

(2000) 07 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 3550 of 1990

Shri Maroti Bhalerao

APPELLANT

Vs

M.S.R.T. Corporation

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2001) 1 BomCR 82 : (2000) 87 FLR 114

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mustafa Ahmed Momin, for the Appellant; P.K. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner was employed by the respondent as a Helper. He was served with a charge sheet on 1st June, 1982 levelling a charge against him under Clauses 3, 10 & 11 of the Discipline & Appeal Procedure. The allegations levelled against him in nutshell were that while enroute journey of the bus from Nanded to Kinwat he unauthorisedly drove the bus and dashed against a tree and met with an accident causing damage to the bus, which was to the tune of Rs. 1,500/-. It was specifically alleged against him that he was not authorised to drive the bus as a Helper and he was, therefore, guilty of the misconducts levelled against him.

2. It is pertinent to note that to the aforesaid specific charges levelled against him that he was driving the bus unauthorisedly he did not submit his written explanation though he was called upon to submit such written explanation. It is further pertinent to note that he did not even take part in the domestic inquiry which was instituted against him to inquire into the charges levelled against him. It appears that the inquiry was adjourned from time to time but the petitioner

did not care to attend the same and remained absent all along. The Inquiry Officer was, therefore, constrained to proceed ex parte against the petitioner. It further appears from the record that to give a longest rope to the petitioner he was once again called by the Inquiry Officer personally on 7th September, 1985. The petitioner employee obliged the respondent management by remaining present when he was given a copy of the findings and report of the Inquiry Officer. It appears that the management and the Inquiry Officer both were more than kind to the petitioner to have again requested him to cross examine the witnesses who were examined in the inquiry in his absence. Fortunately again for the management the petitioner availed of the said opportunity and cross examined the witnesses, who were examined in the inquiry in the absence of the petitioner. On behalf of the management three witnesses were examined i.e. the reporter Shri Wajid Khan, the driver Shri Lakha and conductor Shri Giri. All the aforesaid three witnesses were once again offered for cross examination by the petitioner and, thereafter, the Inquiry Officer, on the basis of the evidence before him, held that the charges levelled against the petitioner were proved. The petitioner was again issued a show cause notice to which he submitted his reply, which contained bare denial. In his reply dated 19th December, 1985 to the show cause notice dated 6th December, 1985, for the first time, he explained that as a Helper he was trying to help the driver as he was old, to pump the bus and that he was not driving the bus. He thought that it was his duty to help the driver in such emergency circumstances. The respondent management did not accept the explanation and passed an order of dismissal dated 11th December, 1985.

3. The petitioner, thereafter, filed a complaint of unfair labour practice before the Labour Court u/s 28 of the M.R.T.U. and P.U.L.P. Act read with Item 1 of Schedule IV of the Act for declaration that the order of dismissal was an unfair labour practice and that he should be reinstated with full backwages and continuity of service. It appears from the submissions of the learned advocates that the order of dismissal was stayed and, therefore, the petitioner continued to be in employment and the order of dismissal was finally given effect when the complaint was dismissed by the impugned order dated 11th February, 1989 by the Labour Court.

4. The Labour Court, on the basis of the pleadings and evidence before it, considered the inquiry proceedings, findings and the material before the Inquiry Officer and held that the inquiry was fair and proper and that it did not suffer from any infirmity or any violation of the principles of natural justice. It appears that the Labour Court itself has scrutinised the inquiry proceedings and has found that there was no infraction or breach of any principles of natural justice and that the petitioner was given full opportunity to defend himself in the inquiry. I have myself perused the findings of the Inquiry Officer and evidence of all the three witnesses who gave evidence against the petitioner. The material evidence of the driver and conductor, who were on the spot, was that the petitioner was driving the bus unauthorisedly and met with an accident. The evidence of both these witnesses remained unshaken. Read with this circumstances, the fact that

the petitioner avoided to attend the inquiry initially and that he did not even submit his written explanation to the charge sheet, it is significant to note that the charges levelled against him have been proved beyond any shred of doubt before the Inquiry Officer. On the basis of the said evidence it cannot be said that the Inquiry Officer was not justified in holding the petitioner guilty of the charges levelled against him. His findings cannot be said to be perverse or baseless. I, therefore, cannot find any fault with the report of the Inquiry Officer and also the reasoning given by the Labour Court. The Labour Court was fully justified in dismissing the complaint of the petitioner and I do not find any illegality, infirmity or any unfair labour practice in the order of dismissal passed by the respondent management.

5. The petitioner was aggrieved by the said order of the Labour Court and, therefore, he filed a revision u/s 44 of the M.R.T.U. and P.U.L.P. Act before the Industrial Court. The Industrial Court has also carefully examined the whole case within its narrow supervisory parameters u/s 44 of the Act. The Industrial Court has also concurred with the findings of the Labour Court and has confirmed the judgment and order of the Labour Court. I may observe here that in the last paragraph of the Industrial Court the learned member has observed that the question of punishment being shockingly disproportionate cannot be gone into in the complaint. The learned member of the Industrial Court was wrong in his passing observations. The question of proportionality of the punishment can always be gone into by the Labour Court as well as the Industrial Court. Nonetheless, the Industrial Court has also considered the proportionality of the punishment and has agreed with the finding of the Labour Court that the punishment was not shockingly disproportionate and the same was commensurate with the charge of misconduct levelled against the petitioner. The respondent management is a public undertaking owning a large fleet of buses for the public use. The petitioner, as a Helper, with whatever intentions, was not authorised to drive the bus. His over enthusiasm to help the management and the driver has cost him dearly in loss of his job itself. As is submitted by Shri Joshi, advocate for the respondent management that the petitioner had no business to drive the bus or even to help the driver, as the repair van would have come to repair the bus and particularly when there were no passengers in the bus who were stranded in the journey. In these circumstances, it is the responsibility of the respondent management not to encourage any unauthorised driving by unauthorised staff of the management. Shri Mustafa Momin, advocate for the petitioner has submitted that the petitioner had a valid driving licence and he had put in 22 years of service. Therefore, a lenient view ought to have been taken by the respondent management. I am afraid while exercising my narrow jurisdiction under Article 227 of the Constitution of India I cannot sit in appeal over the question of punishment which is the sole discretion of the management. Even assuming that in the interest of justice I do have jurisdiction to interfere with the punishment if the punishment is shockingly disproportionate and is unconscionable and that no reasonable employer would impose such a

punishment. In the present case, however, I refrain from exercising my extraordinary jurisdiction to interfere with the question of punishment.

6. Both the lower courts have come to the concurrent finding of fact and I do not find any infirmity in the said judgments to interfere under the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. In these circumstances, the petition fails and the same is dismissed. Rule is discharged with no order as to costs.

7. Shri Joshi, the learned advocate for the respondent management makes a statement that if the petitioner has not so far received the terminal benefits he would be paid all his legal dues, including gratuity, etc. till the date of his actual working in the corporation within four weeks from today. The respondent management shall compute his legal dues and write to the petitioner to collect the same from the work place.

8. Certified copy expedited.