

(2008) 12 BOM CK 0113

In the Bombay High Court

Case No : Writ Petition No. 4612 of 2008

Ramesh Gopinath Tidke

APPELLANT

Vs

Divisional Controller

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

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

Citation : (2009) 4 BomCR 510 : (2009) 120 FLR 871 : (2009) 2 MhLj 394

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

Bench : Single Bench

Advocate : P.N. Verma, for the Appellant; V.G. Wankhede, for the Respondent

Judgement

Dharmadhikari B.P., J.—By this Writ Petition, petitioner employee challenges the Judgment dated 27/8/2008 delivered by Member, Industrial Court, Akola in Revision U.L.P. 45/1997. Said Revision was u/s 44 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter mentioned as Act No I of 1971). Learned Member has allowed the Revision file by respondent M.S.R.T.C. and has set aside the judgment passed in U.L.P. Complaint 45/1994 on 18/ 6/1997 by Labour Court, Akola. The said U.L.P. Complaint was filed by present petitioner challenging the show cause notice dated 24/2/1994 proposing punishment of dismissal after completing departmental inquiry, as said show cause notice was found to constitute unfair labour practice by Labour Court. I have heard Advocate P.N. Verma for petitioner and Advocate V.G. Wankhede for respondent.

2. Misconduct here is of unauthorised driving of empty M.S.R.T.C. bus by petitioner conductor from bus depot to bus station while regular driver was sitting on battery box. Details of misconduct are not necessary in present matter because after this judgment dated 18/6/1997 of Labour Court, the respondent M.S.R.T.C. filed Revision 45/ 1997 and thereafter proceeded to impose lesser punishment on 30/8/1997 for very same misconduct. His salary was brought

down by two stages permanently and period of suspension was regularised as paid leave and balance thereof as unpaid leave if requisite paid leave was not available to his credit. It is not in dispute that accordingly entry was made in his service book and petitioner earned the revised i.e. less salary thereafter. Petitioner pointed out these developments to learned Industrial Court and urged that the earlier show cause notice dated 24/2/1994 was already rendered infructuous.

3. Learned Member considered arguments in U.L.P. Revision on merits ignoring the contention that because of punishment of reduction in salary by two stages said show cause notice has lapsed or become infructuous. There is no application of mind insofar as the effect of said punishment on challenge before it is concerned. Perusal of its judgment particularly paragraph 29 shows that it has rightly considered the non-application of mind by Labour Court to vital aspects like the consequences of grave and irresponsible act of petitioner or then his past service record. The application of mind by learned member, Industrial Court particularly in paragraph 30-31 in this background cannot be labeled either as erroneous or perverse or then in excess of jurisdiction available to it u/s 44 of Act No. I of 1971. But then impact of voluntary act of petitioner of selecting and imposing another punishment in the matter needed consideration.

4. Petitioner on 7/7/2008 filed a Pursis before Industrial Court and disclosed these events. At the request of respondent M.S.R.T.C., Revision was adjourned to 25/ 7/2008 obviously with a view to enable M.S.R.T.C. to meet the facts mentioned in Pursis. Vide said Pursis, petitioner pointed out to Industrial Court that after adjudication by Labour Court in his favour, a fresh show cause notice dated 30/7/1997 was served upon him mentioning a lesser punishment of permanently reducing basic wages by two stages, that it was replied to by him and accordingly punishment of bringing down his wages by two stages permanently was inflicted on him on 30/8/1997 and that he was suffering that punishment i.e. its effect for last about 11 years. In Pursis therefore it was specifically stated that as misconduct proved against him in departmental inquiry which formed subject-matter of U.L.P. Complaint No. 45/1994 was already suitably punished by his Employer M.S.R.T.C., there was no occasion for imposing any further or other punishment for the same and hence, Revision had become infructuous. Though chance was given to respondent by adjourning the matter to 25/7/2008, it was not utilised. Ultimately, though all these facts figure in impugned judgment of Industrial Court, still its impact or significance has been lost sight of. Respondent could have pointed out to Industrial Court what was the correct factual position in the matter. Instead of so doing, respondent continued to beat the dead horse and wasted valuable time of Industrial Court.

5. Even this Court in present Writ Petition by speaking order dated 21st October 2008 the contention of two punishments for same misconduct was mentioned and time was given to respondent M.S.R.T.C. to verify the position. Then, it was pointed out to this Court that after judgment of Industrial Court, petitioner was

dismissed by order dated 1/10/2008. Though time of 3 weeks was given, on 11/11/2008 respondent contended that after judgment of Labour Court in favour of present petitioner was set aside by Industrial Court, the respondent proceeded to impose punishment as per show cause notice dated 24/2/1994 as it was restored and it imposed the punishment of dismissal. It was also argued that M.S.R.T.C. was ready to withdraw the punishment of reduction of salary by two stages. As these arguments were not supported by any affidavit, time till 28/11/2008 was given to respondent to place said stand on record through proper affidavit. On said date, W.P. was adjourned to 3/12/2008 at the request of petitioner. On 3rd December, respondent did not file any affidavit and arguments on lines already mentioned were again reiterated.

6. Perusal of punishment order dated 30/8/1997 shows that for very same misconduct punishment was inflicted upon petitioner and the order did not mention that it was without prejudice to rights of M.S.R.T.C. to proceed to impose more severe punishment if it's U.L.P. Revision 45/1997 was allowed. This punishment order does not mention either pending Revision or then the judgment of Labour Court. The order of dismissal dated 1/10/2008 again nowhere mentions the order of punishment dated 30/8/1997 or then the judgment of Industrial Court or of Labour Court. Thus Competent Authority of M.S.R.T.C. has imposed two punishments for same misconduct upon present petitioner. Petitioner was brought down by two stages in 1997 itself and appropriate note in this respect was taken in his service book by that Competent Authority. The permanent reduction by two stages implemented in 1997 therefore has affected the salary of petitioner for last more than 10 years. It is therefore clear that the punishment cannot be and could not have been treated as provisional. In fact, respondent M.S.R.T.C. also has not treated it as stopgap arrangement. Contentions of Advocate V.G. Wankhede on behalf of respondent as mentioned above are totally misconceived and it could not support the same by filing appropriate affidavit of its Competent Authority.

7. Respondent could have mentioned pending challenge in U.L.P. Revision while imposing punishment of reduction of salary by two stages permanently in punishment order dated 30/8/1997 and forewarned petitioner that the punishment was provisional and without prejudice to its right to inflict punishment as mentioned in show cause notice dated 24/2/1994 if it succeeded in Revision. To keep the records straight, respondent ought to have filed a Pursis accordingly in its pending Revision before Industrial Court. In absence of all these steps which were essential in present facts, the conduct of respondent - the public Corporation, does not inspire any confidence. Though it was given opportunity by Industrial Court it was not taken advantage of and even before this Court, no affidavit explaining the situation in this respect as may appear from records of punishment orders, has been filed. It is obvious that in view of punishment order dated 30/8/1997, challenge in U.L.P. Revision 45/1997 was rendered infructuous and meaningless. Subsequent dismissal for very same misconduct vide order dated 1/10/2008 is nothing but mala fide action taken to

victimise the petitioner.

8. Judgment of Industrial Court dated 27/8/2008 in Revision U.L.P. 45/1997, therefore, shows manifest error and it is unsustainable. Same is accordingly quashed and set aside. Judgment dated 18/6/1997 delivered by Labour Court, Akola in Complaint U.L.P. 45/1994 is hereby restored only because show cause notice dated 24/2/1994 has lapsed.

9. Thus Writ Petition No. 4612/2008 is allowed. Rule made absolute in above terms. Respondent to pay cost of Rs. 2000/- to the present petitioner.