

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4560 OF 1998

Shri Ganpat Bhimsenrao Phalke,
At Chankanwadi Post.
Tq. Paithan, Dist. Aurangabad

..PETITIONER
(Orig.IInd Party)

VERSUS

Maharashtra State Road
Transport Corporation,
Kothala Maidan,
Ahmednagar

..RESPONDENT
(Orig.Ist Party)

Shri. V.N. Upadhye, Advocate for Petitioner;
Shri. M.K. Goyanka, Advocate for Respondent.

WITH

WRIT PETITION NO.5110 OF 1999

Maharashtra State Road
Transport Corporation,
through its
Divisional Controller,
Ahmednagar

..PETITIONER

VERSUS

Shri Ganpat Bhimsenrao Phalke,
Age Major, Occ. Ex-conductor,
R/o. Chakanawadi, Tq. Pathardi,
Dist. Ahmednagar

..RESPONDENT

Shri. M.K. Goyanka, Advocate for Petitioner;
Shri. V.N. Upadhye, Advocate for Respondent.

CORAM : P.R.BORA, J.

RESERVED ON:- 3rd May, 2017

PRONOUNCED ON:- 31st July, 2017

JUDGMENT:

1) Since both these writ petitions take exception to the judgment and Award passed by the 2nd Labour Court at Ahmednagar in Reference (IDA) No.72/1989 passed on 11.9.1997, I deem it appropriate to decide both these petitions by a common reasoning.

2) Petitioner in Writ Petition No. 4560/1998 had raised a dispute in regard to his dismissal from the services of Maharashtra State Road Transport Corporation (for short, MSRTC), which is the petitioner in Writ Petition No. 5110/1999 and the Deputy Commissioner of Labour, Nasik had referred the said dispute for adjudication to the second Labour Court at Ahmednagar, invoking the provisions under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (for short the Act).

3) Petitioner in Writ Petition No. 4560/1998 was serving as a conductor in MSRTC. He joined the services with MSRTC w.e.f. 6th June, 1977. While he was attached to Pathardi depot of MSRTC and was on duty on 24th May, 1985 on the route Ahmednagar - Pathardi, his bus was checked by the checking staff of MSRTC and it was noticed that the said conductor had re-sold the bus tickets. Charge sheet was, therefore issued to him and subsequently a Departmental Enquiry was also conducted against him. In the Departmental enquiry, the conductor was held guilty for the misconduct alleged against him and the Disciplinary Authority, therefore, imposed the punishment of dismissal of service on the said conductor. The punishment so imposed by the Disciplinary Authority was challenged by the said conductor by filing a Departmental Appeal. The same was rejected by the Appellate Authority. The said conductor then raised the dispute with the Deputy Commissioner of Labour. As stated herein above, the said dispute was forwarded for

adjudication to second Labour Court at Ahmednagar.

4) Since the punishment of dismissal was imposed on the said conductor after conducting the departmental enquiry against him, and since the said conductor had challenged the departmental enquiry conducted against him to have been conducted in violation of the principles of natural justice, the learned Labour Court, at the first instance, decided the issue as regards the fairness of the departmental enquiry conducted against the said conductor. The learned labour Court, held that the enquiry as was conducted against the said conductor was in violation of the principles of natural justice.

5) The learned Labour court thereafter gave an opportunity to MSRTC to prove the misconduct alleged against the said conductor by leading evidence before the said Court. The record

reveals that despite availing ample opportunities, MSRTC did not lead any evidence before the Labour Court to prove the misconduct as was alleged against the said conductor and in such circumstances, the learned Labour Court ultimately allowed the Reference Application and directed MSRTC to reinstate the said conductor with continuity of service and with 50% back wages from the date of dismissal till the date of award.

6) The aforesaid order has been assailed by the conductor as well as by MSRTC by filing these writ petitions. As stated herein above, Writ Petition No.4560/1998 is filed by the said conductor, whereas Writ Petition No.5110/1999 is filed by MSRTC.

7) Shri V.N.Upadhye, learned Counsel appearing for the bus conductor, submitted that the learned Labour Court has grossly erred in not awarding 100% back wages even though it has

recorded a finding that the order of dismissal was illegal and improper. The learned Counsel, placing his reliance on the judgment of the Hon'ble Apex Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya - AIR 2014 SC (Supp) 121, submitted that the order passed by the Labour Court needs to be modified and the petitioner conductor deserves to be made entitled to receive 100% back wages from MSRTC.

8) Shri M.K.Goyanka, learned Counsel appearing for MSRTC, submitted that merely because the MSRTC did not adduce any evidence, the learned Labour Court ought not have held that the punishment of dismissal imposed on the bus conductor was improper and illegal. The learned Counsel submitted that the Labour Court must have looked into the charges levelled against the bus conductor and the other material forming part of the enquiry proceedings which was per se sufficient to hold the bus conductor guilty of

the misconduct alleged against him. The learned Counsel, placing reliance on the judgment of the Hon'ble Apex Court in the case of State of Haryana and anr. Vs. Ratansingh AIR 1977 SC 1512, which was followed by this Court in the case of P.K.Wani Vs. Divisional Controller, MSRTC, Dhule - 1995 (1) CLR 1052, submitted that the learned Labour Court ought to have looked into the statements of the passengers and the admission given by the bus conductor as about the events which had occurred on the day on which the bus was checked by the checking staff of MSRTC. The learned Counsel submitted that the said evidence was enough to hold the bus conductor guilty of the misconduct alleged against him and in view of the judgment, cited supra, though there was no oral evidence, the Court ought not have decided the issue against the MSRTC. The learned Counsel further submitted that the learned Labour Court has also erred in awarding 50% back wages without considering the fact that the bus conductor had approached the Court belatedly and in the

meanwhile a long period of 11 years has lapsed. The learned Counsel, therefore, prayed for setting aside the order passed by the Tribunal and consequently, to reject the Reference Application.

9) First, I would like to deal with Writ Petition No.5110/1999 filed by MSRTC. As has been argued by the learned Counsel appearing for MSRTC, even though the MSRTC had failed to adduce any evidence before the Labour court in order to prove the misconduct alleged against the respondent/conductor, the Labour court, at its own, must have looked into the evidence which was adduced in the Departmental enquiry conducted against the respondent and according to the learned Counsel, sufficient material was existing in the enquiry proceeding, which would have justified the disciplinary action taken by the MSRTC against the respondent of dismissing him from the services. In support of his contention, the learned Counsel had relied upon the judgment

of the Hon'ble Apex court in the case of State of Haryana and Anr. Vs. Ratansingh (cited supra) and the judgment of this Court in the case of P.K.Wani Vs. The Divisional Controller.

10) The submission so made by the learned Counsel is liable to be rejected for plural reasons. Admittedly, in the Reference IDA, the preliminary issue as about the fairness of the enquiry was decided against the MSRTC and it was held by the Labour Court that the enquiry was illegal; improper and in violation of the principles of natural justice.

11) The record further reveals that after recording the finding, as above, in Part-I Award, the Labour court had granted the application submitted by the management for examining the witnesses before the Court to prove the misconduct of the respondent – conductor. The record further reveals that the Labour court allowed the application so filed by the management and the matter was adjourned time to

time for adducing evidence by the management to prove the charges levelled against the respondent – conductor in the charge sheet on the basis of which the departmental enquiry was conducted against the said conductor. The record further reveals that the matter was time to time adjourned for the period of about two years at the instance of the MSRTC for leading the evidence. As has been pointed out by the learned Counsel appearing for the respondent conductor, Roznama of the Labour Court shows that 40 such adjournments were granted by the Labour Court to the MSRTC for adducing evidence to prove misconduct of the respondent conductor before the Court. The record further shows that even after availing ample opportunities, since the MSRTC failed to adduce any evidence before the Labour Court, the Labour Court was constrained to proceed further and the matter was then placed for the evidence of the respondent conductor. As has been recorded by the Labour Court, though the respondent conductor was cross-examined by the

MSRTC, no such material has come on record, which would become helpful to MSRTC to prove the charge of re-selling of the tickets against the respondent conductor. In the aforesaid circumstances, the Labour court held the charges levelled against the respondent conductor not proved and, therefore, directed reinstatement of the respondent conductor with 50% back wages.

12) The departmental enquiry conducted against the respondent conductor, when was held illegal and improper by the Labour court, it was incumbent on part of the MSRTC to prove the misconduct of the respondent conductor by adducing necessary evidence in that regard before the Labour Court. As has been noted above, the MSRTC failed in adducing any such evidence though ample opportunities were granted to it by the Labour Court. As has been observed by the Labour Court, even in the cross-examination of the respondent conductor, no such material has come on record which would lead to any adverse

inference against the said conductor.

13) In view of the facts as above, apparently, it does not appear to me that the learned Labour Court has committed any error in recording a conclusion that MSRTC has failed in proving any misconduct against the respondent conductor. Since the enquiry conducted against the respondent conductor was held illegal and improper by the Labour court and when the MSRTC had failed to prove the misconduct against the respondent conductor even before the Court, the order of dismissal of the respondent conductor, was liable to be quashed and set aside. Once the order of dismissal was set aside, the order of reinstatement was bound to follow. I, therefore, do not see any infirmity in the order passed by the Labour court directing reinstatement of the respondent conductor.

14) The judgments relied upon by the learned Counsel appearing for MSRTC to support its contentions cannot be made applicable to the

facts of the present case. In the aforesaid case, at least there was evidence of the officer of the Haryana Road Transport and that was relied upon by the Court. In the instant matter, the MSRTC has not adduced any evidence, even of its officer, for the reasons best known to it. The said judgment, therefore, cannot be of any help to take the cause of the MSRTC further.

. The another judgment of the Division Bench in the case of P.K.Wani (cited supra) also cannot be applied in the present case for the similar reasons. In the said matter also, though the passengers were not examined, the statements of the said passengers recorded by the officer of the ST Corporation were believed by the Court. In the instant matter, even that material is not available before this Court. Thus, in so far as order of reinstatement is concerned, the MSRTC has failed in making out any case for causing interference in the order passed by the Labour court directing reinstatement of the respondent conductor.

15) The next question, which falls for my consideration is, Whether the order passed by the Labour court, awarding 50% back wages, requires any interference ? In writ petition filed by the MSRTC, the challenge was for both, the order of reinstatement as well as order of granting 50% back wages. In the writ petition filed by the conductor, it is his contention that the Labour court must have awarded 100% back wages to him in view of the fact that his dismissal was held to be illegal and was set aside by the Labour court.

16) As I recorded herein above, the order of reinstatement does not require any interference. It is the contention of the MSRTC that even if the order of reinstatement is sustained, the order of granting back wages cannot be sustained. The contention so raised by the MSRTC is liable to be rejected at the threshold. Once the termination is set aside, in normal course, it follows with further order of full back wages.

17) In so far as the contention of the MSRTC

that, no back wages were liable to be awarded even if the reinstatement order is sustained, is liable to be rejected at the threshold since no such case is made out by the MSRTC. Once the termination or dismissal is set aside and reinstatement is directed, ordinarily it is followed with the order of back wages. However, it is the discretion of the Court whether to award the back wages in full or in part. There cannot be a straight jacket formula for awarding the relief of back wages. The Tribunal has to exercise its discretion keeping in view all the relevant circumstances. Of course, the discretion is to be exercised in judicial and judicious manner. The reasons for exercising the discretion must be cogent and convincing and must appear on the face of the record. The judgment and award passed by the Labour court, if perused with this angle and applying the criterion, noted herein above, apparently, there appears no need to cause any interference in the said order also.

18) The learned Counsel for the bus conductor has relied upon the judgment of the Hon'ble Apex court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. - AIR 2014 SC (Supp) 121 to urge that in the cases of wrongful termination of service, the wrongdoer is the employer and sufferer is the employee and, therefore, there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay the employee his dues in the form of full back wages.

19) I have carefully perused the aforesaid judgment wherein the Hon'ble Apex court has referred to its earlier judgments on the point of back wages. The Hon'ble Apex court though has held that in cases of wrongful termination of services, reinstatement with continuity of service and back wages is the normal rule, it is further observed that the aforesaid rule is subject to the rider that while deciding the

issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee; the nature of misconduct, if any, proved against the employee; the financial condition of the employer and the similar other facts.

20. In the instant matter, the learned Labour court in para No. of the impugned judgment has made the following observations, -

"9. Issue No.2 - Since the charges are not proved the workman is entitled for the relief of reinstatement. The facts of the present reference is that the workman was dismissed on 29/9/1986, however, he has made reference in the year 19/7/1989 that means he has made reference after 3 years from the order of dismissal. The first party has not lead evidence to prove the charges before the court. But that does not mean the second party has right to get 100% back wages. It is not known as to why the second

party has waited for 3 years for making reference. In view of the decision of Apex court reported in 1993 (I)-CLR 1072, reference has to be made within time. However, I am of the view that the reference may not be rejected on the point of delay only. Since the charges are not proved, however, the point of delay has to be considered while awarding back wages. Considering the point of delay, I am of the view that he may be granted 50% back wages from the date of dismissal till the date of reinstatement."

21) Considering the observation as above made by the learned Labour Court, it appears to me that it has rightly struck the balance. Since the termination is held illegal, the employer could not have been absolved from the liability of paying the back wages. Similarly, for approaching late to the court, the employee was also not entitled for the back wages in full.

22) Moreover, in Writ Petition filed by

MSRTC, a specific plea is raised as about the past service record of the bus conductor. It is stated that the bus conductor was involved in more than 25 default cases pertaining to irregularities in the matter of issuance of tickets and misappropriation, where he was punished and moderate punishment of fine, censor, warning, stoppage of increment; withholding of increment, were imposed. The contention so raised in the writ petition, has not been denied or disputed by the respondent conductor by filing any affidavit in reply. It appears to me that though in the judgment of the Labour court the said fact does not find place, may be for the reason that the same may not have been brought on record of the court, while deciding the correctness and legality of the order passed by the Labour court, awarding 50% back wages, according to me, the same also can be a relevant consideration. As such also, it does not appear to me that the bus conductor has made out any case for awarding 100% back wages nor any case is

made out by MSRTC to set aside the said order.

23) Both the writ petitions being devoid of any merits deserve to be dismissed and are accordingly dismissed, however, without any order as to costs. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/
fldr.14.6.17.