

(2007) 07 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 1858 of 1994

The Divisional Controller, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Abdul Aziz Sk. Mohd. and Others

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 13, Order 11 Rule 15, Order 11 Rule 17, Order 11 Rule 18

Citation : (2007) 5 ALLMR 1 : (2007) 5 BomCR 591 : (2007) 5 MhLj 691

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : R.S. Charpe, for the Appellant; N.W. Sambre and S.W. Samber for Respondent Nos. 1 to 5 and C.V. Jagdale and M.B. Joshi for Respondent Nos. 6 to 14, for the Respondent

Judgement

A.B. Chaudhari, J.—By the present writ petition, the petitioner. Maharashtra State Road Transport Corporation has challenged the judgment and order dated 30.4.1993, passed by the Industrial Court, Maharashtra (Nagpur Bench) Nagpur, by which the Industrial Court allowed the complaints filed by the respondents/ original complainants and declared the complainants/respondents successful in the departmental examination and further directed the petitioner to promote them to the post of traffic controllers.

FACTS:

2. The respondents/original complainants had filed their complaints before the Industrial Court, Nagpur claiming that the departmental examination held on 26.10.1986 for promotion to the post of traffic controller and its result declared on 31.3.1987 was the result of manipulation and, hence, there was unfair labour practice. Further prayer that was made in the complaints was to declare them as having passed in the said examination and to quash and set aside reversion of the respondents from the post of traffic controllers to the post of conductors,

which took place as a result of their alleged failure to pass examination. Earlier on 15.1.1978, a departmental examination was held and its result was declared on 19.1.1978 in which the respondents/complainants were declared to have passed the said examination. The said examination and its result were put to challenge and ultimately by the judgment and order dated 15.4.1984 in W.P. No. 1525/1979, this Court held that there was noncompliance of various prerequisite, technicalities etc. on the part of the petitioner MSRTC and, therefore, the examination that was held was in breach of Clause 6 of the settlement dated 25.4.1956. However, all the respondents were promoted to the post of traffic controllers during the pendency of the writ petition but as a result of the judgment of the High Court they were reverted. The examination dated 26.10.1986 was held in accordance with the directions of the High Court in which all the respondents appeared but were declared to have been unsuccessful in the result which was declared on 31.3.1987 and, therefore, their reversion orders were issued which they challenged by filing the aforesaid complaints. The respondents had raised a ground in the complaints that their performance in the examination was very good and under those circumstances they could not be declared as unsuccessful. The candidates who were declared successful could hardly right anything in the examination and still they were declared successful in order to favour them. The Industrial Court made an order on 9.4.1987 while issuing notice on the complaints to produce the answer-books of the conductors against whom allegations of favouritism were made. The petitioner - MSRTC appeared before the Industrial Court and filed its written statement denying the allegations made in the complaints. The Industrial Court held trial. Some of the complainants were examined before the Industrial Court. After hearing both the parties, the learned Industrial Court, thereafter, allowed the complaints filed by the respondents as aforesaid. Hence, this writ petition by MSRTC. ARGUMENTS:

3. Shri R.S. Charpe, learned Counsel for the petitioner - MSRTC made following submissions;

(1) By order dated 9.4.1987, the Industrial Court had directed production of answer books of the conductors against whom allegations of favouritism were made. By order dated 4.2.1988 answer papers of those who were declared successful were directed to be produced. There was no order for production of answer papers of the respondents/complainants, in the absence of which drawing of adverse inference by the Industrial Court is wrong.

(2) The orders for production of answer papers is governed by "discovery and inspection". The principles of "discovery and inspection" have been made applicable also to the Industrial Tribunals and the prerequisites for ordering discovery and for inspection were absent in the cases before the Industrial Court and, hence, all those orders made for production of answer papers and inspection etc. are illegal. In support of his submissions, he relied upon the decision in the case of Burn and Co. Vs. Jitendra Nath Maitra and Others, as well as Division Bench judgment of Patna High Court in the case of Kamalapati Ram &

Co. and Ors. v. Workmen in mica industry and Ors. reported in 1963 (I) L.L.J. 703 and the Division Bench decision of this Court in the case of 20th Century Fox Corporation (India) Private Ltd. v. F.H. Lala and Ors. reported in 1975 L. I.C. 517.

(3) The sanctity of the answer books could not have been destroyed by the Industrial Court by ordering production thereof and then allowing the complainants/respondents to take inspection thereof.

(4) No evidence was adduced on record by the respondents/complainants to show any specific malafides for proving that the answer books were either manipulated or tampered with or in order to favour some conductors they were manipulated. On the contrary, in the evidence respondents/complainants stated that they had no grievance against those persons who were successful in the examination and were promoted.

(5) There were no allegations about noncompliance of any of the clauses of the settlement as were made and decided by this Court in W.P. No. 1525/1979 decided on 15.4.1984. There was, therefore, no unfair labour practice as claimed by the respondents/complainants.

(6) Merely because the respondents/complainants were declared unsuccessful in the departmental examination that by itself would not amount to unfair labour practice.

(7) The reasons recorded by the Industrial Court allowing the complaints cannot stand the test of judicial scrutiny and the Industrial Court has declared them successful in the examination only on the ground that their answer books were not produced before the Industrial Court.

4. Per contra, Shri N.W. Sambre, learned Counsel for the respondents/complainants opposing the submissions made by the Counsel for the petitioner submitted as under;

(1) Interference by the Industrial Court in the matter of departmental examinations and their result etc. is permissible and there were enough averments in the complaint to show that unfair labour practice within the meaning of item Nos. 5 ad 9 was committed by the petitioner. In fact, earlier this Court also had held that there was unfair labour practice on the part of petitioner in conducting the departmental examination.

(2) The answer papers were in fact produced before the Court by the petitioner and as per the order made by the Court they were taken away by the petitioner for want of availability of safe lockers with the Industrial Court. But when they were directed to be produced at the time of evidence, the answer papers of all the respondents went missing which was deliberate act on the part of the officers of the petitioner. Corporation to deprive the respondents/complainants of the possible grant of relief to them.

(3) There are averments in the complaints with the names of the persons who

were being favoured by the petitioner. Corporation and who were declared successful despite the fact that they did not even know how to right the answer books. The respondents had, therefore, amply proved the unfair labour practice within the meaning of item No. 5.

(4) The Industrial Court has rightly drawn adverse inference against the petitioner for not producing the answer books in respect of the respondents despite the orders made by the Industrial Court from time to time. As a matter of fact, the petitioner. Corporation had obtained time from the Court for producing the answer books.

(5) The conduct of the officers of petitioner. Corporation disentitles them from making any hue and cry about the Industrial Court's drawing adverse inference against the petitioner. Corporation. In support of this proposition, he relied upon the decision of the Supreme Court in the case of C. Tulasi Priya Vs. A.P. State Council of Higher Education and Others, . He, therefore, prayed for dismissal of the writ petition.

CONSIDERATION:

5. Having heard Counsel for the parties and having gone through the entire record and proceedings of the Trial Court as well as this Court at the outset it is necessary to examine the correctness of the approach of the Industrial Court in ordering production of answer books before it repeatedly. On 9.4.1987, 4.2.1988 and 7.4.1988 the Industrial Court ordered production of answer books before it. Accordingly, the answer books were produced and they were returned to the petitioner by the Industrial Court. Now while deciding application (Exh.2) on 16.4.1987, the Industrial Court in its order recorded that it has gone through the answer books produced before it and did not find anything illegal or irregular and, hence, the interim application was rejected. The respondents/complainants had not adduced any evidence or brought any sufficient material on record for ordering production of answer books before the Industrial Court. The allegations about malafides and favouritism were given complete go bye by the respondents/complainants when the trial was held. This will be evident from the following quoted deposition of witness No. 1 Abdul Aziz Shaikh Mohammad in Complaint (ULPA) No. 277/1987. While I was working as traffic Controller second written examination was held on 26.10.1986. I was declared as failed in the said examination. According to me, I had solved the papers satisfactorily and I ought to have been declared successful. My Roll No. was 218. However, my answer book is missing. The employees whose names are mentioned in para 6 of the complaint have been declared successful in the second written examination. All of them appeared for the examination twice or thrice. The employees at Sr. Nos. 1, 4, 7, 9, 11, 12, 13, 16, 18, 19, 20, 24, 26, 28, 33, 36, 39,41, 43, 44, 45 and 46 are unable even to write. Their answer books are also missing. They are unable to succeed in the examination.

I have no grievance about the employees who have passed the second

examination.

6. Not only that the witnesses for the complainants abandoned their plea about favouritism to the successful candidates by saying that the complainants had no grievance about the conductors who have passed the examination. No specific evidence was tendered to show malafides on the part of any specific officer nor any specific evidence was led to prove malafides or manipulations. In the wake of the above evidence, I do not think that the evidence was sufficient to infer any favouritism or manipulation with the answer books. Now coming to the procedure adopted by the Industrial Court in relation to the "discovery and inspection", the following paragraphs from the decision of the Calcutta High Court, in my opinion aptly apply the instant case. So far as discovery and inspection is concerned, Tribunals are given the same power as Civil Courts. Therefore, the test to be applied here is a simple one viz. Has the Tribunal made an order which a Civil Court placed in similar circumstances would have made? So far as discovery and inspection is concerned, the relevant provisions are Section 30 and Order 11 of the Code of Civil Procedure. Section 30 gives the Court power, subject to conditions and limitations as may be prescribed to make such orders relating to discovery and inspection etc., as may be necessary or reasonable. Limitations are contained in Order 11. Order 11, Rule 12 lays down how an application is to be made for discovery of documents. The application is for an order directing any other party to make discovery on oath, of documents which were, or are in his possession or power, relating to any matter in question therein. Rule 13 specifies what the affidavit of documents should contain. Rule 15 gives power to a party to serve notice on the other party in whose pleadings and affidavits reference is made to any document, to produce such document for inspection. Rule 17 speaks of how inspection should be given & Rule 18 empowers the Court to order inspection when inspection has not been given in spite of notice. This question of discovery & inspection has been the subject matter of numerous authorities in England as well as in India. There are certain principles which have been firmly established in such cases, e.g. an affidavit of documents is considered as prima facie conclusive, but there are certain circumstances under which the Court can order inspection of documents although not stated in the affidavit, because it comes to the conclusion that their existence is reasonable or probable by reason of anything contained in the affidavit, or the documents contained therein, or the pleadings. It is unnecessary to go into these cases because it is conceded by learned Counsel appearing on behalf of the respondents that before inspection could have been ordered it was necessary to order the filing of an affidavit of documents. Such is in reality the procedure which has been laid down by law. Until an affidavit of documents has been directed to be filed, the Court would have no jurisdiction to order inspection. This is not a procedure which can be omitted. I am informed that the tribunals do not order the filing of an affidavit of documents before ordering inspection. This is a practice contrary to law and must not be continued. It is not merely a shadow but a matter of substance that a party should be called upon and should be enabled to state on oath as to what

documents are relevant and are in his possession or power, before being called upon to give inspection thereof. The Industrial Tribunals are creatures of law, and therefore they are bound to follow the procedure laid down by law. They cannot evolve their own procedure in the case of discovery and inspection.

7. In the instant case, I find that the Industrial Court had mechanically passed the order every time, asking for production of the answer books and also allowing inspection thereof. Now coming to the sanctity of the answer books and the exercise alike revaluation of answer books, it will be apt to quote following paragraphs from the decision of the Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .

27. ...Further, it is in the public interest that the results of Public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process.

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possession technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.

8. Having regard to the law laid down by the Supreme Court, I do not think that the Industrial Court was justified in ordering production of the answer books repeatedly and then returning the same to the petitioner's officers and then allowing the complainants/respondents to take inspection thereof. Not only that when the answer books of the respondents/complainants have gone missing, the Industrial Court drew inference that the respondents/complainants must have passed the examination and, therefore, the answer books were not being produced. In my opinion, this is nothing but figment of imagination. The Industrial Court went ahead and declared that they have passed the examination

and also ordered consideration of their promotion to the post of traffic controllers, which is wholly wrong and illegal.

9. For all these reasons, therefore, the impugned judgment and order passed by the Industrial Court is liable to be quashed and set aside. The same is accordingly quashed and set aside.

10. Rule is made absolute in terms of prayer Clause - (i). No order as to costs.