

(2014) 09 BOM CK 0130

In the Bombay High Court

Case No : Writ Petition No. 2432 of 2001

The Divisional Controller

APPELLANT

Vs

Maroti Piraji Gunjal

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 11-A, 17B

Citation : (2014) 6 ABR 321 : (2015) 5 MhLj 455

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : M.K. Goyanka, Advocate for the Appellant; R.D. Mane, Advocate for the Respondent

Final Decision : Allowed

Judgement

R.V. Ghuge, J.—This matter was heard finally on 04/09/2014. By an order dated 10/12/2001, this petition was admitted and the petitioner MSRTC was granted interim relief in terms of prayer clause "D". Prayer clause "D" reads as under: -

"Pending the hearing and final disposal of the present petition, the impugned judgment and award passed by the Learned Judge, Labour Court, Ahmednagar in Reference (IDA) No. 57/1992 8.8.2000 (Exhibit "A") may be kindly stayed."

2. After hearing the parties on 04/09/2014, I have recorded the facts of the case as follows :

(a) The respondent joined as a Conductor with the petitioner - MSRTC on 14.10.1973 and worked till 7.11.1987, when he was dismissed for failing to issue tickets of the proper fare to seven and half passengers, resulting into loss of Rs. 36.80 Ps. to the petitioner.

(b) The respondent called in question his dismissal, dated 7.11.1987, by preferring Reference IDA No. 57 of 1992.

(c) By Part I order, the domestic enquiry was held to be bad in law by the Labour

Court, while considering the challenge of the respondent.

(d) The petitioner challenged the Part I award in this Court and the said Writ Petition came to be rejected by order dated 7.10.1995.

(e) The petitioner, thereafter, conducted a de-novo enquiry and the charges of mis-appropriation were held to be proved against the respondent. Yet, by the impugned award dated 8.10.2000, the Labour Court set aside the dismissal on the ground of dis-proportionality of the punishment and directed reinstatement of the respondent - workman as a fresh appointee. This Court, by its order dated 10.12.2001, admitted the petition and granted interim relief in terms of prayer clause (D), which reads thus: -

"(D). Pending the hearing and final disposal of the resent petition, the impugned judgment and award passed by the learned Judge, Labour Court, Ahmednagar in Reference (IDA) No. 57 of 1992, 8.8.2000 (Exhibit "A") may be kindly stayed."

(f) The respondent has not challenged the conclusions of the Labour Court, as regards the charge of mis -appropriation having been proved, as well as the refusal to grant reinstatement with continuity and full backwages. On account of the interim orders passed by this Court, the respondent was not reinstated by the petitioner.

(g) Learned Advocate for the petitioner seeks two weeks" time to place before this Court the past record of the respondent, which according to the petitioner is unclean and blemished. The learned Advocate for the respondent submits that due to inadvertence, application u/s 17B of the Industrial Disputes Act, 1947 was not filed before this Court during pendency of this petition. He states that the respondent was unemployed, since his dismissal till the age of superannuation in June 2006, at 58 years. He, therefore, seeks liberty to file an affidavit that he was unemployed till his age of superannuation.

3. The material aspect emerging from the record is that the respondent was dismissed on 07/11/1987 on grounds of mis - appropriation. Tickets were not issued and/or lesser fare tickets were issued, which resulted in a loss of Rs. 36.80/- paise to the petitioner Corporation. The Part I award delivered by the Labour Court, setting aside the inquiry and findings of the Enquiry Officer was not interfered with by this Court, by its judgment dated 27/09/1999 in Writ Petition No. 633/1997.

4. By a de -novo inquiry before the Labour Court, the charges were proved. It is undisputed that the conclusion of the Labour Court in the impugned award dated 08/08/2000 that the charges are proved against the respondent has not been challenged before this Court by the respondent/conductor.

5. As such, the issue that arises for the consideration of this Court is whether the impugned award holding that the charges are proved against the respondent and yet granting fresh appointment in the service to the petitioner, could be said to be sustainable.

6. The Labour Court has come to the conclusion that the respondent / conductor had not issued proper tickets and therefore had caused a loss to the petitioner Corporation. This, therefore, leads to the conclusion that the fare was collected and yet the tickets were not issued. Needless to state, the charges proved before the Labour Court therefore indicate that the act of mis -appropriation of the money collected as a fare, had been proved and these conclusions have attained finality. The issue before the Labour Court was therefore restricted only to the aspect as to whether the punishment of dismissal awarded to the respondent / conductor was shockingly dis -proportionate or not.

7. Having heard the learned Advocates for the respective sides at length and having gone through the petition paper book with their assistance, I am of the view that the Labour Court has totally lost sight of the fact that an act of mis -appropriation ought to shock judicial conscience. Once an act of mis -appropriation is proved, no prudent person, in my view, would venture into assessing the quantum of mis -appropriation.

8. The Apex Court in the case of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, has concluded that the amount of money mis -appropriated is not significant. It now concluded that once an act of mis -appropriation is proved, the amount of money mis -appropriated is not the yardstick to measure proportionality of punishment.

9. In this view of the matter, the Labour Court has fallen in grave error by setting aside the order of dismissal dated 07/11/1987 on the ground that granting fresh appointment to the respondent would be an appropriate moulding of the relief u/ s 11-A of the Industrial Disputes Act since the respondent has suffered punishment of unemployment for 13 years and that would be a sufficient and proportionate punishment.

10. It is trite law that the past service record of an employee is necessarily to be adverted to while deciding the proportionality/ quantum of punishment. A clean and unblemished past service record of a considerable length operates as a mitigating factor. A blemished past service record operates as an aggravating factor.

11. In the instant case, the respondent/conductor was punished 11 times for identical mis -conducts of mis -appropriating money. Tickets, not commensurate to the fare of the journey, had been issued and at times passengers were found travelling without tickets. Having joined duties on 14/10/1973, the first mis conduct that he committed of this nature was on 03/06/1974 i.e. within 8 months of joining duties.

12. The default card was placed before the Labour Court and before this Court as well. It is beyond comprehension as to how could the Labour Court therefore hold that the gravity and seriousness of the mis -conduct proved was not aggravated. It is, therefore, apparent that the highly blemished past service record of the respondent/ conductor was never taken into account by the Labour

Court in the real sense.

13. In the light of the above, the impugned judgment and award deserves to be quashed and set aside. However, there is another angle to this case. The respondent/conductor had not moved an application u/s 17B of The Industrial Disputes Act, 1947. Section 17B reads as under: -

17B. Payment of full wages to workman pending proceedings in higher courts. - Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.

14. It is, therefore, trite law that the purpose and object of introducing Section 17B was aimed at reducing the rigours of litigation and for softening the hardship suffered by the litigant who is armed with an order of reinstatement passed by the Labour Court under the Industrial Disputes Act, 1947. It is undisputed that no such application was filed. It also cannot be in dispute that the employee stands to earn wages u/s 17B only if an affidavit to that extent is filed on record and it is declared by the employee that he is not in employment. Such an affidavit has been filed before this Court only on 15/09/2014.

15. It is stated that the respondent/ conductor was not in employment till attaining the age of superannuation in June 2006. It is stated that since he did not have any employment, the education of his 4 sons and 3 daughters suffered. It is stated that all of them are doing laborious work today. It is, therefore, prayed that benefit of Section 17B, though not prayed for at the time of admission of this petition due to lack of knowledge, may now be made available on grounds of sympathy and kindness.

16. I have no hesitation in concluding that an employee who had committed such mis -conducts deserves no sympathy. For the reasons recorded hereinabove, I have quashed and set aside the impugned Award. However, Section 17B is a creation of Law. As such, bearing in mind the intent and object behind introducing Section 17B, I am inclined to quantify an amount of Rs. 1,00,000/- for the period from 10/12/2001 (when this Court stayed the award) till June 2006, when the respondent/conductor attained the age of superannuation. The petitioner submits that since the mis -conducts proved against the respondent/

conductor involves moral turpitude, he is deprived of gratuity. Needless to state, the respondent/ conductor is not entitled to the gratuity.

17. In the light of the above, the petition is allowed. The judgment and award dated 08/08/2000 passed by the Labour Court, Ahmednagar in Ref. (IDA) No. 57/1992 is quashed and set aside. The petitioner is directed to pay an amount of Rs. 1,00,000/- (Rs. One lac only) to the respondent, as observed hereinabove, within a period of 8 (eight) weeks from today.

18. Rule is accordingly made absolute.