

(2000) 04 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 3367 of 1990

The Divisional Controllers, Maharashtra State Road Transport Corporation

APPELLANT

Vs

Shri Santosh Nivrutti Ghorpade

RESPONDENT

Date of Decision : 27-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2000) 4 BomCR 505 : (2000) 86 FLR 187 : (2000) 3 MhLj 827

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : G.S. Hedge, for the Appellant;

Judgement

R.J. Kochar, J.—The petitioners are the two Divisional Controllers of the Maharashtra State Road Transport Corporation which is duly constituted under the provisions of the State Road Transport Corporation. It is established to provide public transport facilities through out the State of Maharashtra and elsewhere.

2. The respondent was employed as a driver with the petitioner at Pune division. On 7-10-1987 he reported for duty at about 2300 hrs. when it was found and noticed that he had consumed alcohol and was under its influence. He also behaved in an indecent and riotous manner with the Controllers as well as being under the influence of liquor he was not in a state of mind to head advice to stop his indecent and disorderly and riotous behaviour on the premises of the petitioner Corporation. As a consequence thereof he was handed over to the police. He was also sent to hospital for medical examination. I may mention here, to complete the link of the narration, that he was on next day produced before the Judicial Magistrate and on pleading guilty of the charge and was convicted and sentenced to suffer simple imprisonment till rising of the Court and to pay fine of Rs. 40/-. There was sufficient material against the said respondent

driver to show that he was under the influence of liquor when he reported for duty. Even the medical certificate established the said fact.

3. It appears that the petitioners charge-sheeted him and dismissed him after holding an enquiry. Thereafter, it appears that he preferred inter-departmental appeals and on failing therein raised an industrial dispute challenging the propriety and legality of the order of dismissal and prayed for reinstatement with full backwages and continuity of service. The State Government referred the dispute to the Labour Court, Pune for adjudication. After both the parties completed their pleadings and filing of documents, preliminary point was decided by the Labour Court in respect of the legality and validity of the departmental enquiry. By part I of the award the Labour Court held that the enquiry was not fair and proper and it was directed by the Labour Court to proceed further on the merits of the case before it. After recording evidence in the Labour Court, it answered the issue in affirmative that the misconduct of the respondent was proved on the basis of the evidence adduced before it. The Labour Court, however, disagreed with the punishment on the ground that it was not proportionate and therefore it granted reinstatement without backwages.

4. The petitioners have challenged the said final award passed by the Labour Court before this Court. The Labour Court has lost sight of a very crucial fact that the respondent employee was employed by the petitioner as a driver to drive a public vehicle which carries more than 50 passengers. The Labour Court further had lost sight of another equally crucial fact that the said respondent employee who had reported for work at about 2300 hrs. i.e. for night shift, was to drive the public vehicle to carry passengers during the night time. The Labour Court also failed to appreciate that when he reported for work in the late hours of the night, he was fully drunk and was under influence of liquor. He was found so in the control room of the petitioners and had he not been noticed by the officers present in the control room that he was under the influence of liquor from his unusual behaviour he would have been perhaps on the wheel of a fateful bus with the passenger inside and would have perhaps caused danger to the life of all the passengers. It was only the favourable stars of the passengers that they were saved from the death trap which would have been laid had the respondent been allowed to drive the bus unnoticed of his consumption of liquor. He was accosted and handed over to the police and his medical test also proved the fact that he was drunk and was under the influence of liquor. On the next day, he was produced before the Magistrate when he pleaded guilty and was therefore convicted and sentenced.

5. In this background, according to me, no reasonable and prudent employer would dare to ask Or permit a driver to sit On the wheels to drive a bus carrying more than 50 passengers. It cannot be forgotten that the petitioners do owe a responsibility to the public at large and they have undertaken to the public to give a safe and reliable transport facility. If the petitioners are to allow such drivers who report to duty under influence of liquor the public safety would

always be in danger and in peril. Such persons who are used to have liquor are not at all compatible with the job of driver. The Labour Court, therefore, has committed grave error of law in directing reinstatement of such a driver who was under the influence of liquor when he had reported for work. It is not possible to agree with the reasoning and finding of the Labour Court that punishment of dismissal of the respondent is shockingly disproportionate or in any way otherwise disproportionate. There can be no other punishment than dismissal from employment of such persons as drivers. They can never be tolerated to work as drivers of public vehicles.

6. All the ingredients or misconduct having been established beyond doubt the only punishment which can be inflicted is that of dismissal and therefore, the petitioners have rightly imposed the punishment of dismissal on the respondent employee and they have rightly not taken any risk of continuing such drivers who dare to report on duty fully drunk. The Labour Court has not applied its mind to the gravity of such situation and has held that denial of backwages would be enough. According to me, the Labour Court has committed grave error of law in granting reinstatement.

7. In the result, the impugned award dated 27-1-1995 is quashed and set aside. Rule is made absolute in terms of prayer Clause (b) of the petition. No orders as to costs.

8. Petition allowed.