

(2006) 01 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 304 of 1995

Sayed Shabbir Sayed Chand

APPELLANT

Vs

Maharashtra State Road Transport Corporation

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

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

Citation : (2006) 3 ALLMR 651 : (2007) 5 BomCR 346 : (2006) 109 FLR 1047 : (2006) 3 MhLj 120

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

Bench : Single Bench

Advocate : B.M. Khan, for the Appellant; V.G. Wankhede, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—The petitioner-employee has challenged the order of Industrial Court dated 8-8-1994 passed in Revision (ULP) No. 121 of 1986 by which the learned Member has substituted punishment of dismissal inflicted by the employer upon him by directing the respondent-employer to reinstate him to his former post without continuity and without backwages.

2. The petitioner was on duty on Hyderabad to Akola route on 6-11-1983 and his bus was checked. In checking it was found that one passenger was travelling without ticket from Nanded to Hingoli and certain way bill columns were found to be not properly filled in and there was overwriting. A charge-sheet dated 8-2-1984 for misconducts falling under Clauses 7(a), 7(d), 10, 12(b), 27 and 35(b) of Schedule "A" of Discipline and Appeal Procedure was served upon the petitioner. A departmental enquiry was thereafter conducted against him and after said enquiry, he was dismissed by order dated 29-1-1985. He challenged this dismissal as unfair labour practice by filing ULP Complaint No. 52 of 1985 before the Labour Court at Akola. The complaint was opposed by the present respondent/employer. The Labour Court found that enquiry conducted against

the petitioner was fair and valid and also findings recorded by the Enquiry Officer were not perverse. It found that the charges were therefore proved against him. It also considered the argument that punishment of dismissal was shockingly disproportionate and concluded that the misconduct proved was not of minor or technical character and hence the punishment cannot be said to be shockingly disproportionate. It, therefore, dismissed the complaint. The petitioner challenged this judgment of Labour Court by filing Revision u/s 44 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as the Act), before the learned Member of Industrial Court vide Revision (ULP) No. 121 of 1986. The Industrial Court, Amravati, vide its order dated 8-8-1994 found that the punishment was shockingly disproportionate. It found that though said passenger i.e. a lady had travelled about 68 kms. without ticket, she was not related to the petitioner and petitioner had no other interest in her and there was no material on record to show that the petitioner was to gain any advantage because of her travelling without ticket. It, therefore, held that at the most the petitioner was grossly negligent in discharging his duties as Conductor and hence it recorded that finding. In view of said finding, it substituted the punishment by ordering present respondent-employer to reinstate the petitioner back in service without continuity and without backwages.

3. Heard Shri Khan, learned Counsel for the petitioner and Shri Wankhede, learned Counsel for the respondent.

4. Shri Khan, learned Counsel has contended that the petitioner retired within one year of his reinstatement as per order of Industrial Court and he lost advantage of his earlier service and could not therefore got the terminal benefits like pension or gratuity. He states that the learned Member of Industrial Court having found the misconducts to be minor or technical, could not have imposed such punishment upon the petitioner. He states that this punishment substituted by the Industrial Court is shockingly disproportionate. He has relied upon the judgment of the Hon'ble Apex Court in the case of Colour-Chem Limited Vs. A.L. Alaspurkar and Others, , in support.

5. As against this, Shri Wankhede, learned Counsel for the respondent submitted that the charges were of grave and serious nature and as per Discipline and Appeal Procedure Rules, punishment of dismissal was provided for such misconducts and hence this punishment was imposed by the employer. He further states that the Industrial Court granted him relief of reinstatement without backwages and without continuity. He contends that the respondent-employer did not challenge said order but such substitution of punishment by the Industrial Court was not proper. He invites attention of the Court to the past service record of the petitioner to contend that his past service record was very bad and hence he could not have been reinstated at all. According to him, in the facts and circumstances of the case, there is no reason for this Court to interfere in writ jurisdiction and the order of Industrial Court should be maintained.

6. When the order of Labour Court is looked into, the Industrial Court has found that Item No. 1(g) of Schedule IV of MRTU and PULP Act is not attracted because the punishment of dismissal is for grave and serious misconduct. In other words, it found that the punishment is not for misconduct of minor or technical nature. The said item has been interpreted by the Hon"ble Apex Court in the judgment on which Shri Khan has relied upon and the relevant observations therein are in para 10. The said observations are as under:

10. Learned senior counsel for the respondents was right when she contended that this being a labour welfare legislation liberal construction should be placed on the relevant provisions of the Act. She rightly invited our attention to paragraph 41 of the Report of the aforesaid case in this connection. She also invited our attention to a decision of this Court in the case of *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, especially the observations made in para 35 of the Report. It has been observed therein that if two constructions are reasonable possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employee, has to be preferred. But it is further observed in the very said paragraph that there is another canon of interpretation that a Statute or for that matter even a particular section has to be interpreted according to its plain words and without doing violence to the language used by the legislature. In our view, Clause (g) of Item 1 of Schedule IV of the Act is not reasonably capable of two constructions. Only one reasonable construction is possible on the express language of Clause (g), namely, that it seeks to cover only those types of unfair labour practices where minor misconducts or technical misconducts have resulted in dismissal or discharge of delinquent workmen and such punishment in the light of the nature of misconduct or past record of the delinquent is found to be shockingly disproportionate to the charges of minor misconduct or charges of technical misconduct held proved against the delinquent. One and only subject-matter of Clause (g) is the misconduct of minor or technical character. The remaining parts of the clause do not indicate any separate subject-matter like the major misconduct. But they are all adjuncts and corollaries or appendages of the principal subject, namely, minor or technical misconduct which in given set of cases may amount to resulting in shockingly disproportionate punishment if they are followed by discharge or dismissal of the delinquent. The first point, therefore, will have to be answered in the negative in favour of the appellant and against the respondent-delinquents.

It is thus clear that even as per this judgment of the Hon"ble Apex Court, the concept of punishment being shockingly disproportionate can be invoked by employee only if the punishment inflicted is for misconduct of minor or technical nature.

7. When the charge-sheet is looked into, the charge-sheet points out misconducts under various heads falling under Schedule "A" of Discipline and

Appeal Procedure Rules. Schedule "A" deals with Acts of misconduct and Schedule B of Discipline and Appeal Procedure Rules deals with Acts of minor lapses and delinquencies. The punishment prescribed is also separately given in Rule 7 of Discipline and Appeal Procedure. The first part of Rule 7 prescribes punishment for minor lapses and delinquencies i.e. for the misconducts falling under Schedule B. The later part of Rule 7 prescribes punishment for acts or misconducts i.e. misconducts falling under Schedule A of Discipline and Appeal Procedure. These acts of Discipline and Appeal Procedure in Schedule "A" constitutes serious and grave misconducts for which various punishments including discharge or dismissal of service is prescribed. The relevant Rule 7 reads as under:

misconduct	Punishment	Appealable	or	Non-	Appealable
					Minor
lapses and (a) Warning	Non-appealable	Delinquencies (b) Reprimand (c) Fine upto 1/10th of the pay		Non-appealable	the amount is not more than Rs. 50/-
(d) Recovery from pay of the whole or Non-appealable part of pecuniary loss caused to the Corporation by negligence or breach of orders, if it does not exceed 1/10th of pay of the employee. Acts of misconduct (a) Recovery from pay of whole or part	Appealable	of pecuniary loss caused to the Corporation by negligence or breach of orders, if exceeding 1/10th of pay of wages. (b) Withholding increment for a period		Appealable	not exceeding three annual increment. (c) Stoppage of promotion for a period
Appealable		not exceeding three years. (d) Reversion to a next below the		Appealable	substantive post held by employee charged. (e) Reduction to lower pay by not more
Appealable		than three stages in the time-scale of pay of the post substantively held by an employee charged. (f) Discharge from service of the		Appealable	Corporation
(g) Dismissal from service of the		Appealable		Corporation	

Provided that the punishment for any of the acts of misconduct mentioned at Items 4, 7(a) to (j). 12(a) and (b), 39, 42 of the Schedule "A" shall be either discharge or dismissal from services of the Corporation. While awarding punishment for the default under these types of misconducts, the Competent Authority shall ensure that the guilt of the employee charged is conclusively proved on the basis of available evidence and the specific instructions issued from time to time by the Administration are scrupulously followed.

The proviso to Rule 7 above clearly provides that the misconduct is in Items 4, 7(a) to 7(j), 12(a) and (b), 39, 42 of Schedule "A", punishment prescribed is discharge or dismissal from services of the Corporation. The fact that the charge-sheet issued to the present petitioner contained misconducts falling under Clauses 7A, 7D, 12B of Schedule "A" of Discipline and Appeal Procedure, is not in dispute. Therefore, charge-sheet is for charges of grave and serious nature. The Enquiry Officer has found that these charges are proved and the employer has

imposed punishment of dismissal for these charges.

8. In this background when the order of Labour Court is perused, the Labour Court has in para 13 considered the issue and has found that the present petitioner has not been punished for misconduct which is of minor or technical character. When the impugned order of Industrial Court is looked into, the Industrial Court has not considered this application of mind by the Labour Court at all. In para 7, the Industrial Court records that representative appearing for the petitioner only argues the issue of quantum of punishment and thereafter it holds that admittedly the punishment has been imposed on account of petitioner's negligence in allowing one lady passenger to travel without ticket for about 68 kms. and then there is a sentence that the Labour Court in last para of impugned judgment i.e. judgment of Labour Court found that this was a serious charge and not of technical or minor character. The next sentence is that representative argued that the punishment is shockingly disproportionate because nature of charge was of minor and technical character. However, there is no definite or positive finding arrived at in this respect by the learned Member of Industrial Court. It has left the issue as it is. It has also not found that the reasoning put forth by the Labour Court was perverse or erroneous. While exercising revisional jurisdiction, it was necessary for it to comment upon this finding reached by the Labour Court and to demonstrate as to how the said finding was either perverse or erroneous. Thereafter in para 8, it has considered the argument of said representative of petitioner and has held that the punishment of dismissal is shockingly disproportionate as the petitioner-Conductor had no ill intention of either causing deliberate monetary loss to the corporation or to gain any benefit for himself in any way. The reasoning put forth by the Industrial Court is that said lady passenger was not known to the petitioner and therefore he had no interest in permitting her to travel without ticket. The fact that said lady passenger travelled without ticket for 68 kms. has been lost sight of. The rule of issue and fact has not been complied with by the petitioner-Conductor. The learned Member of Industrial Court has found that there was no material to demonstrate that the petitioner-Conductor was to gain any advantage out of said without ticket travel. If the bus was checked before the said lady passenger could leave it, what other material or evidence could have been found out by the checking party is not disclosed by the Industrial Court or even by the learned Counsel for the petitioner. Admittedly, there were only 13 adult passengers and two children travelling in the bus and in such circumstances, if a lady passenger is allowed to travel about 68 kms., the inference as drawn by the Enquiry Officer is the only logical conclusion. Without commenting as to why said conclusion reached by the Enquiry Officer is perverse or unsustainable, the learned Industrial Court has applied its mind independently and has arrived at finding which cannot be sustained. It has overlooked the scope of provisions of Section 44 of MRTU and PULP Act.

9. The contention of Shri Khan, learned Counsel for the petitioner, therefore, that the Labour Court has found that punishment is inflicted for minor or technical

character is unsustainable. The learned Member of Industrial Court erroneously mentions that the punishment of dismissal is shockingly disproportionate looking to the magnitude of charge proved against him. Non-application of mind by it is also apparent from the past service record which the respondent has produced before the Labour Court. The said Past Service Record reveals that even in past, on atleast 10 occasions, the present petitioner has been punished for the same type of misconduct. As item I(g) of Schedule IV of MRTU and PULP Act was not attracted, the Industrial Court did not possess jurisdiction to interfere with quantum of punishment.

10. The learned Counsel for the respondent is right when he states that in such circumstances, no interference is warranted in writ jurisdiction. The Industrial Court was not right in interfering with the quantum of punishment. It is to be noted that though the order of Industrial Court is found to be unsustainable, it has not been challenged by filing writ petition. On the contrary, respondent has complied with the orders of Industrial Court and reinstated the petitioner and the petitioner superannuated on reaching the age of retirement.

11. In such circumstances, I find that no case is made out for interference in writ jurisdiction. Writ petition is accordingly dismissed. Rule is discharged. No costs.