court was absolutely right in hoping that the respondent would learn lesson in future. Shri Ketkar, the learned Advocate for the petitioner, has produced the original service record of the respondent as I wanted to know for myself whether the respondent workman has improved his conduct after reinstatement. Shri Ketkar has pointed from the service book of the respondent that he was punished on 33 occasions after reinstatement and that there was absolutely no improvement in his conduct. Out of the aforesaid 33 punishments there were two major or serious punishments. It appears that the respondent workman is being treated very leniently and very politely by the management of the petitioner. Though the record reflects not less than 67 punishments the respondent still remains a privileged employee to continue in employment as a conductor in the public service of the petitioner. The Labour Court's hope that denial of 50% backwages would improve the respondent is not materialised. Even in the future, after reinstatement, he appears to have been punished for 33 times. Considering the entire matter, it will not be in the interest of justice, in the interest of the petitioner and also in the interest of public to Award any wages to the respondent employee. I, therefore, quash and set aside the Part II Award so far as it relates to 50% backwages, payable to the respondent. The Award of reinstatement was on account of utter failure on the part of the petitioner in the conduct of the proceedings before the Labour Court and not because the respondent was not guilty of the charges levelled against him. It is crystal clear from the record that the respondent is habitual misconduct or while in employment.

I, therefore, modify the Part II Award by denying even the 50% backwages to the respondent. Hence, the respondent is not entitled to any backwages. The petition is partly allowed. Rule is partly made absolute with no costs.