

(2014) 10 BOM CK 0176
In the Bombay High Court
Case No : Writ Petition No.1927 of 2014

Sadhana Narhari Komatwar

APPELLANT

Vs

The Divisional Controller

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Citation : (2015) MCR 392

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Mr. K.B. Jadhav, Advocate, for the Petitioner; None, for the Respondents

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Heard the learned Advocate for the petitioner at length. The respondents Divisional Controller, M.S.R.T.C., though served, have preferred to remain absent and have not entered their appearance through any Advocate.

2. The petitioner is aggrieved by the judgment and order of the Labour Court, Latur in complaint (ULP) No.25/2011 and the judgment and order dated 10/02/2014, passed by the Industrial Court at Latur in Revision (ULP) No.32/2013.

3. The petitioner was appointed as a bus conductor on 13/07/2009 by the M.S.R.T.C. On 12/03/2010, she was performing her duty as a "Conductor", when the bus was subjected to a surprise check. It was alleged that she had allowed passengers to travel ticket less.

4. A charge sheet dated 17/03/2010 was issued to her. Charges of misappropriation and resale of used tickets was levelled against her. The petitioner submitted her reply dated 24/03/2010 and denied all the charges. Thereafter, the M.S.R.T.C. proceeded to conduct a domestic inquiry against the petitioner as per their Discipline and Appeal Rules. On 12/05/2011, a second

show cause notice along with the copy of the Enquiry Officer's Report was served upon the petitioner. It is stated that she replied to the said second show cause notice.

5. The petitioner filed complaint (ULP) No.25/2011 under the MRTU and PULP Act, 1971 before the Labour Court for challenging the second show cause notice dated 12/05/2011. Before the employer MSRTC could issue any disciplinary order against her, the petitioner was protected by the ad-interim order passed by the Labour Court. The respondent filed its written statement.

6. The Labour Court then framed issues in the said complaint. Issue Nos. 2 was as regards whether the domestic enquiry was conducted in a fair and proper manner. Issue no.3 was as regards whether the findings of the Enquiry Officer could be branded as perverse.

7. By the Part-I order dated 04/01/2013, the preliminary issues were decided and it was concluded that the enquiry was conducted in a fair and proper manner and the findings of the Enquiry Officer are not perverse.

8. In the above backdrop, the Labour Court proceeded to decide the remaining issues and by the impugned judgment dated 30/03/2013, it was concluded that the proposed punishment of dismissal from service did not amount to an unfair labour practise under the M.R.T.U. and P.U.L.P. Act, 1971. The complaint was, therefore, dismissed.

9. The petitioner had preferred revision (ULP) No.32/2013 before the Industrial Court u/s 44 of the M.R.T.U. and P.U.L.P. Act, 1971. By the impugned judgment and order dated 10/02/2014, the revision was dismissed and the judgment of the Labour Court was upheld.

10. So far as quantum of punishment is concerned, the Labour Court concluded that the proposed punishment of dismissal did not amount to an unfair labour practise as the proposed punishment did not appear to be shockingly disproportionate to the gravity and seriousness of the misconduct. The conclusions arrived at by the Labour Court have been upheld by the Industrial Court by the impugned judgment.

11. The petitioner contends that the charges levelled upon her have not been proved. The charge of misappropriation of money alleged against the petitioner is also not proved. The passengers, who were travelling ticket less or who were allegedly issued used tickets, were not examined in the enquiry.

12. The petitioner relies upon the following judgments delivered by this Court :-

(a) Maharashtra State Road Transport Corporation v. Syed Azgar Ali, 2001(2) Bom.C.R. 626 ;

(b) Mahadeo Atmaramji Nage v. Maharashtra State Road Transport Corporation, BCR-2009-2-824 ;

(c) Divisional Controller, Gujarat State Road Transport Corporation v. Virji D. Barot, GCD-2000-4-3423.

13. The petitioner further contends that besides this one charge sheet at issue, the past service record of the petitioner is clean and unblemished. The petitioner is 24 years old as on date and is a widow having 2 daughters. She has no other source of income besides this employment. Due to the interim orders passed at various stages in the earlier proceedings, the petitioner has continued in employment despite issuance of the second show cause notice dated 12/05/2011.

14. It is, therefore, prayed that the impugned judgments and orders be quashed and set aside and the petition be allowed. It is pointed out that by an order dated 05/03/2014, passed by this Court, ad-interim relief has been granted to the petitioner in terms of prayer clause "E" and "F".

15. Upon having heard the learned Advocate for the petitioner, I have gone through the impugned judgments in the light of his submissions.

16. The petitioner has joined employment on 13/07/2009. Upon completion of about 8 months in employment, she has been charged with the act of misappropriation. Passengers were found travelling ticket less as well as with used tickets, which were already sold in the previous journey made by the bus, wherein the petitioner was a Conductor. She has approached the Labour Court by filing a complaint thereby preventing the respondent employer from initiating any action against her, which is permitted by Law.

17. The issue as regards whether the enquiry was fair and proper and whether the findings of the Enquiry Officer could be branded as perverse are concerned, the Labour Court decided the said 2 issues against the petitioner on 04/01/2013. From the impugned judgment of the Industrial Court, it does not appear that the petitioner challenged these findings in the revisionary jurisdiction of the Industrial Court.

18. If, as a matter of fact, the petitioner has not challenged the said order, it would lead to the conclusion that the Part-I order dated 04/01/2013 has attained finality. In my view, therefore, so far as the enquiry and the conclusions of the Enquiry Officer are concerned, it would not be open for her to raise a challenge directly in this Court. Learned Advocate for the petitioner confirms that the Part-I order dated 04/01/2013 was not challenged before the Industrial Court. In this backdrop, this Court would be unable to reopen the said issue without a substantive challenge before the appropriate forum.

19. Contention of the petitioner that the charges have not been proved against her and there is no evidence against her, cannot be entertained in the light of the fact that the findings of the Enquiry Officer have been upheld by the Part-I order dated 04/01/2013. The conclusions drawn by the Enquiry Officer are held to be supported with evidence on record in the enquiry. It is, in these circumstances that I am unable to entertain, much less accept the submissions of the petitioner.

20. It appears from the impugned judgments that the quantum of punishment had been gone into by the Labour Court as well as the Industrial Court. In the light of the charge of misappropriation set out in the charge sheet, the Labour Court had concluded that the proposed punishment of dismissal was not shockingly disproportionate. The said conclusions have been accepted by the Industrial Court.

21. This Court (Coram : B.H.Marlapalle, J.) has held in the case of Bajaj Auto Limited v. Kalidas Devram Patil, 1999 II CLR 1108 that the past service record needs to be considered before awarding punishment to an employee. In the said judgment, this Court has come to a conclusion that a clean and unblemished past service record of about 2 or 3 years cannot be held to be a mitigating factor since it does not indicate the attitude and conduct of an employee. The said judgment was questioned before the Division Bench. The Letters Patent Appeal was dismissed upholding the said conclusions.

22. In the instant case, the petitioner appears to have worked for 8 months only. The first misconduct of misappropriation is proved to have been committed by her in her 8th month of service. I am, therefore, not impressed by the submissions of the petitioner that her clean past service record of 8 months would operate as a mitigating factor to reduce the seriousness and gravity of the charges proved against her.

23. It is, in these circumstances and more so in light of the gravity and seriousness of the charges proved against the petitioner that I do not find it fit and proper to interfere with the findings of the Labour Court as well as the Industrial Court on the quantum of the punishment proposed against the petitioner.

24. The Apex Court in the case of Hindustan Lever v. Ashok Vishnu Kate, reported at 1996 AIR (SC) 285, has held that interim relief should not be granted at the mere askance when an employee challenges the disciplinary proceedings at the penultimate stage. Unless the punishment amounts to a serious unfair labour practise, the employer cannot be precluded from concluding the disciplinary proceedings in accordance with Law. It would be of assistance to reproduce paragraph No.53 of the said judgment herein below :-

"53. Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of charge sheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or

dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated. "

25. So far as the judgments cited by the petitioner are concerned, it is revealed from these 3 judgments that the punishment of dismissal was already awarded to the said employees. After undergoing a complete trial, this Court had interfered with the punishment.

26. In the case of Syed Azgar Ali (supra), there was no proof of non issuance of tickets. The Labour Court and the Industrial Court had held in favour of the employee. Considering the findings on facts, this Court did not interfere and therefore the punishment awarded was set aside.

27. In the case of Mahadeo Aatmaramji Nage (supra), the Court had come to a conclusion that the passengers had not complained against the Conductor, who failed to issue a ticket to them. In the instant case, there was a surprise check of the bus and in such a surprise check, the Checking Squad had recorded the misdeeds committed by the petitioner, for which she was charged with.

28. In the case of Virji D. Barot (supra), the punishment of dismissal for non-issuance of tickets, was held to be harsh and unjustified considering the long length of clean service of the employee.

29. In the instant case, the petitioner, who had put in only 8 months of employment, had indulged in an act of misappropriation. It would be a mockery if such a petitioner is kept in employment till the age of 58 years, which is the retirement age, after having committed the first act of misappropriation in the 8th month of service. I, therefore, do not find that the ratio laid down in the cited judgments is of any assistance to the petitioner.

30. In the light of the above, this petition is devoid of merits and is therefore dismissed.

31. At this juncture, the petitioner prays for staying of the operation of this order for a period of 4 (four) weeks. The second show cause notice was issued on 24/03/2010. The petitioner rushed to the Labour Court and was protected. Her complaint was dismissed. Even in the Industrial Court, her revision petition was dismissed. The petitioner was granted ad-interim protection by this Court, pending admission.

32. In light of the fact that the complaint of the petitioner and her Revision have

been dismissed and since this petition is also dismissed, I am unable to accept the request of the petitioner for continuation of the interim protection any further. The ratio laid down by the Apex Court in paragraph No.53 of the Hindustan Lever judgment (supra), dis-entitles the petitioner from seeking any further relief.