

(2015) 06 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 4874 of 2011

The Divisional Controller MSRTC Ahmednagar

APPELLANT

Vs

Shaikh Hassan Shaikh Amir. and Others

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2-A

Citation : (2015) 3 LLJ 381 : (2015) 3 LLN 94 : (2016) 1 MhLj 817

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

Bench : Single Bench

Advocate : Deshmukh Bhausahab S., for the Appellant; Barde Parag Vijay, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J.

1. Rule.

2. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The Respondent/Employee has passed away on 05.03.2014. His widow is about 71 years old today.

4. Despite a host of factors having been canvassed by the respective sides, I would be advertent to those submissions which I find relevant in view of the order that I propose to pass keeping in mind that the Respondent/Employee has passed away.

5. The Respondent was a Bus Driver appointed by the Petitioner in 1967. He was in continuous employment with the Petitioner and had completed 13 years of service as on the date of dismissal 25.09.1980.

6. On 08.04.1979 while manning the Bus on the Pandharpur-Jamkhed route, a head-on collision took place between the said Bus and a Car resulting in the

death of 5 persons and causing injuries to a few bus passengers. The Bus as well as the vehicle of the deceased persons was badly damaged.

7. After issuing the charge sheet, a departmental enquiry was conducted and on 25.09.1980, the Respondent (now deceased) was dismissed from service by way of punishment. He preferred an appeal to the first Appellate Authority of the Petitioner. It is noteworthy that the first Appellate Authority converted the punishment of dismissal into removal from service and held that the Respondent be appointed by way of a fresh appointment. An order was accordingly passed on 09.02.1981.

8. After accepting the order dated 09.02.1981, undergoing fresh training as per the procedure of the Petitioner and after refusing to join service, the Respondent preferred Complaint (ULP) No. 21/1981 before the Labour Court. The Complaint was initially allowed by the judgment and order dated 09.04.1984.

9. A Revision (ULP) No. 54/1984 was preferred by the Petitioner challenging the judgment and order dated 09.04.1984 delivered by the Labour Court. The revision was allowed by the Industrial Court vide judgment dated 07.01.1985 and by setting aside the Labour Court's judgment, the complaint was remanded.

10. Complaint (ULP) No. 21/1981, after remand, was re-registered as Complaint (ULP) No. 60/1987. The deceased Respondent withdrew the said complaint in order to prefer an appeal to the second Appellate Authority of the Petitioner. By order dated 30.07.1991, the second Appellate Authority rejected the second appeal of the deceased Respondent. Thereafter, the deceased Respondent resorted to the proceedings before this Court and eventually, after disposal of Writ Petition No. 3032/1991 and Review Petition No. 5784/1999, he raised an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 for challenging his dismissal dated 25.09.1980.

11. Reference (IDA) No. 20/2004 was registered before the Labour Court in relation to the order of dismissal dated 25.09.1980. By the impugned judgment and award dated 08.10.2009, the Reference was partly allowed and the Labour Court issued the following directions:-

"1.The reference is partly answered in the affirmative.

2. It is declared that the dismissal order dtd.25.09.1980 is illegal and set aside.

3. During pendency of this case the second party has attained age of superannuation, hence question of reinstatement does not arise.

4. The first party employer is directed to grant him continuity of service from the date of termination to the date of retirement.

5. The first party employer is directed to pay him lumpsum back wages Rs. 1,00,000/-from the date of termination to the date of superannuation and also directed to pay retirement benefits according to rules and regulations of corporation."

12. During the pendency of this petition, the Petitioner made an offer in mediation proceedings to the deceased Respondent on 30.01.2012, a copy of which is placed on record (two pages). The same is marked as Exhibit "X" for identification. Based on Exhibit-X, the Petitioner submits that the deceased Respondent was offered gratuity at Rs. 52,752/- presuming that he has worked continuously. The Provident Fund emolument at Rs. 1,14,376/- and 60 days' wages by way of leave encashment at Rs. 7523/-. The Petitioner, therefore, submits that an amount of about Rs. 1,74,651/- was offered to the deceased Respondent. The Petitioner was not agreeable to pay the amount of back wages of Rs. 1 lac granted by the Labour Court. It is stated that the deceased Respondent rejected the said offer.

13. Learned Counsel for the Petitioner has taken me through the impugned award dated 08.10.2009. The following issues were cast by the Labour Court which were dealt with in the impugned award

14. Issue No. 1 was decided by the Labour Court on 10.12.2008 and the domestic enquiry conducted was set aside. The Petitioner led fresh evidence before the Labour Court. The effect of the death of five passengers was sought to be proved before the Labour Court and so also, the charges levelled upon the Respondent.

15. Learned Advocate for the Petitioner has taken me through the impugned judgment in details. He has tried to canvass that the charges are proved before the Labour Court, the accident committed by the deceased Respondent has resulted in the death of 5 innocent persons and the punishment commensurate to the gravity and seriousness of the misconduct could only be in the form of dismissal from service.

16. It is further canvassed by the Petitioner that a fresh appointment was ordered as noted above. The Respondent accepted the order, he underwent the entire training session and later on, refused to join. He further submitted that an amount of Rs. 1,74,651/- was offered to the deceased Respondent prior to his passing away, which he had rejected.

17. Mr. Deshmukh strenuously contended that the observations of the Labour Court on the issue of back-wages would clearly establish that he was disentitled from earning those back-wages. He draws my attention to the portion of the conclusions drawn by the Labour Court, which read as under :-

"As regards the back wages the second party has not contended in his application that after termination he tried to obtain the job other than first party. This fact is also admitted by the second party in the cross-examination. He has also admitted in his cross-examination that he earns Rs. 15,000/- to Rs. 20,000/- each month from the other sources and maintaining his family."

18. He submits that having arrived at the observations / conclusions as reproduced above, the Labour Court could not have granted back wages of any

amount. He further points out from the conclusions of the Labour Court that the back wages could not have been paid as it is not a natural consequence and more so, when the Respondent has failed to take up a plea on the point of unemployment. He, therefore, points out the following portion from the impugned award:-

"It is well settled law that the grant of back wages is not natural consequences, if the complainant failed to take the plea in the application, on the point of his unemployment the Court can not grant the back wages."

19. Mr. Deshmukh has stated that the Respondent had attained the age of superannuation in 1995 and as such, there was no issue of reinstatement before the Labour Court. He, however, reiterates that the charges were proved before the Labour Court and the Respondent was disentitled from earning his back-wages.

20. Mr. Barde, learned Advocate for the Respondent, has strenuously supported the impugned judgment and award. He submits that the impugned award is sustainable and calls for no interference. He, however, submits that as the Respondent is no more and who had attained the age of superannuation in 1995, the offer of Rs. 1,74,651/-was fair, provided the amount of Rs. 1 lac that has been deposited by the petitioner in this Court on 15.11.2011 vide Demand Draft No. 712659 dated 11.11.2011, pursuant to the order passed by this court on 03.10.2011, be paid to the Respondent.

21. Notwithstanding the above, he submits that the Labour Court has rightly concluded that the charges levelled upon the Respondent are not proved and has correctly awarded the back-wages.

22. Having considered the above contentions of the rival sides, I have gone through the petition paper book with their assistance and I have also considered the impugned judgment and award in details.

23. In my view, owing to the passage of 35 years and the death of the Respondent, it would serve no purpose in going into the factum of the charges having not been proved as has been concluded by the Labour Court or otherwise. It would also be an academic exercise to consider the evidence threadbare in view of the Petitioner's submissions that the evidence adduced before the Labour Court would clearly establish the charges against the deceased Respondent. I also can not be oblivious of the fact that five innocent persons have been killed in the head-on collision between the bus driven by the Respondent and the car.

24. With due circumspection, I am of the view that the retiral benefits offered by the Petitioner to the extent of Rs. 1,74,651/-can be disbursed to the 71 years old widow of the Respondent.

25. That leaves me with the last issue as regards the back-wages. It is a trite law that the back-wages cannot be granted as a matter of course or as a matter of

natural consequence in the event the termination is set aside. The claimant/workman has to lead evidence to establish that he attempted to acquire a job pursuant to his dismissal and despite his efforts, could not acquire any employment or source of earning.

26. In the instant case, the Respondent admittedly has led no evidence to support his claim for the back-wages. Similarly, he has admitted in cross-examination before the Labour Court that he was earning Rs. 15,000/-to 20,000/- per month from the earning sources and he was maintaining his family. This evidence was recorded about 7 -8 years ago. An amount of Rs. 20,000/-then earned cannot be termed to be a meager amount.

27. I find from the conclusions of the Labour Court that it was in agreement with the settled principles of law that the back-wages cannot be granted in a routine course as a consequence of setting aside the dismissal order. The Labour Court agreed that if the Claimant/ Workman did not lead evidence on his unemployment to support his claim of back-wages, there could not be grant of back-wages.

28. It also needs mention that the first Appellate Authority of the Petitioner has passed an order converting the dismissal of the Petitioner into removal from service and had awarded fresh employment by the order dated 09.02.1981 which the deceased Respondent initially accepted, underwent training and then refused to join employment. In my view, the refusal to join employment in itself ought to disentitle the Respondent of the back-wages. Had the Respondent joined employment pursuant to the order dated 09.02.1981, he could have peacefully served and continued in employment for 14 more years till attaining the age of superannuation in 1994.

29. Taking an over all view of the above factors, I find it justified to deprive the widow of the deceased Respondent of the back-wages of Rs. 1 lac as was ordered by the Labour Court. However, I find that the said amount deposited by the petitioner in this court on 15.11.2011, must have gathered some interest, which could be somewhere about Rs. 25,000/-. In these circumstances, the widow of the deceased Respondent shall withdraw the amount of interest accrued on the money deposited in this Court and the Petitioner shall take back the amount of Rs. 1 lac that was deposited in this Court.

30. Needless to state, the Provident Fund accumulation must have grown in the interregnum till the date of actual payment. The Petitioner shall calculate the same and pay the said amount, which they have initially calculated and mentioned in Exhibit-X, to the widow of the Respondent. Similarly, the Petitioner shall pay simple interest @ 3% p.a. on the gratuity amount to the widow of the Respondent.

31. In the light of the above, this Writ Petition is partly allowed. The impugned judgment and award 08.10.2009 stands modified in the light of the directions set out herein above. The petitioner shall re-calculate the amount mentioned in

Exhibit "X" as directed in paragraph Nos. 29 and 30 above and pay the said amount to the widow of the deceased Respondent within a period of EIGHT WEEKS from today. Rule is, accordingly, made partly absolute in the above terms.