

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4519 OF 2014

Chintaman Tarachand Chavan,
Age 52 years, Occ. Nil,
R/o at post Sangavi, Tq. Chalisgaon,
District Jalgaon.

..Petitioner

Versus

1. The Divisional Controller,
Maharashtra State Road
Transport Corporation,
Jalgaon Division, Jalgaon.

2. Competent Authority,
Depot Manager (P),
Maharashtra State Road
Transport Corporation,
Chalisgaon, Dist. Jalgaon

..Respondents

...
Advocate for Petitioners : Shri Patil Sandesh R.
Advocate for Respondents : Shri Goyanka M.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 16, 2015

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. On 15.7.2015, when this matter was heard, I had recorded the contentions of the parties as follows:-

“1 The Petitioner is aggrieved by the judgment and order dated 14.03.2014 delivered by the Industrial Court in Revision (ULP) No.10/2013 preferred by the Respondent/MSRTC.

2 The Petitioner was working as Bus Conductor from 1985. The charge sheet dated 26.11.2008 was served upon him alleging misuse of ticket blocks of denomination of Rs.8, Rs.9 and Rs.10 amounting to Rs.63,700/.

3 A departmental enquiry was conducted. The dates of enquiry 28.05.2009 and 19.06.2009 were communicated to the Petitioner. He could not attend since he was unwell and had filed two adjournment applications along with the medical certificates before the Enquiry Officer. The enquiry was conducted ex parte and finally the Petitioner was dismissed from service on 08.08.2009.

4 The Petitioner preferred Complaint (ULP) No.33/2009 before the Labour Court. By Part I judgment dated 19.04.2012 the enquiry was held to have been conducted in violation of the principles of natural justice and hence, set aside.

5 No right to conduct a denovo enquiry was reserved by the Respondents in the Written Statement.

6 By the final judgment dated 09.07.2012, the said complaint was allowed directing the Respondents to reinstate the Petitioner in service with continuity and 50% backwages.

7 The Respondents preferred Revision (ULP) No.10/2013 before

the Industrial Court. By the impugned judgment and order dated 14.03.2014, the revision was allowed and the final judgment of the Labour Court dated 09.07.2012 has been quashed and set aside.

8 *The issue, therefore, is as to whether, the Respondent had challenged Part I order dated 19.04.2012 along with the final judgment dated 09.07.2012 before the Industrial Court in its revision petition. This question crops up because the Industrial Court has set aside the final judgment dated 09.07.2012 delivered by the Labour Court, but has gone into the aspect as to whether, the enquiry was conducted in adherence to the principles of natural justice and which it could have done only if Part I order dated 19.04.2012 was questioned.*

9 *Both the learned Advocates pray that this matter be treated as part heard and adjournment for a day be granted to find out from the Revision Petition as to whether, Part I order was challenged or not? Both the learned Advocates are not equipped with a copy of the revision petition.*

10 *Stand over to 16.07.2015 (Tomorrow) as PART HEARD."*

5. Revision Petition No.10 of 2013, preferred by the respondent / Corporation is placed before this Court. In the entire Revision Petition, it appears that the dates of impugned judgments are also erroneously mentioned. For example, the final judgment of the Labour Court is dated 9.7.2012 and in the Revision Petition in paragraph 4A, it is pleaded that the impugned order dated 8.8.2009 is totally illegal, unjust and not tenable in the eyes of law. The order dated 8.8.2009 is the order of dismissal, which the respondents have issued to the petitioner / employee. On page No.2 of

the Revision Petition it is stated that the judgment of the Labour Court dated 30.8.2012 is being challenged. Similarly, in the prayer clause, it is stated that the order dated 30.8.2012 be quashed and set aside. In fact, there is no order dated 30.8.2012 passed by the Labour Court in the matter pertaining to the petitioner herein.

6. The Part I order dated 19.4.2012 and the final judgment of the Labour Court is dated 9.7.2012. It is, therefore, apparent that the Revision Petition has been drafted in the most casual manner, without going through the details set out and reflecting non-application of mind. In fact, the respondents herein should have moved the Industrial Court for amending the Revision Petition, so as to mention the correct dates and point out the impugned judgments, either in Part I order dated 19.4.2012 and/or the final judgment dated 9.7.2012.

7. Shri Patil, learned Advocate for the petitioner vehemently submits that the impugned judgment deserves to be quashed and set aside since the conclusions drawn by the Industrial Court in the Revision Petition are unsustainable. He submits that, the Industrial Court has considered the contentions of the respondents and has failed to appreciate the reasons adduced by the Labour Court, while arriving at its conclusions.

8. Shri Patil further states that after the enquiry was set aside, the Industrial Court, at the most, could have only gone into the proportionality of the punishment. According to him, the charge of theft or

misappropriation of tickets amounting to Rs.63,700/- is not proved against him. He, therefore, submits that the impugned order deserves to be quashed and set aside and the judgment of the Labour Court deserves to be restored.

9. Shri Goyanka, learned Advocate submits on behalf of the respondents that the impugned judgment deserves to be sustained since the Industrial Court has properly considered the enquiry papers and the charges levelled upon the petitioner. He, however, concedes that the Revision Petition does not contain the proper dates and the respondents should have moved an application for correcting the dates which are wrongly mentioned.

10. He further submits that the respondents have inadvertently not challenged the Part I order, dated 19.4.2012, along with the final judgment, dated 9.7.2012, which is required to be done. He therefore, submits, in the alternative, that if the Revision Petition is to be remitted for a fresh hearing before the Industrial Court, liberty be granted to request the Industrial Court for permitting the respondents to amend the Revision Petition and raise additional grounds and also challenge the Part I order dated 19.4.2012.

11. Having considered these submissions canvassed on 15.7.2015 and today, to say the least, it appears that an unusual approach has been adopted by the Labour Court as well as the Industrial Court. The Labour Court has interfered with the enquiry, primarily on the ground that the

enquiry was posted on 28.5.2009 and 19.6.2009 and the petitioner employee was absent on both the dates, owing to his illness. Shri Goyanka has indicated from the original file which is placed before the Court for its perusal, that there were about 11 days on which the enquiry was posted. The dates are said to be, 29.12.2008, 5.1.2009, 15.1.2009, 22.1.2009, 3.2.2009, 28.2.2009, 10.3.2009, 31.3.2009, 21.4.2009, 28.5.2009 AND 19.6.2009. This was never looked at by the Labour Court.

12. It is apparent that that the petitioner had remained absent on all these dates on the same ground that he was unwell. This has been lost sight of by the Labour Court. So also, it is pointed out from the default card that there were about 35 punishments imposed upon the petitioner herein. It however, needs to be mentioned that with regard to the dismissal of the petitioner on 29.12.1992, the Labour Court had allowed the petitioner's complaint (ULP) No.214 of 1992 by setting aside the enquiry holding that the findings of the Enquiry Officer are perverse and thereby, reinstating the petitioner in employment with continuity and without backwages, in one single judgment.

13. In the light of the above, it is quite evident that the Labour Court has not considered all these factors. So also the Industrial Court has gone into the grounds raised by the respondents oblivious of the fact that the Revision, in fact, mentioned wrong date of the judgment which was impugned. It is also noteworthy, that the Industrial Court has considered the legality of the Part I order dated 19.4.2012, without there being any

challenge raised by the respondent MSRTC in its Revision Petition.

14. It is in these peculiar facts and circumstances of the case that I am inclined to partly allow this petition by setting aside the judgment of the Industrial Court, dated 14.3.2014 and remit the Revision Petition to the Industrial Court for a fresh hearing by granting liberty to the respondents to move an application for amending the Revision Petition so as to mention the correct date of the impugned judgment and if deemed fit for questioning the Part I order dated 19.4.2012, which appears to have been inadvertently left out. However, the Industrial Court shall consider the aspect of imposition of costs on the respondents for the hardships being caused to the petitioner herein.

15. In the light of the above, this petition is partly allowed and the impugned judgment and order of the Industrial Court, dated 14.3.2014 in Revision (ULP) No. 10 of 2013 is quashed and set aside. Revision (ULP) No. 10 of 2013 is remitted back to the Industrial Court.

16. The respondent shall be at liberty to place the entire record and proceedings of the enquiry before the Industrial Court, which would give the petitioner employee an opportunity to make out his case. The respondents are granted the liberty to move an application for amending the Revision Petition for raising additional grounds and/or assailing Part I order dated 19.4.2012, delivered by the Labour Court. In the event, such an application is filed, the Industrial Court shall hear the petitioner

employee and pass an appropriate order to ensure that the ends of justice are met.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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