

(2015) 08 BOM CK 0097

In the Bombay High Court

Case No : Writ Petition No. 9943 of 2014

The Divisional Controller, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Dilip Vasant Pachpute

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Citation : (2015) 6 ABR 344 : (2016) 1 ALLMR 107 : (2015) 4 LLJ 131

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

Bench : Single Bench

Advocate : Rakesh Jain h/f D.S. Bagul, for the Appellant; Ajay Magare, 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. Contention of the petitioner is that the respondent was appointed as a conductor in the MSRTC in 1998. On 26-03-2009, the respondent was manning the bus on the Sakri-Nashik road. A flying squad checked the bus at Ozar main gate and found a female passenger travelling from Satana to Nashik to be in possession of Ticket No. 317070 and 176744 for an amount of Rs. 30/- each and one ticket bearing No. 36910 of Rs. 2/- which were unpunched. Similarly, Rs. 28/- in excess were found in the cash bag of the respondent.

3. A charge sheet was issued to the petitioner dated 15-04-2009. A departmental enquiry was conducted. The enquiry officer held the respondent guilty of the charges levelled upon him. A second show cause notice dated 22-10-2009 was issued to the respondent and he was finally dismissed from the Department on 30-12-2009.

4. The respondent preferred Complaint (ULP) No. 20 of 2010 before the Labour Court at Dhule. By Part 1 judgment on the two issues dated 23/11/2010, the

Labour Court has concluded that the enquiry is proper and the findings of the enquiry officer are not perverse. By judgment and order dated 09-12-2011, the Labour Court has dismissed the complaint.

5. The respondent preferred Revision (ULP) No. 3 of 2012 before the Industrial Court at Dhule. It appears that the respondent had averred that no charges are proved against him and he is not guilty of committing any misconduct.

6. By the impugned judgment dated 03-03-2014, the Industrial Court set aside the findings of the Labour Court on the preliminary issue as well as the final judgment. The complaint was partly allowed by the Industrial Court by directing the petitioner to reinstate the respondent herein with continuity. The respondent was deprived of the back wages.

7. The Industrial Court in its conclusion in paragraph 12 has held that the principles of natural justice have been violated and has, in effect, set aside the enquiry. The Industrial Court was under an obligation to follow the procedure in the light of the settled position of law laid down in the cases of 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 by 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 .

8. The petitioner contends that the Industrial Court should have remanded the matter to the Labour Court for the petitioner to conduct a denovo enquiry before the Labour Court. The Industrial Court has allowed the entire revision petition and has directed reinstatement with continuity in service. It is further stated that the Industrial Court could not have set aside the Part 1 judgment of the Labour Court dated 23/11/2010, as there was no specific challenge and no prayer to that effect.

9. Mr. Magare, learned Advocate for the sole respondent has strenuously supported the impugned judgment and order delivered by the Industrial Court dated 03/03/2014. He submits that the Industrial Court, after hearing both the sides, finally had come to a conclusion that there was no evidence to support the charges levelled by the petitioner. The conclusions drawn by the Enquiry Officer are not sustainable as passengers are not examined before the Enquiry Officer. The passengers, who had made a statement before the Reporter, were not presented for cross-examination. The Enquiry Officer had failed in its duties to summon the passengers in the enquiry.

10. He further submits that the conclusions of the Labour Court were unsustainable and hence the complaint could not have been dismissed. Once the findings of the Labour Court are branded as perverse, the complaint is sustained. The Industrial Court rightly allowed the complaint and directed the reinstatement of the respondent on the post of Conductor with continuity of service. Mr. Magare, therefore, submits that the Industrial Court has ensured that the

respondent is not kept unemployed once the judgment of the Labour Court is rendered unsustainable. He, therefore, submits that this petition is devoid of merit.

11. He further submits that even if the Industrial Court may not have followed the correct procedure, it is merely an irregularity and hence the Industrial Court cannot be faulted and its judgment is not rendered unsustainable merely on account of its failure to follow the due procedure laid down in Law.

12. I have considered the submissions of the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

13. The Labour Court had concluded on 23/11/2010 that the enquiry was conducted in a proper manner and the findings of the Enquiry Officer are not perverse. The failure of the MSRTC to examine the passengers was not faulted by the Labour Court. It is only on this ground that the Industrial Court has interfered with the conclusions drawn by the Labour Court, without there being any challenge to the Part 1 judgment dated 23/11/2010, in the revision petition, as is noted by the Industrial Court in paragraph no.1 of the impugned judgment.

14. The Apex Court, in the case of Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, AIR 2001 SC 930 : (2001) 88 FLR 912 : (2001) 2 JT 72 : (2001) 1 LLJ 725 : (2001) 1 SCALE 373 : (2001) 2 SCC 574 : (2001) SCC(L&S) 469 : (2001) 1 SCR 487 : (2001) AIRSCW 593 : (2001) 1 Supreme 342 has held in paragraph Nos. 3 to 7 as under :-

"3. As a result of the domestic enquiry, the respondent was dismissed from service. Reference was made to the Labour Court which came to the conclusion that the domestic enquiry was not fair or proper. Opportunity was given to the appellant to produce evidence which it did.

4. After recording the evidence, the Labour Court by the impugned award came to the conclusion that the allegation that the Conductor had issued tickets of Rs. 1,75 instead of Rs. 2,25 was proved but it had not been proved that he had collected the amount of Rs. 2.25 from the passengers. The Labour Court set aside the punishment of dismissal and directed reinstatement with full back wages. On a writ petition being filed by the appellant Corporation, the Single Judge dismissed the same after noting that the Labour Court had awarded 50 per cent of the back wages with reinstatement. Realising that this was a mistake, the Single Judge rectified the same and ordered reinstatement with full back wages. The letters patent appeal was dismissed. Hence, this appeal by special leave.

5. On the facts as found by the Labour Court and the High Court, it is evidence that there was short-changing of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had

during the disciplinary proceedings taken into account the fact that the respondent had been found guilty on as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant Corporation.

6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

7. In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retiral benefits."

15. In the instant case, though the part 1 judgment of the Labour Court dated 23/11/2010, has not been challenged, the Industrial Court has set aside the said part 1 judgment only on the ground that the passengers were not examined and hence, no charge is proved against the respondent.

16. In an identical situation, the Apex court dealt with the effect of non-examination of passengers in the case of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, (2004) 8 JT 103 : (2004) 3 LLJ 1074 : (2004) 8 SCALE 308 : (2005) 3 SCC 254 : (2005) SCC(L&S) 407 : (2005) 1 SLJ 227 , in paragraph Nos. 2 to 11 as under :-

"2. Being aggrieved by the said order, respondent preferred a claim before the Additional Labour Court, Hubli praying for setting aside the order of dismissal and for reinstatement with consequential benefits. The Labour Court after hearing the parties concerned came to the conclusion that the inquiry conducted by the management was fair and proper. However, it came to the conclusion that the only charge against the respondent was being in possession of Rs. 93/- which was in excess of the sale of tickets, no presumption could be drawn that it was an amount received by non-issuance of tickets to passengers. It held that the corporation ought to have examined the passengers from whom such amount was collected without issuing tickets or issuing tickets of lesser denomination. Since, the same was not done, the Labour Court came to the conclusion that the order of dismissal was uncalled for and as also highly disproportionate compared

with the smallness of the amount. Hence, it made the award directing the reinstatement of the respondent with full back wages and continuity of service and other consequential benefits.

3. As stated above, aggrieved corporation preferred a writ petition before the High Court of Karnataka. The learned single Judge who heard the writ petition agreed with the Labour Court that since the corporation failed to examine the passengers from whom the said excess amount was collected, the charge of non-issuance of tickets or issuance of tickets of lesser denomination could not be upheld. The learned single Judge also agreed with the Labour Court that the punishment awarded was also excessive however it thought fit to reduce the back wages to 75% as compared to the full back wages awarded by the Labour Court.

4. On appeal filed against the said judgment before the Division Bench of the High Court of Karnataka came to be dismissed by the Division Bench on two grounds firstly it held that there was a delay of 16 days in preferring the appeal. However, the court observed that it would have certainly condoned the said delay had there been any merit in the appeal. Having said so the Division Bench held that they do not find any merit in the appeal and agreed with the single Judge that the order of reinstatement with reduced back wages was a just order.

5. In this appeal, the Shri R.S. Hegde learned counsel appearing for the appellant corporation contended that the Labour Court having come to the conclusion that the inquiry was just and fair could not have come to the conclusion that it was necessary for the corporation to have examined the passengers for the purpose of establishing its charge against the respondent. He also contended that the corporation had produced before the Labour Court a list of prior such misconduct committed by the respondent on similar charges. A copy of the said list is annexed to this appeal as annexure P-1 wherein it is noticed the respondent prior to the order of dismissal in this case was charged number of times for offences of non-issuance of tickets or issuance of tickets of lesser denomination and collecting the correct fare from the passengers and not remitting the same to the corporation. The list shows for the above said offences the respondent has been given various punishments including censure, reprimand, fine, stoppage of increment etc. Learned counsel also submitted that the view of the Labour Court and the learned single Judge that the misconduct alleged against the respondent could only be established by the examination of passengers is impracticable because as in the present case and quite often the misconduct comes into light only when the vehicle comes back to the depot after dropping the passengers and at the time of depositing the collection for the day if surprise check is made at that time and such misconduct is detected and it is next to impossible for the corporation to trace the passengers and bring them before the inquiry officer to establish their case that is why the corporation has from its regulation made it mandatory that the conductor should at no point of time carry more than Rs. 5/- as their personal money and if they are found in excess of that same will indicate

that the excess money in question was collected by non-issuance of tickets or issuance of tickets of lesser denomination. In such circumstances, it was not necessary or possible for the appellant-corporation to have examined the passengers to establish the guilt of the respondent. He also submitted that the finding of the Labour Court and the learned single Judge that the punishment is disproportionate to the misconduct is wholly misconceived. Learned counsel relied on a judgment of this Court in support of this contention of his in the case of Karnataka State Road Transport Corporation v. B.S. Hullikatti. That was also a case where a conductor concerned had committed similar misconduct 36 times prior to the time he was found guilty and bearing that fact in mind this Court held thus :-(SCC p.576, para 5)

"Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant corporation."

6. On the above basis, the Court came to the conclusion that the order of dismissal should have been set aside. In our opinion, the facts of the above case and the law laid down therein applies to the facts of the present case also.

7. The fact the respondent was carrying Rs. 93/- in excess of the amount is a fact proved. This itself is a misconduct over and above that the courts below ought not to have insisted on examination of the passengers. Since the respondent did not have any explanation for having carried the said excess amount, this omission also is was sufficient to hold the respondent guilty.

8. This Court in the case of State of Haryana and Anr. vs. Rattan Singh which is also a case arising out of non-issuance of ticket by a conductor held thus :-(SCC pp.491-92)

"In a domestic enquiry all the strict and sophisticated rules of Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence --not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of

the finding is an error of law apparent on the record and the court can interfere with the finding.

In the present case, evidence of the inspector is some evidence which has relevance to the charge and the courts below had misdirected themselves in insisting on the evidence of ticketless passengers. Also merely because the statements were not recorded, the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further, it was not for the court but the tribunal to assess the evidence of the co-conductor."

(emphasis supplied)

9. From the above it is clear once a domestic tribunal based on evidence comes to a particular conclusion normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh (supra) is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh's (supra) has since been followed by this Court in Devendra Swamy vs. Karnataka State Road Transport Corporation.

10. Since the only ground on which the finding of the domestic tribunal has been set aside being the ground that concerned passengers are not examined or their statement were not recorded, in spite of there being other material to establish the misconduct of the respondent, we are of the opinion, the courts below have erred in allowing the claim of the respondent. In our opinion, the ratio laid down in the above case of Rattan Singh (supra) applies squarely to the facts of this case.

11. In the instant case also there is the evidence of the inspector who conducted the checking which establishes the misconduct of the respondent based on which a finding was given that the respondent was guilty of the misconduct alleged. Based on the said finding, the disciplinary authority has punished the respondent by an order of dismissal. But the Labour Court, and the learned single Judge rejected the said finding and set aside the punishment imposed solely on the ground that the evidence of the passengers concerned was not adduced and their statements were not recorded by the inspector which as stated in the Rattan Singh's case is not a condition precedent. Therefore, we are of the opinion that the courts below have erred in interfering with the finding of fact on an erroneous basis."

17. Considering the law as laid down in the case of KSRTC Vs.A.T. Mane's case (supra), failure to examine passengers cannot be said to be a material flaw in the

enquiry. The Apex Court has concluded that reasonable evidence on record would be sufficient evidence to prove the charge against an employee. The evidence of the Reporter or Inspector who checked the bus would be sufficient evidence to prove the charges. It appears that the Industrial Court has lost sight of the law and has concluded that because the passengers were not examined in the enquiry, the conclusions drawn by the Enquiry Officer are unsustainable.

18. The Industrial Court has granted reinstatement with continuity of service to the respondent only on the ground that the respondent had filed a purshis Exh.U-24 suggesting a condition before the Labour Court that if he is reinstated in service, he would give up all back wages. The Industrial Court considered this aspect and concluded that because the respondent has to maintain his family and children and since he has submitted the purshis Exh.U-24, he deserves to be reinstated in service with continuity. I am of the view that the Industrial Court has shown misplaced sympathy to the respondent.

19. I am surprised by such conclusions arrived at by the Industrial Court. A case of misappropriation has been levelled upon the respondent. Reissuance of used tickets and issuing tickets which are not punched, can reasonably be said to be an act of misappropriation. It was apparent that the Checking Squad had noticed these aspects when the bus was subjected to a surprise check. It was, in similar circumstances that the Apex Court in the A.T. Mane case (supra), concluded that such evidence is enough to conclude that the charge of mis-appropriation is proved.

20. The Industrial Court, while getting swayed by the purshis Exh.U-24 appears to have hastily granted the relief of reinstatement with continuity of service to the respondent. Considering the evidence on record and the ratio laid down by the Apex Court in the B.S. Hullikatti and A.T. Mane case (supra), I find that the conclusions of the Industrial Court, setting aside the enquiry, is erroneous and unsustainable.

21. The issue of disproportionate punishment was subject matter of the revision petition No. 3 of 2012 preferred by the respondent. Mr. Magare prays for an opportunity to address the Revisional Court on the proportionality of the punishment. The Industrial Court has failed to consider the said aspect and as such has failed to grant the litigating sides a proper hearing on the issue whether the punishment awarded to the respondent could be said to be shockingly disproportionate.

22. A fair opportunity of hearing is the cardinal principle for dispensing justice. This has not been done. Therefore, only to facilitate a hearing to the petitioner and the respondent on this Count, that I am remanding the matter to the Industrial Court for hearing. In doing so, I uphold the conclusions of the Labour Court vide its judgment dated 23/11/2010 that the findings of the Enquiry Officer are fair and the enquiry was conducted in adherence to the principles of natural justice.

23. In the result, this petition is partly allowed. The conclusion of the Industrial Court in setting aside the part-I judgment of the Labour Court dated 23/11/2010, is quashed and set aside. Revision (ULP) No. 3/2012 is remitted back to the Industrial Court.

24. The litigating sides pray for a date of appearance before the Industrial Court, Dhule in Revision (ULP) No. 3/2012. As such, the litigating sides shall appear before the Industrial Court on 11/09/2015 and address the Court only on the issue of proportionality of the punishment in the light of the conclusions of the Labour Court that the punishment is not disproportionate. The Industrial Court shall decide Revision (ULP) No. 3/2012 only to the extent of the proportionality of the punishment, as expeditiously as possible, but preferably on or before 31/12/2015.

25. Needless to state, since the Industrial Court has failed to deal with the issue of proportionality, it shall decide this issue, not on the basis of the purshis Exh.U-24 filed by the respondent/employee, but on its own merits by considering the past service record of the respondent/employee (containing 12 punishments) in the light of the Apex Court judgment in the case of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., AIR 2000 SC 3129 : (2000) 87 FLR 483 : (2000) 10 JT 589 : (2000) 2 LLJ 1395 : (2000) 6 SCALE 446 : (2000) 7 SCC 517 : (2000) SCC(L&S) 958 : (2000) 3 SCR 367 Supp : (2000) AIRSCW 3439 : (2000) 6 Supreme 339 and the judgment of this Court in the case of P.R. Shele Vs. Union of India (UOI) and Others, (2008) 3 ALLMR 83 : (2008) 2 BomCR 213 : (2008) 2 MhLj 33 .

26. Rule is accordingly made partly absolute in the above terms.

27. No costs.