

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3024 OF 2016

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

-- PETITIONER

VERSUS

Valchand S/o Vana Baviskar,
Age-46 years, Occu-Service,
R/o At Post Gandheli, Tq.Amalner,
Dist. Jalgaon

-- RESPONDENT

Mr.M.K.Goyanka, Advocate for the petitioner.
Mr.Sandesh R.Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/08/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. The petitioner/Corporation is aggrieved by the judgment of the Industrial Court dated 24/04/2015, by which Complaint (ULP) No.17/2013 filed by the respondent herein has been allowed.
3. I have considered the submissions of the learned Advocates for

the respective sides.

4. The respondent was working as a Bus Conductor. He was absent from 24/10/2006 upto 31/10/2006 followed by 11/11/2006 to 28/11/2006 and from 06/12/2006 till 20/12/2006. It was alleged that this constituted unauthorized absenteeism. He was served with a charge sheet and after conducting a departmental enquiry and upon considering 25 misconducts committed in the past, he was dismissed from service on 14/05/2008.

5. He preferred his first department appeal which was partly allowed and the punishment was said to have been reduced by appointing the respondent as a newly recruited conductor. The entire earlier service was brought to an end. His second department appeal was dismissed.

6. The respondent joined duties as a newly appointed conductor on 21/11/2008. On 30/08/2013, which is after 4 years and 9 months, the respondent filed Complaint (ULP) No.17/2013 alleging that his fresh appointment order deserves to be quashed and set aside and his reinstatement in service be confirmed as his order of dismissal has been set aside by the first Appellate Authority.

7. The Industrial Court has allowed the complaint by concluding that the charges were not fully proved against the respondent and the findings of the Enquiry Officer are improper. There is no punishment provided for reappointing any employee and hence the order of the first Appellate Authority is illegal.

8. I find it quite surprising that the Industrial Court has failed to notice two judgments delivered by this Court, after considering the law of about 50 years, in the matter of Maharashtra State Cooperative Cotton Growers Marketing Federation Ltd., and another Vs. Vasant Ambadas Deshpande, [2014 I CLR 878 = 2014(3) Mh.L.J. 339] and MSRTC Beed Vs. Syed Saheblal Syed Nijam, 2014 (3) CLR 547 = 2014 (4) Mh.L.J. 687. On the one hand, it has set aside the enquiry and branded the findings as being perverse and on the other hand, it has set aside the order of fresh appointment and granted reinstatement with continuity and full back wages to the respondents. I find the impugned judgment to be unsustainable.

9. The order of punishment based on the enquiry was that of dismissal from service. The Industrial Court could not have gone into the said aspect, considering the provisions of the MRTU and PULP

Act, 1971 and the view taken by the Hon'ble Supreme Court in the matter of Hindustan Lever V/s Ashok Vishnu Kate, [(1995) 6 SCC 326]. The issue of the enquiry and order of dismissal was within the purview of the Labour Court. Moreover, if the Industrial Court was to set aside the order of the First Appellate Authority, then the position in which the respondent was (dismissed), prior to the order of the First Appellate Authority, would be restored. His order of dismissal, therefore, would have automatically been restored. The Industrial Court could not have interfered into the order of dismissal, due to lack of jurisdiction.

10. This Court, in the matter of Anil Vajjnath Arbad Vs. The Divisional Traffic Supdt. in WP No.6699/2007, by its judgment dated 21/01/2016, has relied upon the judgment of the Hon'ble Apex Court in the matter of State of Punjab Vs. Krishan Niwas, AIR 1997 SC 2349 and has concluded that the order of fresh appointment, after bringing to an end the employer-employee relationship by virtue of the order of dismissal, therefore presupposes that the order of dismissal is sustained and a fresh appointment of inducting the employee as a new employee is issued. Without the order of termination, there cannot be a fresh appointment order.

11. The observations of this Court in paragraph Nos. 16 to 22 of the Anil Arbad Case (supra) read as under :-

“16 I find that the Respondent dismissed the Petitioner from service on 12.08.2000 by way of punishment. Thereafter, it passed the following order:-

“..... Taking into consideration all merits and demerits of the case we have decided to give him one chance to redeem himself in the services of the Corporation and show improvement in his attitude only on humanitarian grounds and as such, we set aside the orders issued by the earlier authorities and order as under:-

He should be re-appointed as a fresh Art.A.”

17 It is in these circumstances that I conclude that the order of re-appointment cannot be termed as an order of punishment in the face of the fact that the punishment of dismissal was imposed and the service of the Petitioner had been brought to an end.

18 The Apex Court in the case of State of Punjab (supra) has concluded in paragraphs 2 to 5 as under:-

“2. This appeal, by special leave, arises from the judgment of the Punjab & Haryana High Court made on March 7, 1996 in Second Appeal No.2662/95.

3. The admitted facts are that the respondent was

charged for an offence under Section 302 I.P.C. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 I.P.C. was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for 1-1/2 years. After undergoing the imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated March 1, 1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back-wages. The respondent accepted it and joined duty on June 5, 1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The Trial Court dismissed the suit. On appeal; the Addl. District Judge reversed the judgment of the trial Court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.

4. Learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on June 5, 1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then.

acted upon it. Under these circumstances, the civil Court would not have gone into the merits and decided the matter against the appellants.

5. Accordingly, the appeal is allowed. The orders of the High Court and the appellate Court stand set aside and that of the trial Court stands confirmed. No costs.”

(Emphasis is supplied).

19 In the light of the ratio laid down by the Apex Court in the case of the State of Punjab (supra), the Petitioner would, therefore, be precluded from questioning the fairness of his fresh appointment once he has accepted it without any protest or murmur and has joined duties. If he was aggrieved with the order of fresh appointment and imposition of punishment of dismissal from service, he could have questioned his order of dismissal before the Labour Court. The Industrial Court did not have jurisdiction to deal with the order of dismissal in the light of the powers vested in it.

20 The powers of the Labour Court and the Industrial Court are defined in Sections 4, 5, 6 and 7 of the MRTU & PULP Act, 1971, which read as under:-

- “4. Industrial Court
 (1) The State Government shall by notification in the Official Gazette, constitute an Industrial Court.
 (2) The Industrial Court shall consist of not less than three members, one of whom shall be the

President.

- (3) *Every member of the Industrial Court shall be a person who is not connected with the complaint referred to that Court, or with any industry directly affected by such complaint:*

Provided that, every member shall be deemed to be connected with a complaint or with an industry by reason of his having shares in a company which is connected with, or likely to be affected by, such complaint, unless he discloses to the State Government the nature and extent of the shares held by him in such company and in the opinion of the State Government recorded in writing, such member is not connected with the complaint, or the industry.

- (4) *Every member of the Industrial Court shall be a person who is or has been a Judge or a High Court or is eligible for being appointed a Judge of such Court :*

Provided that, one member may be a person who is not so eligible, if he possesses in the opinion of the State Government expert knowledge of labour or industrial matters.

5. *Duties of Industrial Court.*

It shall be the duty of the Industrial Court:-

- (a) *to decide an application by a union for grant of recognition to it;*
- (b) *to decide an application by a union for grant of recognition to it in place of a union which has already been recognised under this Act;*
- (c) *to decide an application from another union or an employer for withdrawal or cancellation of the recognition of a union;*
- (d) *to decide complaints relating to unfair labour practices except unfair labour practices falling in Item 1 of Schedule IV;*
- (e) *to assign work, and to give directions, to the Investigating Officers in matters of verification of membership of unions, and investigation of complaints relating to unfair labour practices;*

- (f) to decide references made to it on any point of law either by any civil or criminal court and
- (g) to decide appeals under Section 42.

6 Labour Court

The State Government shall, by notification in the Official Gazette, constitute one or more Labour Courts, having jurisdiction in such local areas, as may be specified in such notification, and shall appoint persons having the prescribed qualifications to preside over such Courts;

Provided that, no person shall be so appointed, unless he possesses qualifications (other than the qualification of age), prescribed under Article 234 of the Constitution for being eligible to enter the judicial service of the State of Maharashtra; and is not more than sixty years of age.

7 Duties of Labour Court

It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in Item I of Schedule IV and to try offences punishable under this Act."

21 As such, even if it is presumed that the order of the Appellate Authority granting re-appointment/ fresh appointment is to be set aside, the Petitioner would be relegated back to the earlier order which is an order of dismissal. At best, the Industrial Court, if were to allow the complaint, could have set aside the order of the Appellate Authority thereby, relegating the Petitioner to the order passed by the first Appellate Authority confirming the order of dismissal. In any case,

if the order of fresh appointment is to be set aside, the Petitioner will have no option, but to challenge the order of dismissal which is a stage prior to the passing of the order by the second Appellate Authority.

22 *In the light of the above and the law laid down by the Apex Court in the case of State of Punjab (supra), the Petitioner could not have questioned his fresh appointment after having accepted it and joined duties without any protest and without reserving a right to challenge the orders of the second Appellate Authority, the first Appellate Authority and the order of dismissal passed by the competent disciplinary authority and that too before the Industrial Court.”*

12. The reliance placed by the respondent on the judgment of this Court in the matter of MSRTC Vs. Hamid Ishaq Mirza, [2010 (suppl.) BCR 67] would be of no assistance to the respondent considering the fact that the judgment of the Hon'ble Apex Court in the matter of State of Punjab Vs. Krishan Niwas (supra) was not cited before this Court.

13. In the light of the above, the impugned judgment of the

Industrial Court is quashed and set aside. Complaint (ULP) No.17/2013 stands dismissed keeping in view that the respondent was in employment for more than 4 years 9 months after accepting his appointment as a freshly appointed conductor.

14. The Registrar (Judicial) of this Court is directed to place a copy of this judgment before Mr.S.K.Kulkarni, learned Member, Industrial Court, Jalgaon.

15. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)