

(2014) 09 BOM CK 0067

In the Bombay High Court

Case No : Writ Petition No. 3561 of 2013

The Divisional Controller

APPELLANT

Vs

Prabhakar

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : (2014) 6 ABR 435 : (2015) 144 FLR 272 : (2014) 4 LLN 91

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

Bench : Single Bench

Advocate : M.K. Goyanka, Advocate for the Appellant; V.Y. Patil, Advocate for the Respondent

Final Decision : Allowed

Judgement

R.V. Ghuge, J.—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner-M.S.R.T.C. contends that the respondent was appointed as a daily wager on 27-03-1991. He was entered on the P.F. role on 15-06-1991. He was a bus driver. He was taken on temporary time scale with effect from 14-02-1992.

3. The respondent was driving a bus which was involved in an accident on 18-11-1992. The said accident resulted in the death of three persons and seriously injured one person. As a consequence the respondent was dismissed on 16-03-1993 after conducting a domestic enquiry under the Discipline and Appeal Rules of the petitioner.

4. The respondent challenged his dismissal by filing complaint (ULP) No. 198 of 1993 before the Labour Court at Jalgaon. By its judgment and order dated 13-01-2000, the complaint was dismissed. The enquiry was held to be fair and proper and the findings of the Enquiry Officer were held to be sustainable.

5. The respondent filed revision (ULP) No. 87 of 2002 before the Industrial Court

at Jalgaon. By its judgment and order dated 22-01-2004, the revision petition was dismissed.

6. The respondent preferred Writ Petition No. 3615 of 2004 challenging the judgments of the Labour Court as well as of the Industrial Court. The petition was allowed only to the extent that the Labour court was directed to go into the aspect of proportionality of punishment. It has been specifically concluded in paragraph 8 & 9 of the judgment that the Labour Court shall not re-open any other issue except deal with the question of proportionality and as to whether the punishment was shockingly disproportionate. The parties were allowed to lead evidence if they so desired. As such, the conclusions of both the Courts below, holding the enquiry to be fair/ proper and agreeing with the findings of the Enquiry Officer were upheld by this Court.

7. The petitioner, therefore, contends that the Labour Court wrongly re-opened all the issues and concluded that the enquiry is not fair and proper. Findings of the Enquiry Officer were held to be perverse. The charges were not held to be proved before the Labour Court and the punishment of dismissal was interfered with. The said judgment dated 21-07-2011 was called in question by the petitioner by preferring revision (ULP) No. 23 of 2011. The same came to be dismissed by the Industrial Court, Jalgaon. Both these judgments have, therefore, been assailed in the petition.

8. By an order dated 25-04-2013, this Court directed the parties to maintain status-quo, the same has been continued till this date.

9. The learned Advocate Shri V.Y. Patil, has strenuously contended that the conclusions drawn by the Labour Court are fair, proper and justified. Therefore, the Industrial Court has not interfered with the said conclusions. He has relied upon reported judgments which are as follows :-

a] Mill Manager, Savatram Ramprasad Mills Vs. Industrial Court and Another,

b] Divisional Controller, M.S.R.T.C., Bhandra Vs. Gulab Tanbaji Bhandarkar, 1988 (1) Mh.L.J. 818.

c] The judgment of the Apex Court in the case of Jaswant Singh Vs. Pepsu Roadways Transport Corporation and Another,

10. He, therefore, submits that merely because an accident has occurred would not mean that the respondent should be awarded the punishment of dismissal. He insists that the respondent joined in 1989 and had put in four years of service before his dismissal. He further states that the death of three persons occurred as they came under the rear wheels of the bus. Their deaths cannot be attributed to the conduct of the respondent as a driver. The respondent could not have any control as regards these three persons coming under the rear wheels. He, therefore, submits that no interference by this Court was warranted and the Labour Court and Industrial Court have rightly interfered with the action of the petitioner.

11. The record produced before this Court by the petitioner indicates the date of appointment as 23-07-1991. Complaint (ULP) No. 198 of 1993 was earlier dismissed. As recorded above, the enquiry was held to be fair and proper and the findings of the Enquiry Officer were held to be sustainable. The Industrial Court, therefore, dismissed the revision filed by the respondent. These conclusions were upheld by this Court.

12. By order dated 05-07-2010, this Court had not permitted the Labour Court as well as the litigating parties to reopen any issue framed by the Labour Court except the issue of proportionality of the punishment. In short, the Labour Court was called upon to inquire into whether the punishment awarded to the respondent was shockingly disproportionate to the gravity and serious of the misconduct.

13. The Labour Court was not justified and was precluded from opening issue Nos. 1 to 3, when the matter was remanded. Apparently, the Labour Court has transgressed its limits as were laid down by this Court in its order dated 05-07-2010. The Labour Court ventured into the arena of perversity of the enquiry and the findings of the Enquiry Officer and thereby committed a gross error in trying the complaint a fresh. For these reasons, the judgment of the Labour Court dated 21-07-2011 deserves to be quashed and set aside. Consequentially, the judgment of the Industrial Court dated 22-02-2013 also deserves to be set aside.

14. The only issue before the Labour Court was as to "whether the punishment of dismissal was shockingly disproportionate to the gravity of the misconduct." It is trite law that merely because the punishment appears to be disproportionate is not enough to warrant interference by the Labour Court.

The Apex Court has held that punishment awarded to an employee must be shockingly disproportionate so as to cause an interference by the Court. This view has been laid down in the following judgments :-

a] Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna,

b] Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain,

Various High Courts have followed the view taken by the Apex Court in the following judgments :-

a] R.S.R.T.C. and Another Vs. Bhagwana Ram and Another,

b] B.L. Meghwal Vs. State of Rajasthan and Another,

The dis-proportionality of the punishment must shock the judicial conscience of the Labour Court. Unless it is found to be shockingly disproportionate, there can be no interference in the punishment.

15. The gross error committed by the Labour Court is that it retried the complaint, held that the enquiry is unfair and vitiated, set aside the findings of

the Enquiry Officer by branding them to be perverse and then concluded that not a single charge was proved against the respondent/ workman. This clearly indicates non application of mind by the Labour Court. The same can be said about the Industrial Court as well.

16. Three deaths have been caused by the accident in which the respondent was involved. One person was seriously injured. By the order of this Court dated 05-07-2010 in Writ Petition No. 3615 of 2004, the issue as regards the accident and the misconduct committed was not to be reopened. The respondent-employee has not challenged the judgment of this Court before the Apex Court. The conclusions that all the charges are proved against him, have attained finality.

17. Past record of about three years despite being clean, in my view, would not operate as a mitigating factor in these circumstances. Since the other issues before the Labour Court were not to be reopened, the judgment cited by the respondent in the case of Gulab Tanbaji Bhandarkar (supra), can be of no assistance since in the said case it was proved that the accident that resulted in deaths was beyond the reasonable control of the driver. In the instant case, the said issue cannot be reopened in view of the order passed by this Court on 05-07-2010.

18. The reliance placed upon the judgment of Mill Manager, Savatram Ramprasad Mills (supra) is also of no assistance because the clean and unblemished past service record of the employee concerned was of thirty years. In the instant case, it is less than three years. For similar reasons the judgment of the Apex Court in the matter of Jaswant Singh (supra), would not be of any assistance. That was a case of a driver having reported on duties in drunken state.

19. So far as the clean and past service record of about three years is concerned, this Court had an occasion to deal with such an issue. The Single Judge of this Court in the case of Bajaj Auto Limited Vs. Kalidas Devram Patil, has considered the judgment of the Apex Court in the case of Palghat BPL & PSP Thozilali Union Vs. BPL India Ltd. and another, reported at 1996 (1) CLR 368. This Court had concluded that a past record up to 2 to 3 years despite being clean cannot be considered as a mitigating factor, since it does not prove the consistent attitude and conduct of an employee. This judgment was challenged before the Division Bench in the case of Kalidas Devram Patil Vs. Bajaj Auto Ltd. The Letters Patents Appeal was dismissed for similar reasons.

20. In the light of the above, the Labour Court as well as the Industrial Court have fallen in a grave error. The impugned judgments are grossly erroneous and are perverse. The directions given by this Court in order dated 05-07-2010 have been overlooked by the Labour Court which was impermissible.

21. The accident that has resulted in death of three persons and seriously injured one person, though a first accident at the hands of the respondent, is a serious misconduct. Its seriousness is not mitigated by the clean past service record of

the respondent which is only of about three years.

22. I therefore, do not find that the said past record could be termed as a mitigating factor in order to reduce the seriousness and the gravity of the misconduct committed by the respondent. The punishment of dismissal awarded to the respondent is, therefore, an appropriate punishment.

23. In view of the above, Writ Petition is allowed. The impugned judgments and orders of the Labour Court dated 21-07-2011 in complaint (ULP) No. 198 of 1993 and Industrial Court dated 21-02-2013 in Revision (ULP) 23 of 2011 respectively are quashed and set aside. The complaint stands dismissed and the Revision petition stands allowed. Rule is made absolute.