
(2003) 06 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No's. 372 and 466 of 2001

Vasant Namdeo Chavan

APPELLANT

Vs

Maharashtra State Road

RESPONDENT

Date of Decision : 03-06-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (2003) 4 BomCR 473

Hon'ble Judges : Khandeparkar R.M.S., J

Bench : Single Bench

Advocate : S.R. Kumbhat and J.J. Saxena, instructed by Kamalkishore Tated, for the Appellant; Sarvasri V.S. Hegde and C.M. Lokesh, instructed by Hegde and Associates, for the Respondent

Final Decision : Dismissed

Judgement

Khandeparkar R.M.S., J.—Since common questions of law and facts arise in both the petitions and as they arise from a common judgment passed by the Industrial Court, Mumbai, they were heard together and are being disposed of by this common judgment.

2. The facts in brief relevant for the decision are that the petitioner filed a complaint before the Labour Court alleging unfair labour practices by the respondents. The petitioner was charge-sheeted to the effect that on 23-2-1992 after completing Bombay-Panvel-Mumbra trip he had misbehaved with his superior, that he had consumed liquor while on duty and he had delayed to deposit the cash amount collected from the passengers. He was referred to J.J. Hospital for his medical check up. After holding domestic enquiry and on completion of the necessary formalities of issuance of show cause notice, etc., the petitioner's services were terminated by order dated 30-6-1993. The Labour Court after hearing the parties, by its judgment and order dated 28-9-1998 directed the reinstatement of the petitioner in the employment of the respondent-Corporation without back wages. Being aggrieved by the direction for

reinstatement of the petitioner in services, the respondents filed Revision Application No. 28 of 1999 whereas being aggrieved by refusal of the back wages, the petitioner filed Revision Application No. 121 of 1999 before the Industrial Court. After hearing both the parties, the revision application filed by the respondent came to be allowed while the revision application filed by the petitioner came to be dismissed by the impugned order dated 30-11-2000.

3. The impugned judgment and orders are sought to be challenged on the ground that there was no evidence on record to prove the alleged misconduct on the part of the petitioner in relation to the alleged misbehaviour with the higher officer of the respondent-Corporation as well as consumption of liquor while on duty and there was sufficient explanation for the delay in depositing the cash collection for the day on 23-2-1992 and yet the Court below overlooking the same erred in holding that there was misconduct on the part of the petitioner and thereby to set aside the order of the Labour Court directing the reinstatement of the petitioner. On the other hand, the learned Advocate for the respondent-Corporation submitted that there was no occasion for the respondent to lead any evidence on the point of misconduct on the part of the petitioner as the facts relating to misconduct, as were stated by the respondent, were clearly admitted by the petitioner and therefore only issue which was open for adjudication was in relation to the quantum of punishment and considering the nature of the misconduct, no fault can be found with the impugned order holding that the same being a major misconduct, the order of dismissal from services being the appropriate punishment imposed by the respondent-Corporation.

4. The order passed by the Labour Court clearly discloses that in the course of the arguments, it was informed to the Labour Court that the petitioner did not wish to pursue the issues pertaining to the fairness of the enquiry, perversity of the finding given by the Enquiry Officer, proof of charges levelled against the petitioner and the adjudication was restricted to the issue of quantum of punishment. A clear finding in that regard in the order of the Labour Court reads thus :

"During the course of argument Mr. Paranjape the learned Counsel for the complainant submitted before the Court that he did not wish to pursue the first three issues framed by this Court vide Ex. O. 6. In short he did not pursue issue of fairness of the enquiry, perversity of the findings given by the Enquiry Officer and the proof of charges levelled against the complainant. Mr. Paranjape the learned Counsel for the complainant clearly announced before this Court that he decided to argue only the issue of quantum of punishment. According to him the misconduct levelled and proved against the complainant is of minor in nature and as such the punishment of dismissal is absolutely disproportionate to the gravity of the charges levelled against the complainant with the given circumstances of this case."

Undisputedly, the said finding was not challenged before the Industrial Court in the revision application filed by the petitioner nor it has been challenged in the

writ petition before this Court. It is not the case of the petitioner that the petitioner's Advocate before the Labour Court exceeded the instructions given by the petitioner or that he acted contrary to the instructions by the petitioner. Apparently, therefore, the petitioner had admitted the charges against him and the same are deemed to have been proved for all purpose and it is not open to the petitioner now in writ petition to challenge the findings of the Enquiry Officer in relation to the charges levelled against the petitioner. Being so, there is no substance in the contention of the learned Advocate appearing for the petitioner that the charges were not established against the petitioner.

5. Once the charges of misconduct of the nature levelled against the petitioner were proved, the only issue which had remained to be adjudicated before the Labour Court as well as before the Industrial Court was in relation to the issue of quantum of punishment. Being so, no fault can be found with the judgments of the courts below dealing only with the issue of quantum of punishment.

6. The charges against the petitioner were pertaining to misbehaviour of the petitioner with the officer of the respondent-Corporation as also consumption of liquor while on duty. Attempt was made by the learned Advocate for the petitioner to draw attention to the contention of the respondents themselves in their written statement before the Labour Court to the effect that the medical certificate did not disclose any abnormality in the speech, gait or pupils of the petitioner when he was examined by the doctor and it was sought to be contended that it apparently discloses that the charge of consumption of liquor was totally contrary to the materials on record and therefore mere admission on the part of the petitioner in that regard cannot be used against the petitioner. Fact remains that the petitioner had not challenged the finding regarding proof of misconduct arrived at by the Labour Court either while filing the revision application or even before this Court in the writ petition. It is also not the case of the petitioner that the admission of misbehaviour on the part of the petitioner in the course of hearing of the complaint before the Labour Court was by way of any coercion or misrepresentation or that any ground in that regard was raised by the petitioner before the Industrial Court or even in the memo of the writ petition. Undoubtedly, in the memo of the writ petition it was sought to be pleaded that the petitioner was lured to admit the charges with the promise that he would be let off with a minor punishment. However, no such ground was agitated before the Industrial Court. Apparently, it is purely an afterthought. Besides, the contents of the written statement of the respondents clearly disclosed that "the complainant's breath was smelling of alcohol". It is further stated that the complainant had consumed alcohol but was not under the influence of alcohol. The said averment obviously related to the certificate issued by the doctor who had examined the petitioner. This apparently discloses that the petitioner had consumed alcohol while he was on duty. Whether he had acted under the influence of liquor or not is a totally different issue but the fact remains that the evidence on record discloses consumption of alcohol by the petitioner while he was on duty. Being so, the materials on record nowhere

contradict the admission of the charges levelled against the petitioner and on the contrary the same clearly support the said admission.

7. As regards the quantum of punishment, the Industrial Court has clearly observed that the misconduct which had been proved is that of a minor nature and considering the nature of the misconduct, which included misbehaviour with the officer of the respondent as well as consumption of liquor while on duty, the dismissal of the petitioner from services cannot be said to be disproportionate to the misconduct proved and established in the matter. Indeed, considering the nature of the misconduct, there is hardly any scope to contend that the dismissal of the employee from services on account of such misconduct would be disproportionate to the nature of the misconduct proved in the matter. Considering the same, I do not find any illegality committed by the Industrial Court in setting aside the order passed by the Labour Court directing the reinstatement of the petitioner in services. Indeed, the Labour Court on the one hand had held that the petitioner had committed misconduct but on the other hand had jumped to the conclusion that it was of a lesser degree without analysing the particulars of misconduct and without disclosing any justification for classifying the same to be of such a lesser degree. An employee attending to his duties by consuming liquor can hardly be said to be committing a misconduct of any lesser degree. Besides, the duties performed by the petitioner required him to come in contact with various persons while commuting through the bus and considering the nature of the duties required to be performed by the petitioner, by no stretch of imagination the consumption of liquor while on duty by such an employee can be said to be a misconduct of a lesser degree. Being so, the findings arrived at by the Industrial Court cannot be said to be either perverse or not borne out from the records and hence do not warrant any interference.

8. In the result, therefore, there is no case for interference in the impugned orders. The petitions fail and are hereby dismissed and the rule is discharged with no order as to costs.