

(2015) 03 BOM CK 0394

In the Bombay High Court

Case No : Writ Petition No. 4113 of 2004

Ramesh Gulabrao Bhande

APPELLANT

Vs

The Member, Industrial Court and Others

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Citation : (2015) 5 ALLMR 837 : (2016) 1 BomCR 812 : (2016) 148 FLR 614 : (2015) 6 MhLj 727

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : R.S. Sirpurkar, Advocate, for the Appellant; N.S. Rao, AGP and A.S. Mehadia, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—In Complaint ULP No. 118 of 1995, the Labour Court at Amravati has set aside the order of dismissal of the complainant from service after holding an enquiry and directed his reinstatement to his former post of Conductor with continuity in service but without backwages. This judgment and order dated 23.06.1999 was the subject matter of challenge in Revision ULP No. 137 of 1999 by the respondent employer. The Industrial Court by its judgment and order dated 03.08.2004 has set aside the same and dismissed the complaint. Hence, the employee is before this Court in this writ petition. The bus in question was plying from Chandola to Daryapur. Total 49 passengers were travelling in a bus, out of which 43 passengers were issued tickets. The charge against the petitioner was that though he collected the fare from 4 passengers boarded at Sasan, the tickets were not issued to them. In respect of other 2 passengers, the charge was that neither the tickets were issued to them nor the fare was collected from them, who boarded at Chandola and Nandrun. It was also the charge that luggage fare from one passenger was also not collected.

2. The Labour Court has recorded the finding that the enquiry conducted against the petitioner was found to be legal, proper and fair in accordance with the

principles of natural justice. However, the Labour Court has held that the findings recorded by the Enquiry Officer are perverse. The Labour Court has held that though the fare was collected from the passengers who boarded at village Sasan, in a bus plying from Chandola to Daryapur, the tickets were not issued to them. The conductor was in the process of issuance of ticket and the distance was hardly 8 kms., and it cannot be said that the complainant was negligent in performing his duties. The Industrial Court has held that the Labour Court has exceeded its jurisdiction to interfere in the findings of fact recorded by the Enquiry Officer. There was ample material available for proving the act of misconduct alleged against the complainant and hence, the question of perversity of the findings recorded by the Enquiry Officer does not at all arise.

3. Before the Enquiry Officer, one Mr. Khan, Checking Officer, was examined. The Industrial Court recorded the finding that he was not cross examined by the complainant in support of the defence that he was given an assurance by the Enquiry Officer that lenient view shall be taken. The Industrial Court has held that the complainant has not entered the witness box to depose any such assurance. The Industrial Court has further recorded the finding that the statements of the passengers were recorded by the Checking Officer in presence of the complainant. The bus travelled the distance of about 8 kms but the tickets were not issued though the fare was collected.

After going through the judgments delivered by both the courts below, I am of the view that the view taken by the employer was a possible view of the matter based on the relevant evidence available on record. The Labour Court exceeded its jurisdiction in holding that the findings recorded by the Enquiry Officer are perverse. In view of this, no jurisdictional error can be found in the view taken by the revisional court.

In the result, writ petition is dismissed.