

(2015) 06 BOM CK 0196

In the Bombay High Court

Case No : Writ Petition No. 9569 of 2013

The Divisional Controller, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Durgaprasad Ramchandra Gupta

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Citation : (2015) 06 BOM CK 0196

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

Bench : Single Bench

Advocate : Goyanka M.K., for the Appellant; Patil Sandesh R., Advocates for the Respondent

Final Decision : Dismissed

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 petitioner challenges the judgment and order dated 29.6.2012 delivered by the Labour Court in Complaint (ULP) no.55 of 2005 and the judgment of the Industrial Court dated 16.8.2013, dismissing the Revision (ULP) No. 8 of 2013.

5. The contention of the petitioner is that the Bus travelling from Anturli to Anturli Phata on which the respondent was officiating as a Bus-Conductor, was checked at Anturli Phata on 12.9.2003. There were only 19 passengers in the Bus. Five passengers were found travelling ticketless. The Way Bill was closed after the passengers boarded the Bus at Anturli, which was travelling upto Muktai Nagar. The fact that the Way Bill was closed is a clear documentary evidence to indicate that the respondent Bus Conductor had completed his job of issuing tickets to all the passengers who had boarded the Bus till the Bus-stop at Anturli.

6. The respondent was charge-sheeted, domestic enquiry was conducted and finally was awarded the punishment of dismissal from service, by order dated 28.3.2005.

7. The respondent preferred Complaint (ULP) No. 55 of 2005 challenging his dismissal under item (1) of Schedule IV of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the State Act"). By the impugned judgment and order dated 29.6.2012, the Complaint was partly allowed and the respondent was granted reinstatement with continuity and 50% back wages.

8. The petitioner preferred Revision (ULP) No. 8 of 2013, which was dismissed by the Industrial Court by judgment dated 16.8.2013. The respondent has not challenged his denial of 50% back wages before the Industrial Court as well as before this Court.

9. A peculiar issue has been raised in this petition. By Part I order, dated 29.2.2012, delivered below Exhibit O-6, the Labour Court concluded that the enquiry was conducted in a fair manner. However, the findings of the Enquiry Officer were branded as perverse, since the same were not based on legal and acceptable evidence in the conclusion of the Labour Court. The enquiry thus stood watered down in the light of the crystallized position in law.

10. The issue, therefore, before the Labour Court was whether a de novo enquiry was conducted by the petitioner -Corporation. It is undisputed that the petitioner did not reserve the right to conduct a de novo enquiry in its written statement, despite knowing the challenge to the enquiry and the findings of the Enquiry Officer posed by the respondent in his complaint. Such a right necessarily has to be reserved in the Written Statement, in the light of the ratio laid down by the Apex Court in the matter of KSRTC Vs. Laxmidevamma [2001 II CLR 640]. This issue is no longer res integra.

11. Despite the petitioner -Corporation having not conducted a de novo enquiry, the Labour Court, though erroneously has once again considered the entire enquiry record while coming at the conclusion that a shockingly dis-proportionate punishment has been awarded to the respondent since the charges are not proved against the respondent. In fact, the enquiry stood watered down and in the light of the judgment of the Apex Court in the case of 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 , the case of the Corporation was rendered as "a case without enquiry".

12. Notwithstanding the above, the Labour Court concluded that the charges are not proved against the respondent. On the issue of back wages, the Labour Court has granted 50% of the back wages. The respondent had led evidence that he had been rendered unemployed and had no source of income. He was depending upon his family members. However, he did not lead evidence to contend or

establish that he tried for an alternate employment, but failed to acquire any employment. In this backdrop, the Labour Court granted 50% back wages to the respondent. These conclusions have not been interfered with by the Industrial Court.

13. Since the petitioner did not reserve a right to conduct a de novo enquiry in the Written Statement, in the light of the Apex Court judgment in the case of Laxmidevamma (supra), it cannot be inferred or concluded that the Labour Court failed to grant liberty to the petitioner to conduct a de novo enquiry. In this backdrop, when the petitioner itself did not reserve the right and did not make an effort to conduct a de novo enquiry, no fault can be found with the conclusions of the Labour Court. For the same reasons, the impugned judgment of the Industrial Court cannot be faulted.

14. In the light of the above, I do not find any reason to interfere with the impugned judgments. The respondent is deprived of 50% back wages by the Labour Court, which is a sustainable conclusion. He has not questioned the same and as such, the judgment of the Labour Court has attained finality.

15. The petition is devoid of merits and is, therefore, dismissed. Rule is discharged.