
(2010) 06 BOM CK 0135

In the Bombay High Court

Case No : Writ Petition No. 2890 of 1999

Shri Sonu Mahadeo Chavan

APPELLANT

Vs

Pune Municipal Transport

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Citation : (2010) 126 FLR 1025 : (2011) 1 MhLj 589

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.R. Nargolkar, for the Appellant; R.M. Pethe, for the Respondent

Judgement

Nishita Mhatre, J.—The Petition has been filed to challenge the award of the Labour Court, Pune dated 13.7.1998 by which the Labour Court has denied continuity of service and backwages to the petitioner.

2. The facts in the present case are not in dispute. On 16.8.1979, the petitioner was dismissed from service after being found guilty of misconduct in an enquiry held against him. The misconduct alleged against the petitioner was that he had committed a fatal accident while driving a bus owned by the respondent. The petitioner was also prosecuted for the same charge. Although the dismissal order is dated 16.8.1979, the petitioner approached the conciliation officer only on 16.7.1987. A reference was made for adjudication before the Labour Court in 1988. The Labour Court did not accept the contention of the Respondent that an enquiry was held since the enquiry proceedings were not placed on record. The respondent attempted to prove the charges levelled against the petitioner by leading evidence before the Labour Court.

3. The Labour Court, after considering the evidence on record, held that the respondent had failed to prove the charge of misconduct against the petitioner. On the basis of this evidence, the Labour Court concluded that the misconduct was not proved by the respondent. However, while considering the reliefs to be granted to the petitioner the Labour Court directed reinstatement without

continuity of service and backwages. The reasons for denying the petitioner continuity of service and backwages was that he had approached the Labour Court after an inordinate delay and therefore he was not entitled to continuity of service. Furthermore, the Labour Court held that there was no need to grant continuity of service to the workman since he was involved in a criminal case in which admittedly he was acquitted. As regards backwages, the Labour Court accepted the statement made by the petitioner that he was earning Rs. 500/- to Rs. 600/- per month by obtaining some casual work after he was terminated from service. However, the Labour Court denied full backwages to the workman.

4. The learned advocate appearing for the petitioner submits that there was no reason at all for the Labour Court to deny continuity of service and full backwages to the petitioner when once it had held that he was entitled to reinstatement. He submits that even assuming the Labour Court wanted to deny the complete relief to the petitioner, continuity of service ought to have been granted. Furthermore, he urges that the amount which the petitioner earned during his unemployment with the respondent was a pittance being Rs. 500/- to Rs. 600/- per month and therefore, the Labour Court ought to have granted backwages. Reliance is placed on the judgment in the case of *Ajaib Singh v. Sirhind Co-op. Marketing cum Processing Service Society Ltd.* and Anr. 1999 (I) CLR 1068 in support of this submission that the Labour Court ought to have moulded the relief by denying the Petitioner some part of the backwages and ought to have granted continuity of service.

5. Mr. Pethe, appearing for the respondent, submits that the Labour Court has rightly denied both reinstatement and backwages in the facts and circumstances of the present case. He submits that the Petitioner was dismissed from service since he had caused a fatal accident. He points out that the Labour Court has erroneously held that no misconduct had been committed by the Petitioner. He further submits that having considered the inordinate delay on the part of the petitioner in approaching the Court, the Labour Court had rightly denied him continuity of service and backwages. The learned advocate further submits that this being a case of a fatal accident, no indulgence should be shown to the petitioner by granting him continuity of service and backwages.

6. Undisputedly, the workman was dismissed from service on 13.8.1979 after a chargesheet was issued. He was charged for having committed a fatal accident. The petitioner approached the machinery under the Industrial Disputes Act only on 6.7.1987 and obtained a Reference in 1988. The petitioner was also acquitted in the criminal case in which he was charged for having committed a fatal accident. In my opinion, therefore the submission of the learned advocate for the respondent that the facts of this case must be borne in mind that the petitioner had committed a fatal accident cannot be accepted for more than one reason. The petitioner was acquitted of the criminal charge levelled against him. The Labour Court also held that the misconduct was not proved by the respondent although evidence was led before the Labour Court by the respondent in order to

establish the charges. In these circumstances, in my opinion, whether the petitioner has committed a fatal accident or not has not been proved. It is not a factor which needs to be taken into account while considering whether he should be granted continuity of service and backwages. This is more so because the respondent has not cared to challenge the finding of the Labour Court that the respondent had failed to prove the charge of misconduct against the petitioner.

7. Therefore, the only reason that one would have to consider for denying continuity of service and backwages is the delay in approaching the Court. Undoubtedly, there is a delay of 8 years before the Petitioner approached the Conciliation Officer. Therefore, this period in any event cannot be considered for backwages. However, there is no reason to deny the petitioner continuity of service during this period. As held in Ajaib Singh's case (supra), it is the duty of the Labour court to mould the relief appropriately in case there is a delay on the part of the workman in approaching the Court. The Supreme Court has further observed that in such a case, denial of backwages to a certain extent would suffice but the workman would be entitled to continuity of service.

8. In my opinion, in the present case, the Labour Court's reasoning for denial of continuity of service is unacceptable. Merely because there is a delay in approaching the court, it would not necessarily mean that the petitioner should be denied continuity of service once he is granted reinstatement. The Labour Court has in fact observed that the petitioner approached the Conciliation Officer immediately after he was acquitted in the criminal case. Considering the facts in the present case, in my opinion, the petitioner would be entitled to continuity of service on his reinstatement.

9. As regards backwages, the petitioner admittedly has earned Rs. 500/- to Rs. 600/- per month by obtaining some casual work after he was terminated from service. Even accepting the contention of the petitioner that he was able to earn Rs. 600/- per month, there was no reason for the Labour Court to deny full backwages. In fact, the respondent employer has not led any evidence to prove that he was earning more than what the petitioner had stated. In these circumstances, the Labour Court ought to have granted backwages from the date the Petitioner approached the Conciliation Officer, less the amount of Rs. 600/- p.m., which the petitioner admittedly had earned.

10. The award of the Labour Court insofar as it denies continuity of service and backwages to the petitioner is set aside. The award is confirmed in respect of the reinstatement. The petitioner would be entitled to continuity of service on his reinstatement. The petitioner would further be entitled to backwages and all other consequential benefits from 6.7.1987, less Rs. 600/- per month which he admittedly earned. However, the Petitioner is not entitled to backwages from 13.8.1979 to 5.7.1987. The award of the Labour Court is modified accordingly.

11. Rule made absolute accordingly. No costs.