

(2015) 09 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 3527 of 2012

The Divisional Controller, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Abdul Karim Saifansab Javalge

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 32, 4, 42, 44, 5

Citation : (2016) 1 ABR 655 : (2015) 6 ALLMR 835 : (2015) 5 BomCR 551 : (2016) 1 MhLj 916

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

Bench : Single Bench

Advocate : Bagul D.S., for the Appellant; V.D. Gunale, Advocate h/f R.G. Shirsath, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

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

2. I have heard Shri Bagul, learned Advocate for the Petitioner/ MSRTC and Shri Gunale, learned Advocate for the Respondent, extensively.

3. The following two points emerge for determination in this petition:

(i) If the Industrial Court in it's revisional powers under Section 44 of the MRTU & PULP Act, 1971 overturns the findings of the Labour Court and concludes that the findings of the Enquiry Officer are perverse, thereby, vitiating the entire enquiry, then, whether, it can decide the whole issue and grant reinstatement, without remanding the matter back to the Labour Court for enabling the Employer to conduct a denovo enquiry in the light of the ratio laid down by the Apex Court (five judges) in the matter of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, AIR 2001 SC 2090 : (2001) 90 FLR 35 :

(2001) 1 JT 461 Supp : (2001) LabIC 1777 : (2001) 2 LLJ 199 : (2001) 3 SCALE 600 : (2001) 5 SCC 433 : (2001) 3 SCR 284 : (2001) 2 SCT 1041 ?

(ii) Whether, the Industrial Court, within its revisional jurisdiction under Section 44 of the MRTU & PULP Act, 1971, can set aside the order of dismissal which was passed prior to the institution of the revision petition and after the Labour Court dismissed the complaint filed for challenging the show cause notice?

4. The undisputed facts emerging from the record are as under:

- (a) The Respondent/ Employee joined the Petitioner/ MSRTC as a Driver in 1993.
- (b) A complaint was received by the Petitioner/ MSRTC in 1998 wherein it was pointed out that several drivers (including the Respondent herein) had obtained employment on the basis of false and forged documents.
- (c) A preliminary enquiry was conducted by the Petitioner/ MSRTC.
- (d) The preliminary enquiry report dated 30.04.1998 indicates that the Respondent had not acquired education in a recognized school and had claimed to have passed his 08th standard in a school which was imparting education only up to the 04th standard.
- (e) By communication dated 29.12.1999, the Education Officer (Primary), Zilla Parishad, Latur informed that the school, namely, Shri Dayanand Balvikas Mandir School, Killari, District Latur in which the Respondent claimed to have taken education, was a private school/ tuition class and the same was not recognized and was not an authorized school.
- (f) The Petitioner initiated a departmental enquiry against the Respondent/ Employee.
- (g) Upon conclusion of the enquiry, the second show cause notice dated 18.03.2000 was issued to the Respondent/ Employee proposing the punishment of dismissal.
- (h) The Respondent/ Employee filed Complaint (ULP) No. 34/2000 before the Labour Court which was allowed on 06.07.2002.
- (i) The Petitioner/ MSRTC preferred Revision (ULP) No. 203/2004 (old No. 110/2002) before the Industrial Court, which was decided on 17.02.2007 resulting in setting aside the judgment of the Labour Court and remanding back the complaint for adjudication afresh.
- (j) By the judgment and order dated 09.07.2010, the Labour Court dismissed the complaint by holding that the enquiry was conducted in a fair and proper manner and the action of the Petitioner/ MSRTC was justified.
- (k) On the next day, the Respondent was dismissed from service by the order dated 10.07.2010.

(l) The Respondent/ Employee preferred Revision (ULP) No. 32/2010.

(m) The said revision was instituted on 20.09.2010, which is two months and 10 days after the dismissal of the Respondent.

(n) By the impugned judgment and order dated 08.11.2011, the Industrial Court allowed the Revision, set aside the judgment of the Labour Court concluding that the charges are not proved against the Respondent/ Employee and further set aside the order of dismissal dated 10.07.2010 and directed reinstatement with continuity and full backwages.

5. It is trite law that the Industrial Court, under Section 32 of the MRTU & PULP Act, 1971, while dealing with an incidental issue, cannot expand its jurisdiction beyond what was originally vested in it by law. (See National General Mazdoor Union Vs. Nitin Casting Limited and Others, (1991) 1 BomCR 8 : (1991) 61 FLR 315 .

6. The Industrial Court has concluded that since the show cause notice on punishment was issued to the Respondent, the Industrial Court can deal with the order of dismissal which has been passed after the complaint was dismissed by the Labour Court.

7. The entire journey of litigation in between these parties has been with reference to the second show cause notice dated 18.03.2000. It cannot be overlooked that the order of dismissal dated 10.07.2010 has been delivered after the Labour Court dismissed Complaint (ULP) No. 34/2000 vide judgment dated 09.07.2010. The Petitioner was, therefore, at liberty to proceed pursuant to the second show cause notice.

8. The revision before the Industrial Court was filed on 20.09.2010, which is two months and 10 days post the dismissal of the Respondent. The Respondent was not precluded from challenging the dismissal order by filing a separate complaint since the earlier complaint was already dismissed by the Labour Court.

9. Sections 4 and 5 under Chapter II of the MRTU & PULP Act, 1971 define the Industrial Court and its duties. Section 5 reads as under:-

5. Duties of Industrial Court.

It shall be the duty of the Industrial Court:

(a) to decide an application by a union for grant of recognition to it;

(b) to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;

(c) to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;

(d) to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;

(e) to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;

(f) to decide references made to it on any point of law either by any civil or criminal court and

(g) to decide appeals under Section 42."

10. Sections 6 and 7 define the Labour Court and provide for duties of the Labour Court. Section 7 reads as under:-

7. Duties of Labour Court:-

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item 1 of Schedule IV and to try offences punishable under this Act."

11. In the light of the above, the order of termination or dismissal would have fallen within the jurisdiction of the Labour Court and not the Industrial Court. In my view, Section 32 would not enlarge the scope of jurisdiction beyond the extent to which it has been conferred upon the Industrial Court under the provisions of the Act. Merely because the Industrial Court was dealing with the second show cause notice which was the penultimate stage in the disciplinary proceedings, would not create jurisdiction in the Industrial Court to deal with the order of dismissal which is by way of imposition of penalty upon the Respondent/Employee.

12. In *M/s. Nitin Casting Limited (supra)*, this Court has already concluded that the Industrial Court while dealing with the connected issues under Section 32, would not be able to decide the issues which were inherently not within its jurisdiction. Relevant observations of this Court in paragraph 9 are as under:-

9. From the language of section 32, it is clear to me that this does not enlarge the scope or the extent of the jurisdiction of the Industrial Court beyond what is conferred upon it by the other provisions of the PULP Act. If under the other provisions of the PULP Act the Industrial Court has no jurisdiction to deal with the unfair labour practices mentioned in Schedule IV of the Act, section 32 does not give such power to the Industrial Court. What is contemplated in section 32 is that the Industrial Court or, for that matter, even the Labour Court has power to decide all matters arising out of an application or a complaint referred to it for decision under the provisions of the PULP Act. The complaint or the application which is referred to the concerned Court must be made to the proper Court. While deciding such a complaint or an application if certain matters or issues or questions arise, the concerned Court has been invested with the power to decide all those matters, issues or questions so arising. The Court is not debarred from dealing with such matters, issues or questions arising merely on the ground that no specific provision has been made elsewhere conferring power upon the concerned Court to deal with such incidental questions. This is the meaning of

section 32 of the PULP Act. It does not enlarge the jurisdiction of either the Industrial Court or of the Labour Court which is otherwise not being conferred upon it by the other provisions of the PULP Act."

13. The crystallized position in law has been considered by this Court in the case of 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 and 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 , in so far as the manner in which the first two issues are to be dealt with by the Labour or Industrial Court in a complaint.

14. As such, in my view, the Industrial Court should have restricted it's judgment only to the aspect of whether, the judgment of the Labour Court dated 09.07.2010 was perverse or not. When it concluded that the judgment was perverse and set aside the findings of the Enquiry Officer, the Industrial Court was left with no jurisdiction to grant consequential reliefs to the Respondent and surely not to the extent of granting reinstatement in service by setting aside the order of dismissal which was not assailed and which could not have been assailed in the revision proceedings. It should have remanded the complaint to the Labour Court for enabling the Petitioner/ Management to conduct a denovo enquiry.

15. Hence, I conclude that the Industrial Court could not have granted relief of reinstatement, continuity of service and full backwages to the Respondent, while holding that the findings of the Enquiry Officer are perverse. So also, the Industrial Court could not have assumed jurisdiction under Item 1 of Schedule IV of the MRTU & PULP Act, 1971 for setting aside the order of dismissal issued to the Respondent. When this was not permissible even in a complaint, the Industrial Court could have never done so in a revision petition under Section 44.

16. Shri Gunale, learned Advocate, at this juncture, submits that as the earlier complaint has already been dismissed and the judgment of the Industrial Court is now set aside by this Court, liberty be granted to the Respondent to file a fresh complaint for challenging the order of dismissal dated 10.07.2010 and the time spent in litigation post dismissal be considered as a good ground for condonation of delay.

17. The Petitioner/ Corporation has no objection in the light of the law that the Respondent cannot be rendered remedyless and can challenge the dismissal before a competent court.

18. In the light of the above, the impugned judgment of the Industrial Court dated 08.11.2011 is quashed and set aside. Revision (ULP) No. 32/2010 stands disposed of. The judgment of the Labour Court dated 09.07.2010 shall be

deemed to be in relation to the second show cause notice dated 18.03.2000.

19. In the event, the Respondent/ Employee files a complaint before the Labour Court for challenging the order of dismissal dated 10.07.2010 within a period of THIRTY DAYS from today, time spent by the Respondent/ Employee before the Industrial Court from 20.09.2010 till the decision in this petition, shall be considered as a good ground for condonation of delay on an application which the Respondent shall file along with the complaint.

20. In the light of the above, this Writ Petition is partly allowed and Rule is made absolute in the aforesaid terms.