

(2015) 06 BOM CK 0267

In the Bombay High Court

Case No : Writ Petition No. 9820 of 2014

The Divisional Controller, Maharashtra State Road Transport Corporation and Others

APPELLANT

Vs

Anant Dhondu Kolte

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Citation : (2015) 06 BOM CK 0267

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

Bench : Single Bench

Advocate : Manoj Shinde h/f M.K. Goyanka, for the Appellant; V.Y. Patil, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J—Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The learned Advocates have canvassed a host of submissions. However, in the light of crystallized law, the issue as regards fairness of the enquiry and the fairness of the findings of the Enquiry Officer, need to be decided peremptorily. The same has not been done by the Labour Court. It is in this backdrop that I have considered the submissions of the learned Advocates.

5. The respondent herein was working as a Conductor with the petitioner/ Corporation. His services were terminated by way of punishment with effect from 21.12.2006 for proved misconduct. It is not in dispute that a domestic enquiry was conducted.

6. The respondent preferred Complaint (ULP) No. 27 of 2009 for challenging his termination. The Labour Court framed five issues, which are as under:-

"1. Does the complainant prove that the departmental enquiry held against him was unjust, unfair, improper and in utter disregard to the principles of natural justice?

2. Does the complainant prove that findings of the enquiry officer are perverse?

3. Does the complainant prove that the respondent has committed an unfair labour practice under Item-1(a), (b), (d), (e), (f) & (g) of Schedule IV of the MRTU & PULP Act, 1971, by dismissing him from service w.e.f. 21.12.2006?

4. Whether the complainant is entitled for the relief as sought for?

5. What order? "

7. By the impugned judgment and order dated 15.5.2012, the Labour Court set aside the domestic enquiry by concluding that though it was conducted in fairness, the findings of the Enquiry Officer are perverse. Consequentially, the Labour Court concluded that the respondent deserves to be reinstated in service with continuity, other benefits and 25% back wages from 21.12.2006. The petitioner preferred Revision (ULP) No. 73 of 2012, which was dismissed by judgment and order dated 17.12.2014, delivered by the Industrial Court, which is impugned in this petition.

8. Shri Patil has vehemently contended that there is no perversity in the conclusions of the Labour Court, which has rightly allowed the complaint. He further submits that the Industrial Court has rightly dismissed the Revision. It is also contended that none of the charges levelled upon the respondent have been proved in the enquiry and the conclusions of the Enquiry Officer were not supported with the evidence on record. He, therefore, submits that the Labour Court has rightly branded the conclusions of the Enquiry Officer as being perverse.

9. Despite the vehemence of Shri Patil, I am unable to accept his contentions in the light of the view taken by this Court based on catena of judgments of the Apex Court as well as this Court in the case of Maharashtra State Road Transport Corporation Vs. Syed Saheblal Syed Nijam, (2014) 4 ABR 294 : (2014) 5 ALLMR 104 : (2014) 4 LLJ 267 : (2014) 4 MhLj 687 . The following judgments which have been relied upon by this Court while delivering the said judgment:-

(1) Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Registered Office, Cotton Complex and Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd., Zonal Office, Workshop Corner Vs. Vasant Ambadas Deshpande, (2014) 4 ABR 71 : (2014) 2 ALLMR 682 : (2014) 141 FLR 669 : (2014) 1 LLJ 604 : (2014) 3 MhLj 339 .

(2) Vinod Vishnu Wani and Others Vs. Permanent Magnets Ltd., (2002) 4 ALLMR 137 : (2002) 3 BomCR 334 : (2002) 94 FLR 66 : (2002) 2 LLJ 1123 .

(3) Permanent Magnets Ltd., Mumbai Vs. Vinod Vishnu Wani, (2002) 1 ALLMR 797 : (2002) 1 BomCR 310 : (2002) 4 BOMLR 6 : (2002) 93 FLR 32 : (2002) 3

MhLj 413

(4) A.H. Wadia Charity Trust and Others Vs. Neville Jathan and Others, (2002) 2 MhLj 723

(5) Karnataka State Road Transport Corporation Vs. Laxmidevamma & another) 2001 II CLR 640

(6) Kumaon Mandal Vikas Nigam Ltd., V/s. G.S. Pant and others, 2001 (1) CLR 12,

(7) Bharat Forge Company Ltd. Vs. A.B. Zodge and another, (1996) 3 AD 58 : AIR 1996 SC 1556 : (1996) 73 FLR 1754 : (1996) 5 JT 628 : (1996) 2 LLJ 643 : (1996) 2 SCALE 731 : (1996) 4 SCC 374 : (1996) 2 SCR 912

(8) Shambhu Nath Goyal Vs. Bank of Baroda and Others, AIR 1984 SC 289 : (1983) 2 LLJ 415 : (1983) 2 SCALE 931 : (1983) 4 SCC 491 : (1984) 1 SCR 85 : (1983) 2 SLJ 607

(9) Britannia Biscuit Co. Ltd. Vs. Third Industrial Tribunal and Another, 80 CWN 676 : (1977) 1 LLJ 197 ,

(10) The Cooper Engineering Limited Vs. Shri P.P. Mundhe, AIR 1975 SC 1900 : (1975) 31 FLR 188 : (1975) LabIC 1441 : (1975) 2 LLJ 379 : (1975) 2 SCC 661 : (1976) 1 SCR 361 ,

(11) The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, AIR 1973 SC 1227 : (1973) 26 FLR 359 : (1973) 1 LLJ 278 : (1973) 1 SCC 813 : (1973) 3 SCR 587 ,

(12) State Bank of India Vs. R.K. Jain and Others, AIR 1972 SC 136 : (1972) LabIC 13 : (1971) 2 LLJ 599 : (1972) 4 SCC 304 : (1972) 1 SCR 755 ,

(13) Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, AIR 1972 SC 1031 : (1972) 1 LLJ 180 : (1972) 1 SCC 595 : (1972) 3 SCR 29 and

(14) Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, AIR 1965 SC 1803 : (1965) 11 FLR 112 : (1965) 2 LLJ 162 : (1965) 3 SCR 588 .

10. The issue, therefore, is no longer res-integra. When the issues as regards the fairness of the enquiry and the fairness of the findings of the enquiry officer are to be decided, the said two issues have to be decided as preliminary issues so as to constitute the Part I order of the Court. If the enquiry is set aside for any reason, while answering the said two issues, the employer can conduct a de novo enquiry, provided, a right to that effect is reserved in the Written Statement of the employer in the light of the ratio laid down by the Apex Court (Five Judges) in the case of Karnataka State Road Transport Corporation Vs. Laxmidevamma an another [2001 (2) CLR 640].

11. I do not find that the Labour Court has followed the procedure in deciding the

said two issues peremptorily. The impugned judgment of the Labour Court is, therefore, unsustainable. For similar reasons, the impugned judgment of the Industrial Court is also unsustainable.

12. In the light of the above, this petition is partly allowed. The impugned judgment of Labour Court dated 15.5.2012, delivered in Complaint (ULP) No. 27 of 2009 is quashed and set aside. So also the impugned judgment of the Industrial Court dated 17.12.2013, delivered in Revision (ULP) No. 17 of 2012 is also quashed and set aside. Complaint (ULP) No. 27 of 2009 is remitted back to the Labour Court for deciding issue Nos. 1 and 2 peremptorily in the light of the observations of this Court in the MSRTC, Beed judgment (supra) and the observations made by this Court in the case of Maharashtra State Cooperative Cotton Growers Marketing Federation case (supra) [2014 (1) CLR 878], while deciding the first two issues. Needless to state, it is expected that the Labour Court shall follow the law as laid down in the aforesaid judgments, while deciding the complaint afresh and on its own merits. All contentions of the litigating sides are kept open.

13. It is jointly informed by the learned Advocates that the respondent has been reinstated in employment on 19.1.2013 and since then he continues to be in the employment of the petitioner.

14. In 2014, the respondent is said to have committed another misconduct for which a departmental enquiry was conducted and he was proposed with a punishment of dismissal from service through a second show cause notice. The respondent has approached the Labour Court, Jalgaon by preferring Complaint (ULP) No. 12 of 2014 and the respondent is protected by the interim orders of the Labour Court. In this backdrop, the respondent shall be continued in employment by virtue of the orders passed in Complaint (ULP) No. 12 of 2014. It is made clear that in so far as Complaint (ULP) No. 27 of 2009 is concerned, the respondent shall not claim continuance in employment and he shall so continue subject to further orders being passed by the Labour Court in Complaint (ULP) No. 12 of 2014, which needs to be decided expeditiously.

15. Rule is accordingly made partly absolute. No order as to costs.