
(2005) 04 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 473 of 1993

Ramesh Bakde

APPELLANT

Vs

Divisional Controller, MSRTC and Another

RESPONDENT

Date of Decision : 21-04-2005

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 : (2006) 2 BomCR 361 : (2005) 4 MhLj 152

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

Bench : Single Bench

Advocate : C. Jagdale, for the Appellant; V.G. Wankhede, for the Respondent

Judgement

B.P. Dharmadhikari, J.—By this petition under Articles 226 and 227 of Constitution of India, the petitioner, a dismissed employee of respondent No. 1 challenges the adverse order passed by Industrial Court Nagpur on 22nd September, 1992 whereby the said Court has allowed Revision u/s 44 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (referred to as to as MRTU Act hereinafter) filed by respondent No. 1 and has quashed and set aside the order 31-8-1991 passed by Second Labour Court Nagpur in Complaint U.L.P. No. 865 of 1989. The petitioner was working as driver and he was dismissed from services of respondent No. 1 MSRTC with effect from 3rd July, 1989 for proved misconduct after conducting departmental inquiry against him. He did challenge that dismissal in Complaint U.L.P. No. 865 of 1989 u/s 28 of MRTU Act before Second Labour Court Nagpur and the said Court found that charges levelled against him were not proved in departmental inquiry and hence granted him relief of reinstatement with full backwages and continuity on 31-8-1991.

2. I have heard Advocate Jagdale for petitioner employee and Advocate V. G. Wankhede for respondent No. 1 employer at length. The Labour Court has

applied its mind independently to the evidence on record and has recorded a finding that misconduct is not proved. The learned member of Industrial Court has similarly considered the evidence to record a contrary finding. Both the Advocates have taken this Court through the entire evidence and documents on record to substantiate the correctness of their respective contentions. Counsel for petitioner states that misconduct is not proved while the counsel for respondent No. 1 states that misconduct is proved. Advocate Jagdale for petitioner has tried to demonstrate how Industrial Court has exceeded its jurisdiction by re-appreciating the evidence and by ignoring the importance of consideration of past service record. However, I find that the learned Labour Court as also the learned Member of Industrial Court has considered this issue independent of the findings reached by inquiry officer. In view of this, it is not necessary for this Court to evaluate at length the comparative strength of respective arguments of both learned Advocates as it also necessitates reference in detail to the respective evidence of parties in departmental inquiry in the light of findings of Enquiry Officer.

3. Perusal of order dated 31st August, 1991 passed by Second Labour Court Nagpur in favour of petitioner reveals that the petitioner did not dispute fairness of departmental inquiry before that Court. The Labour Court therefore proceeded to decide the other issues and the issues framed with answer as recorded by Labour Court read :-

1. Whether the charges levelled against the No. complainant stand proved in the inquiry? 2. Whether the punishment of dismissal awarded to Does not the complainant is shockingly disproportionate? survive. 3. Whether the complainant is entitled for Yes. reinstatement with continuity in service and back wages? 4. What order? As per order.

4. Even after these issues were framed, the parties have not led any oral evidence before the Labour Court. These issues are answered by Labour Court on the basis of material which was available before the inquiry officer.

5. Thus, instead of attempting to find out whether findings recorded by inquiry officer that misconduct stands proved are perverse or not, the Labour Court has stepped into the shoes of inquiry officer and has itself appreciated entire evidence to find out for itself whether misconduct has been proved in inquiry or not. The order shows that it does not contain any reference to inquiry report or to any finding recorded therein. In fact, when petitioner who was complainant before Labour Court admitted fairness of departmental inquiry, the Labour Court ought to have framed the issue to find out whether findings recorded by inquiry officer are just and proper or are perverse. Admittedly that has not been done. The Labour Court has found that charges levelled against petitioner were of interference with the checking work of bus by the checking staff. It has then proceeded to divide particulars given in the charge-sheet and the evidence led before inquiry officer into two parts. Under first head, it has considered direct interference by him while under the second head it has considered indirect

interference. For this purpose, it has looked into the evidence of witnesses and their cross-examination and thereafter has drawn, its own conclusion that there is no evidence on record to demonstrate either the direct interference or in direct interference by petitioner in the work of checking staff. After reaching this finding, it has considered the scope of power available to it for interference with the quantum of punishment and has ultimately passed order which is in favour of petitioner. Learned Labour Court has not looked into any finding recorded by inquiry officer and has not demonstrated how or why such finding of inquiry officer is perverse.

6. When the matter went before Industrial Court, in revisional jurisdiction, the learned member of Industrial Court has again appreciated the evidence on record in the light of findings reached by Labour Court. Thus, there is re-appreciation by learned member of Industrial Court of entire evidence to find out whether findings reached by Labour Court are proper or not. In paragraph 14 of its judgment at the end, the learned member of Industrial Court has concluded that "there is ample evidence on record to prove that behaviour of Driver was rude and subversive to the discipline. The evidence is sufficient to prove the charge against the Driver. The trial Court erred in rejecting it. The reasons given by it are not at all proper for rejecting their evidence. In fact, the trial Court has not considered the evidence in details. In my opinion, the inquiry officer was right in holding the Driver as guilty for above misconducts". It has thereafter considered his past service record and ultimately has allowed the revision filed by respondent MSRTC. Again, the only reference to the finding reached by inquiry officer is at one place and in the line mentioned above.

7. The inquiry report is not even annexed with writ petition. Said report is available on record of ULP complaint received from Labour Court. Its perusal reveals that the inquiry officer has considered the evidence of witnesses and has recorded reasons for not accepting deposition of Gramsevak Shri Mundhe given in departmental inquiry and for accepting the spot panchanama prepared by him. Similarly inquiry officer has disbelieved deposition of Shri Kale given by him in departmental inquiry and to rely upon spot panchanama which bears his signature. The inquiry officer has also considered evidence of jeep driver Shri Dangre and contradictions and inconsistencies in the defence of petitioner. However, this is lost sight of by the Labour Court as also by the Industrial Court. The Hon''ble Apex Court has in judgment reported at N. Rajarathinam Vs. State of T.N. and Another, considered similar issue and has held that if the finding of inquiry officer is based upon some evidence, it cannot be said that finding is based upon no evidence. In that case 17 witnesses were examined by Government to prove the charge and they turned hostile. There was only solitary evidence of one witness and the finding of inquiry officer against delinquent employee was based upon this witness. It is in this background that the Hon''ble Apex Court has made above observations. In Thiruvanaikoil Co-operative Urban Bank Limited Vs. The Presiding Officer, Labour Court, Tiruchirapalli and N.P. Ravishankar, the Madras High Court has held that a finding of fact arrived at in a

disciplinary proceedings could be interfered with by Labour Court only when there was no material to support it or no reasonable man would have arrived at that finding on the basis of material available before inquiry officer. Similar view is also taken by Division Bench of this Court in case of V.N. Damle v. Hon'ble Chief Justice Bombay High Court reported at 2002 (3) CLR 800.

8. Thus, the Labour Court ought to have considered the findings/ conclusions reached by inquiry officer and effort ought to have been made by it to find out whether it is based on any evidence available on record of Departmental Enquiry in support thereof. The learned Labour Court erred in applying its mind afresh without noticing the application of mind of by inquiry officer to the material on record. If there is some material on record and conclusion drawn by inquiry officer is supported by it, it is not open to Labour Court to hold that such finding is perverse only because it is tempted to take other view of the matter. Thus, Labour Court has acted without jurisdiction in independently appreciating the material on record as if it was writing the inquiry report. The learned member of Industrial Court has again not considered the findings reached by inquiry officer and has not made an attempt to find out whether such finding is supported by the evidence or document available on record. Industrial Court also has taken fresh review of entire evidence and has found that Labour Court did not consider entire evidence available before inquiry officer. It found for itself that the misconduct/charges are proved and therefore findings of inquiry officer are justified. Thus, Industrial Court also has overstepped the limits of jurisdiction available to it u/s 44 of MRTU Act. In Vithal Gaitu Marathe v. MSRTC reported at 1995 (1) CLR 854, the Division Bench of this Court has held that Industrial Court was in error in overturning the judgment of Labour Court on findings of facts based on re-appreciation of evidence and it is observed that in exercise of limited jurisdiction u/s 44, the Industrial Court cannot do so. This view is followed in 2002 (2) CLR 111 between Chief Executive Officer, Zilla Parishad, Sangali v. Shri Rajaram Rau Gavali and Anr. by learned single Judge of this Court. The learned single Judge has observed that Labour Court had based its judgment on the basis of inquiry report and the material produced before it. It has accepted the findings of inquiry officer as fair and proper. In this background, learned single Judge has held that the Industrial Court has not recorded what error of law apparent on the face of record was committed by the Labour Court and Industrial Court has re-appreciated, reassessed and re-scrutinised the entire evidence before the inquiry officer and the whole material before the Labour Court. Conclusion reached is Industrial Court had crossed limits of restricted jurisdiction of superintendents over the Labour Court.

9. In the facts of present case, the Industrial Court ought to have noticed that the Labour Court did not consider how and why any particular finding reached by inquiry officer is unsustainable and perverse. The Labour Court as also the Industrial Court overstepped the role to be played by them in the matter. I therefore find that if this Court considers the findings reached by inquiry officer and the evidence in support thereof, it will be first such exercise and that too, in

writ. Basically, under MRTU Act it is the duty of Labour Court and circumstances of the case warrant that it should be left to Labour Court. Party aggrieved may thereafter approach the Industrial Court. Hence, the impugned order of Industrial Court dated 22-9-1992 as also the order of Labour Court dated 31-8-1991 are hereby quashed and set aside. The matter is remanded back to Labour Court and for that purpose Complaint ULP No. 865/1989 is restored back to its file. Parties have already filed Pursis before it disclosing that they do not want to adduce any evidence even on merits. The Labour Court to proceed further from the stage of hearing the arguments of parties on perversity or otherwise of the findings recorded by inquiry officer and to pass appropriate orders in this respect in accordance with law. As the complaint is very old, the matter is made time bound and the same is directed to be decided as early as possible, and in any case before 31st December, 2005.

10. Rule made absolute in above terms. No cost.