
(2013) 01 BOM CK 0206
In the Bombay High Court
Case No : Writ Petition No. 3992 of 2002

S.B. Avasarmol

APPELLANT

Vs

Member, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

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

Citation : (2013) 137 FLR 430

Hon'ble Judges : Vasanti A. Naik, J

Bench : Single Bench

Advocate : A.M. Ghare, for the Appellant; Bonade, A.G.P. and V.G. Wankhede, for the Respondent

Final Decision : Dismissed

Judgement

Vasanti A. Naik, J

1. By this petition, the petitioner impugns the judgment passed by the Industrial Court on 9.4.2002, allowing a revision filed by the respondent Corporation and reversing the judgment passed by the Labour Court on 29.11.2001, allowing the complaint filed by the petitioner and directing the Corporation to reinstate the petitioner in service with back wages.

The petitioner was working with the respondent Corporation as a driver since the year 1974. The petitioner was on duty on a Corporation bus on 27.8.1987 which was driven by the petitioner from Dahi to Buldana. When the bus was checked at Deulgaon Ghat, the petitioner was found to be under the influence of alcohol. A spot panchanama was performed. An alcohol test was conducted on the petitioner. The result of the test turned out to be positive and it was found that the petitioner was driving the bus under the influence of alcohol. The petitioner was issued a chargesheet and an inquiry was conducted against the petitioner. After the inquiry, the petitioner was dismissed from service. The petitioner challenged the order of his dismissal before the Labour Court, Akola. The Labour

Court, Akola, by the impugned judgment dated 29.11.2001, allowed the complaint filed by the petitioner and directed the Corporation to reinstate the petitioner in service with continuity of service and back wages. Being aggrieved by the said judgment, the Corporation preferred a revision before the Industrial Court u/s 44 of the MRTU & PULP Act. The Industrial Court, by the impugned judgment dated 9.4.2002, allowed the revision filed by the Corporation and reversed the judgment passed by the Labour Court. The Industrial Court dismissed the complaint filed by the petitioner.

The learned Counsel for the petitioner submitted that the Industrial Court was not justified in reversing the judgment passed by the Labour Court as the scope for interference with the judgment of the Labour Court u/s 44 of the Act was very limited. It is submitted that the Labour Court had rightly recorded a finding that the findings of the Inquiry Officer were perverse and the inquiry was also not fair and proper. It is submitted that the punishment of dismissal was shockingly disproportionate to the act of misconduct committed by the petitioner. It is submitted that it was wrongly found by the Inquiry Officer that the petitioner was under the influence of liquor.

2. Shri V.G. Wankhede, the learned Counsel for the Corporation, supported the judgment passed by the Industrial Court and submitted that the findings recorded by the Industrial Court were just and proper as there was ample evidence before the Inquiry Officer for holding that the charges levelled against the petitioner were proved and in this background there was hardly any scope for the Labour Court to allow the complaint. It is submitted that the petitioner had not challenged the fairness of the inquiry by submitting a pursis and the Labour Court had not considered this aspect of the matter and had erroneously held that the inquiry was not fair. It is submitted that the Labour Court had not recorded any reasons whatsoever for holding that the findings of the Inquiry Officer were perverse or were not based on any evidence. It is submitted that the petitioner had committed a grave misconduct by driving the Corporation bus under the influence of liquor and hence for the act of major misconduct, the petitioner was rightly dismissed.

3. Mrs. Bodade, the learned Assistant Govt. Pleader, supported the judgment passed by the Industrial Court and submitted that on considering the act of grave misconduct and the fact that there was evidence before the Inquiry Officer to hold that the petitioner was guilty, the Industrial Court rightly reversed the findings recorded by the Labour Court to dismiss the complaint filed by the petitioner.

4. On hearing the learned Counsel for the parties and on a perusal of the impugned order, as also the order of the Labour Court, it appears that the Labour Court was not justified in holding that the findings of the Inquiry Officer were perverse. It is necessary to note that the Labour Court had merely recorded the submissions of the Counsel for the petitioner in paragraphs 7 and 8 of the judgment and had referred to the submissions of the Counsel for the respondent

Corporation in paragraphs 9 and 10 thereof. No reasons whatsoever are recorded in para 10 of the order to hold that the findings recorded by the Inquiry Officer were perverse. Since the judgment of the Labour Court was sans reasons, the Industrial Court on a proper appreciation of the material on record, found that there was evidence before the Inquiry Officer to hold that the petitioner was guilty and hence it was not permissible for the Labour Court to consider the sufficiency or otherwise of the evidence to hold that the charges could not have been proved. The Industrial Court rightly found that the petitioner had failed in the alcohol test and had also admitted in his statement that the yellow chemical turned into green after the test was conducted. The Industrial Court found that the petitioner had committed an act of serious misconduct and since the scientific evidence in regard to alcohol test was not disputed by the petitioner, there was no reason for the Labour Court to interfere with the order of dismissal. In regard to the proportionality of the punishment, the Industrial Court rightly found that the petitioner was driving the bus of the Corporation under the influence of alcohol thereby causing danger to the life and limb of the passengers who were sitting in the bus as well as other persons travelling on the road. The findings recorded by the Industrial Court are just and proper. In fact, the Labour Court had not recorded any reason for holding that the findings of the Inquiry Officer were perverse and the punishment was disproportionate. There is no reason to interfere with the impugned judgment in exercise of the writ jurisdiction. In the result, the writ petition is dismissed with no order as to costs. Rule stands discharged.