

(2016) 06 BOM CK 0181
In the Bombay High Court
Case No : Writ Petition No. 271 of 2015

Satish S/o Fagulal Gajam

APPELLANT

Vs

Maharashtra State Road Transport

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30(2)

Citation : (2016) 6 BCR 827 : (2016) 3 CLR 964 : (2016) 3 CLR 685 : (2016) 5 MhLJ 192

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.(Oral)—In view of notice for final disposal issued earlier, the learned Counsel for the parties have been heard at length.

2. The petitioner herein is aggrieved by the adjudication of his application for interim relief that was filed along with his complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, the said Act).

3. It is the case of the petitioner that he was employed with the respondent as a Conductor having been appointed in the year 2010. During the course of service, he was served with a charge-sheet dated 9.7.2012 on the charge that while he was on duty certain passengers were found travelling without ticket. Pursuant to aforesaid, an enquiry was held and the punishment of withholding of three annual increments not having cumulative effect came to be imposed upon the petitioner by order dated 18.11.2013. It is his further case that on 20.8.2014, a show cause notice came to be issued to him under Clause 9 of the Maharashtra State Road Transport Corporation Employees Discipline and Appeal Procedure

(for short, the Discipline and Appeal Procedure). As per the said notice, it was proposed to dismiss the petitioner from service. This notice was challenged by the petitioner by filing the aforesaid complaint under Section 28 of the said Act. Along with the complaint, the petitioner moved an application for grant of interim relief under Section 30(2) of the said Act which has been rejected.

4. The learned Judge of the Labour Court by order dated 22.9.2014 held that a prima facie case had not been made out by the petitioner. It was held that the procedure prescribed by the respondent had been duly followed and, therefore, there was no prima facie case made out. By order dated 22.9.2014, the application for interim relief came to be rejected. The revision application filed by the petitioner against aforesaid order was also dismissed on 15.1.2015. Hence, this writ petition.

5. Shri C. V. Jagdale, the learned Counsel for the petitioner submitted that both the Courts erred in not granting interim relief to the petitioner. According to him, the show cause notice dated 20.8.2014 was issued by the respondent in a manner contrary to the Discipline and Appeal Procedure. According to him, the order dated 18.11.2013 imposing penalty of withholding three annual increments was not challenged by the respondent by filing any appeal. He submitted that it was not permissible for the respondent to issue the show cause notice in question by relying upon Clause 9 of the Discipline and Appeal Procedure. In that regard, he referred to the provisions of Clause 2 and its proviso, Clause 8 and Clause 9 thereof. Relying upon the judgment of learned Single Judge in S.R. Nagre v. Divisional Controller M.S.R.T.C. 1987 Mh.L.J. 212, it was submitted that the right of appeal was not restricted to employees alone and if the respondent was aggrieved by the impugned punishment imposed by the disciplinary authority, it ought to have preferred an appeal. It was then submitted that the scope of Clause 9 of the Discipline and Appeal Procedure was considered by learned Single Judge in M.S.R.T.C. v. R.D. Toplewar 1987 Mh. L. J. 85 and it was held that the power thereunder was limited and the same did not permit the reopening of the entire matter. He also referred to the decision of the Gujarat High Court in G.S.R.T.C. v. D. L. Patel (2003) I CLR 871. It was then submitted that the quantum of punishment proposed could not have been stated in the show cause notice dated 20.8.2014. According to him, this aspect indicated that the Authority had prejudged the matter and it had already decided the punishment to be imposed. It was, therefore, submitted that a case for grant of interim relief was made out and both the Courts erred in refusing to grant the same.

6. Shri V. G. Wankhede, the learned Counsel for the respondent opposed aforesaid submissions. According to him, the challenge as raised in the complaint was merely to the show cause notice dated 20.8.2014. This challenge was raised without filing any reply to the show cause notice. He submitted that the show cause notice had been rightly issued under Clause 9 of the Disciplinary and Appeal Procedure by the superior authority. It was not necessary for the

respondent to challenge the initial order dated 18.11.2013 by filing an appeal. The recourse to Clause 9 of the Discipline and Appeal Procedure could always be taken. This notice had been issued within the stipulated period of one year from the initial order dated 18.11.2013. In that regard, the learned Counsel relied on the decision in *Maharashtra State Road Transport Corporation v. Laxman Kachru Vairal* 2016 (3) Mh. L.J.222. It was then submitted that the show cause notice was issued by following the proper procedure and not after recording any further evidenced of the parties. The same was issued on the basis of the material which was already available on record. The learned Counsel submitted that the discretion was rightly exercised by the Labour Court. Similarly, the Industrial Court did not exceed its jurisdiction under Section 44 of the said Act when it rejected the prayer for interim relief.

7. I have given due consideration to the respective submissions and I have gone through the documents placed on record. The question that arises is whether the Labour Court and the Industrial Court have exercised discretion in accordance with law while refusing to grant interim relief to the petitioner. It is not in dispute that after holding an enquiry, the punishment of withholding three annual increments not having cumulative effect was imposed on the petitioner by order dated 18.11.2013. The respondent by invoking the provisions of Clause 9 of the Disciplinary and Appeal Procedure issued a show cause notice dated 20.8.2014 seeking to enhance the punishment imposed. It can be seen that this notice has been issued within a period of one year from the initial order imposing punishment on the petitioner.

8. Clause 9 of the Discipline and Appeal Procedure lays down the procedure to be followed by the appellate authority while deciding an appeal filed under Clause 8. By the proviso to said Clause, the appellate Authority is empowered to issue a show cause notice if it is proposed to enhance the punishment imposed by the competent Authority. In the present case the punishment initially imposed was by the competent Authority the Divisional Traffic Officer. The show cause notice under Clause 9 has been issued by the reviewing Authority which is the Divisional Controller. The Divisional Controller is also the appellate Authority. The provisions of Clause 9 of the Discipline and Appeal Procedure fell for consideration in *M.S.R.T.C. v. R. D. Toplewar* (supra) and it was held that though titled as review, it was in fact revisional power that was vested with the appellate Authority. It was further held that the revisional jurisdiction under Clause 9 could not be equated with appellate jurisdiction. In *S. R. Nagre* (Supra) on which heavy reliance was placed by the learned Counsel for the petitioner it can be seen that a penalty of reducing the present basic pay permanently to the initial basic pay came to be imposed. The employee concerned preferred an appeal which was partly allowed by directing withholding of two increments without cumulative effect. The employee preferred a further appeal. In these proceedings, the order passed by the first appellate authority was interfered and the punishment came to be enhanced. It is in these facts that it was held that in absence of any appeal preferred by the Corporation, the second appellate authority could not have

enhanced the punishment that was awarded by the first appellate Court. In the light of these facts, it cannot be said that this Court in *S. R. Nagre (supra)* held that in absence of any appeal preferred by the Corporation, the power under Clause 9 for enhancing the punishment could never be exercised. This judgment, therefore, does not support the contention of the petitioner that in absence of any appeal by the Corporation, the penalty imposed could not be proposed to be enhanced.

9. The facts of the present case indicate that a show cause notice issued under Clause 9 of the Discipline and Appeal Procedure is under challenge in the complaint filed by the petitioner. It has been prima facie found by the Labour Court that this notice have been issued in exercise of power under Clause 9. It has been prima facie held that there was jurisdiction with the reviewing Authority to issue such show cause notice and that while doing so, the entire matter had not been reopened nor had the statements of any of the parties recorded again. This order has been confirmed by the Industrial Court in revisional jurisdiction. The scope for interference under Section 44 of the said Act is limited and the power of superintendence can be exercised if the order of Labour Court has resulted in miscarriage of justice. The petitioner can respond to the show cause notice and put forth his say. Considering the facts of the present case, the nature of relief sought in the complaint and the legal position referred to herein above, I do not find that the Labour Court and thereafter the Industrial Court committed any error in refusing to grant interim relief to the petitioner.

10. In view of aforesaid, there is no case made out to interfere in the writ jurisdiction. While issuing notice on 21.1.2015, the petitioner had been granted time to file reply to the show cause notice. If such reply has not filed till date, further time of three weeks is granted to file reply to the show cause notice.

11. The writ petition is dismissed with no order as to costs.