
(1999) 12 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 95 of 1989

Shri Ramdas G. Patil

APPELLANT

Vs

General Manager BEST Undertaking

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(4), 78, 79, 84
Constitution of India, 1950 — Article 226, 227

Citation : (2000) 2 ALLMR 414 : (2000) 3 BomCR 152 : (2000) 86 FLR 180 :
(2000) 2 MhLj 129

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

Bench : Single Bench

Advocate : Kulkarni, for the Appellant; A.V. Bukhari, instructed by Crawford, Bayley and Co., for the Respondent

Judgement

R.J. Kochar, J.—The petitioner was employed as a conductor under the respondents Undertaking for a period of about seven years. On 29-12-1984 an incident took place in the Bus which he was conducting. It was alleged against him that he had assaulted a lady passenger viz. Smt. Ranjana S. Mane. A charge sheet was served on him on 4-3-1985 calling upon him to explain the charges. He, however, did not submit his written explanation to charges denying of explaining the incident. The respondent held a domestic enquiry and found him guilty of the misconduct alleged against him and finally he was dismissed from employment by an order dated 9-7-1985. Against the said order his internal appeal was also dismissed.

2. Being aggrieved by the impugned order of dismissal he filed an application u/s 79 r/w section 78 and 42(4) of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the Act") to challenge the propriety and legality of the impugned dismissal order. At the first instance the Labour Court by its order dated 30-10-1993 set aside the dismissal order and directed the employee to be reinstated with full back wages and continuity of service. I may mention here that the Labour Court had come to a conclusion that the enquiry was not fair and

proper and that the findings were perverse. He held that the misconduct alleged against the employee was not proved and the findings of the Trying Officer (Enquiry Officer) were perverse, and therefore, the order of punishment of dismissal was not sustained by the Labour Court.

3. Being aggrieved by the order of the Labour Court the respondent herein preferred an appeal before the Industrial Court u/s 84 of the Bombay Industrial Relations Act, 1946. The Industrial Court after hearing the parties held that the Labour Court had not decided properly the issue of findings of the Enquiry Officer and allowed the appeal by quashing and setting aside the order of the Labour Court. The Industrial Court was pleased to remand the matter back to the Labour Court for "reappreciation with a direction that the case be considered on the basis of the departmental proceedings and that it should not be decided on the basis of the criminal proceedings as the action taken by the Undertaking was a departmental action". Both the parties appear to have accepted the said judgment and order of the Industrial Court of remand of the matter to the Labour Court and they appeared before the Labour Court. The Labour Court after remand considering the order of the Industrial Court found that the Industrial Court had already found the employee guilty of the misconduct and therefore, there was nothing more to be decided and in view of the order of the Industrial Court the Labour Court had dismissed the application by his order dated 30-6-1995.

4. Being aggrieved by the said order of the Labour Court, the petitioner filed an appeal before the Industrial Court. By its order dated 27-11-1998 the Industrial Court once again remanded the matter back to the Labour Court "for deciding it afresh by giving reasonings after discussing the submissions made on behalf of the parties and to follow the directions given in the remand order in Appeal No. 8/94". The Industrial Court had given a time bound programme to the Labour Court to dispose of the matter in accordance with law on or before 31-3-1999.

5. Being aggrieved by the said order of the Industrial Court the petitioner employee has filed the present writ petition under Articles 226 and 227 of the Constitution of India praying to quash and set aside the impugned judgment and order of the Industrial Court to the extent of remand in part and he has also prayed for reinstatement in service with full back wages and continuity of service.

6. Dr. R.S. Kulkarni, the learned Counsel for the petitioner submits that I should decide the entire matter on merits without again sending it back to the Industrial Court or to the Labour Court as the petitioner was dismissed from employment as far back in 1985 and that now we are very close to the evening of the 20th Century. Shri Bukhari, the learned Counsel for the respondent however opposed the said course strongly suggested by Dr. Kulkarni. Shri Bukhari submitted that since only the order of remand is passed by the Industrial Court, this Court should not interfere with the said order as the merits of the case will be decided by the Labour Court and if the High Court enters into the merits at this stage both the parties would be deprived of their rights to appeal against the Order of

the Labour Court. Shri Bukhari submitted that the matter should not be short-circuited merely on the ground of passage of 20 years.

7. I agree with the course suggested by Dr. Kulkarni and I have decided to go into the merits of the matter and to conclude the issue atleast at this stage. Though Mr. Bukhari has opposed this course he has however, also entered into the merits of the case and has argued at length how the order of dismissal was proper, legal and justified and how the punishment inflicted on the petitioner was justified. He has also taken me through the entire record of the domestic enquiry and the findings of the Trying Officer. He also supported the conclusions of the Trying Officer and that there was no perversity in his conclusions and that they were based on material before him. In view of the submissions of Shri Bukhari on the question of propriety and legality of the domestic enquiry and the findings recorded by the Trying Officer he has indirectly and practically agreed with the course suggested by Dr. Kulkarni and according to me there is nothing wrong if I go into the merits of the enquiry and decide it once and for all upto the stage of High Court the question whether the order of dismissal was proper, legal and justified on the basis of the material on record. It is also an admitted fact that there is no infirmity alleged by the petitioner in the procedure followed in the domestic enquiry held in the alleged misconduct against the petitioner. There is no allegation that "principles of natural justice were not observed in the enquiry. The only point which is to be decided is whether the findings of the Enquiry Officer are perverse and baseless. I have decided to go through the whole case on merits on that issue as both the learned Counsel have addressed me at length on that point. According to me, the employee should know once and for ever atleast after a period of 15 years what is in the store for him. He should know his fate atleast after a period of 15 years and by the end of this Century itself.

8. The provisions of the Act contemplate a decision by the forums created under the Act bearing in mind what is fair and right and having regard to the interest of the person immediately concerned, in our case the delinquent Conductor, and also the interest of community as a whole. It is the bounden duty of the Labour Court to put an end to the industrial dispute as expeditiously as possible and to exercise its jurisdiction to decide all the questions of propriety and legality of the dismissal order by making utmost efforts to avoid delay in the decision of the dispute and try to avoid remand of the matters within the frame work of the law. In the present case the Industrial Court could have decided the entire dispute for itself without remanding the same to the Labour Court. Bearing everything in my mind I have myself found it just and proper to decide the entire dispute by considering the whole undisputed record at the request made by Dr. Kulkarni though Shri Bukhari has orally opposed. In the present case there is no question of any opportunity having been lost by any of the parties. It is only the question of considering the material and evidence on record and find out whether the findings of the Trying Officer were perverse or not. The definition of the "industrial dispute" and the "industrial matter" under this Act contains in itself "what is fair and right having regard to the interest of the employee as well as

the employer and the interest of the community as a whole." In my humble opinion we should try to minimise stages as far as possible and minimise the possible delay in disposal of the matters in public interest. In case the employee succeeds finally after a lapse of 20 years, the Community at large would suffer as the Public Undertakings like the BEST would be required to pay a huge amount of back wages without any work done by him. It means the public will suffer such a huge loss of money without any return therefor.

9. Let us examine the case on merits, now. The petitioner was charge-sheeted for an act of misconduct that he had assaulted a lady passenger on bus. The Trying Officer has recorded the evidence of two witnesses viz Shri G.J. Yadav, Accident Inspector and Inspector No. 48. Both the witnesses were cross examined by the union representative on behalf of the delinquent employee. The Accident inspector of the Undertaking has given his evidence that on 29-12-1984 he had received a message from Traffic Control that a lady passenger was assaulted by the delinquent employee and that she was injured and was allowed to go from Sion Hospital and that a case was registered against the delinquent employee at Antop Hill Police Station. The witness has further averred in his evidence that he immediately rushed to Antop Hill Police Station and he was told by the Inspector No. 48 who was present in the Police Station that the delinquent Conductor was taken to Metropolitan Magistrate Court, Dadar for remand. He has also made a statement in his evidence that after recording the statement of the injured lady she was allowed to go from the Police Station. He further gave the statement recorded by the police as given by the injured lady. In her statement the injured lady had narrated the incident how the delinquent Conductor had assaulted her with his ticket box resulting in injuries over her left side head and that she was bleeding and feeling giddiness and at her request the Driver had taken the bus to the Chembur Police Station where her statement was recorded. This is the evidence of the Accident Inspector recorded before the Trying Officer. He has given verbatim what was the F.I.R. recorded by the Police Station. He has also produced a copy of the F.I.R. and the statement of the Sr. Inspector of police as recorded by him verbatim given by the injured lady. He had also produced the copy of the F.I.R. and panchanama. This Panchanama is dated 29-12-1984 signed by two independent witnesses. In the panchanama it is clearly stated that the injured woman pointed out the accused Conductor as the person who assaulted her with metal box No. 78749. All this is a contemporaneous record of whatever had transpired on the day of the incident which is found from the said material on record. The Accident Inspector has given his evidence before the Trying Officer and has also produced the copy of the F.I.R. and the statement recorded by the Sr. Inspector of Police and also the statement given by the delinquent employee. He has also produced the copy of the panchanama. The Accident Inspector was cross examined by the Union representative. Even the Inspector No. 48 gave his statement before the Enquiry Officer supporting the case that the Duty Officer of the Police Station recorded the statement of the delinquent Conductor and also the statement of the injured lady who had abused

the Conductor and thereupon the Conductor lost his temper and assaulted her. The Bus Inspector No. 48 was also cross examined. What is interesting to note is that the injured lady appears to have turned hostile and denied in her evidence that she was assaulted by the delinquent Conductor. Dr. Kulkarni has argued vehemently that the lady herself has said that she was not assaulted by the Conductor and that she felled down on herself and sustained the injuries. The learned Counsel has given great emphasis on the statement of the injured lady and has strongly submitted that the misconduct alleged is not proved and that the findings of the Trying Officer are perverse and therefore this Court should grant reinstatement with full back wages and continuity of service to the petitioner.

10. I do not agree with the submissions of Dr. Kulkarni. According to me, there was more than sufficient material before the Trying Officer against the delinquent Conductor. The Accident inspector Shri Yadav, Bus Inspector No. 48 have stated verbatim what exactly transpired in the Police Station. The material in the form of the statement recorded at the Police Station was before the Trying Officer. The panchanama recorded by the Sr. Police Inspector was also produced before the Trying Officer. All these materials clearly indicate that the incident of assault by the delinquent Conductor on the injured lady did take place. From this material it is very clear that she was assaulted and the bus was taken to the Police Station and that she was thereafter removed to the Sion Hospital where she was treated and her statement was recorded verbatim in the Police Station, which clearly shows that the delinquent Conductor had assaulted the lady with his ticket box on her head and she sustained the injuries. No fault can be found with the conclusion of the Trying Officer that the delinquent Conductor was guilty of assaulting the lady passenger with his ticket box. His finding cannot be condemned as perverse as he has relied on the material before him and according to me, it cannot be said to be baseless as he has drawn his conclusions from the material evidence before him. We cannot forget that it is a domestic enquiry and not a criminal trial. We also cannot forget that if a passenger is assaulted or hit in this manner then it will be very difficult for the public to travel by public transport. It is immaterial or irrelevant if the injured or assaulted person thereafter for the reasons best known to all of us turns hostile and denies the fact of assault or injuries. It is very significant to note that before the Chembur Police Station the delinquent Conductor had admitted that he had assaulted the lady passenger. The Trying Officer has also considered the statements given by the lady passenger in the Police Station. The Trying Officer has also considered the panchanama and the F.I.R. produced before him. He has also taken into account the fact that the driver at the instance of the delinquent Conductor had taken the bus to the Police Station and the events which have been spontaneously narrated in the statements of lady passenger and also the bus Conductor had established the truthfulness of the occurrence. The denial by the delinquent Conductor and also the lady passenger are mere after thought and later developments. There is no doubt in my mind that the lady passenger

must have been overcome and must have been very strongly requested to protect the Conductor otherwise he would lose his job. The lady passenger in turn considering the fact that the delinquent Conductor could be saved by her, she made a volte face and flatly denied that she was assaulted by the delinquent Conductor. Had it been only a case of an accidental fall by her in the bus itself she would not have insisted that the bus should be taken to the Police Station and she would not have made the statements/complaints to the Police Station to the effect that she was assaulted by the delinquent Conductor. There is no reason for the Police Officers to record false statements and there was no reason for the panchas who recorded the actual events narrated. There is further no reason for the Accident Inspector and the Inspector No. 48 to have given any untrue story which they collected from the statements recorded in the Police Station before the Enquiry Officer. The delinquent Conductor has nowhere even whispered that the Police Inspector or the Accident Inspector or the Inspector No. 48 had any personal enmity with him to have given false version or statements against him. In the aforesaid circumstances the findings and conclusions of the Trying Officer holding the delinquent Conductor guilty of the acts of misconduct cannot be faulted with. We cannot forget that it was a domestic enquiry and not a criminal trial. In the face of preponderance of evidence before the Trying Officer his findings cannot be termed as perverse or baseless. According to me, any reasonable man would come to the said conclusion to which the Trying Officer has come. We cannot clutch to the straw of the volte face statement made by the lady passenger at her residence that she was not assaulted by the delinquent Conductor. We cannot believe her statement that her thumb impression was taken by the police on a plaint paper and that the Police Inspector had written a false story in her name against the delinquent Conductor. I do not believe this version of the lady passenger and I have no doubt in my mind that she was trying to save the delinquent Conductor for the reasons known to both of them only. In view of the aforesaid discussion I hold that the domestic enquiry conducted by the Trying Officer is legal, fair and proper and it does not suffer from any violation of the principles of natural justice. I also hold that the findings recorded by the Trying Officer are not perverse and baseless but the same are legal proper and fair. I further hold that the Order of dismissal passed by the respondent is proper and legal and the delinquent conductor is not entitled to the relief of reinstatement with full back wages and continuity of service.

11. I have gone through the judgments cited by both the learned Advocates. There is no quarrel with the well-known propositions of law laid down in the said judgments which have borne in my mind while deciding the above matter.

12. Hence the following order:

(a) Rule is made absolute in terms of prayer Clause (a) to the extent of remand order passed by the Industrial Court in Exh.E.

(b) The impugned order dated 27-11-1998 of the Industrial Court is quashed and set aside.

(c) The order dated 30-6-95 Exh.D passed by the Labour Court is confirmed for the reasons recorded hereinabove.

(d) The Application filed by the petitioner before the Labour Court is dismissed.

13. No order as to costs.

14. Issuance of certified copy of this judgment and order is expedited.

15. Petition dismissed.