

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7752 OF 2017

Jaywant Ramchandra Gangawane	...Petitioner
<i>Versus</i>	
Divisional Controller , Maharashtra State Road Transport Corporation And Anr	...Respondents

....
Mr.Meelan Topkar, Advocate for the Petitioner.
....

CORAM : R. G. KETKAR, J.

DATE : 24th JULY, 2017

P.C.

1. Heard Mr.Meelan Topkar, learned counsel for the petitioner, at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 22.3.2017 passed by the learned Member of Industrial Court, Satara (for short, 'Tribunal') in Revision (U.L.P.) No.36/2016. By that order, the Tribunal allowed the Revision filed by the respondents under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'Act') and set aside

the order dated 20.2.2012 passed by the learned Member, Labour Court, Satara below Exhibit U-2 and dismissed the application made by the petitioner, hereinafter referred to as the 'complainant', for interim relief restraining the respondents from terminating the services of the complainant on the basis of the show-cause notice.

3. In support of this Petition, Mr. Topkar strenuously contended that after considering the material on record, by order dated 20.2.2012 the Labour Court held that the complainant has made out prima facie case; that balance of convenience lies in his favour; and that irreparable loss and hardship will be caused to the complainant in case the interim relief is not granted. He submitted that the Labour Court has considered the entire material on record and thereafter has passed the discretionary order. The Tribunal was not justified in interfering with the discretionary order passed by the Labour Court, more so while exercising the powers under Section 44 of the Act. At the highest, the Tribunal could have expedited the hearing of the complaint by directing the Labour Court to decide the same in a time bound manner. He, therefore, submitted that the petition requires consideration.

4. I have considered the submissions advanced by Mr. Topkar. I have also perused the material on record. As noted earlier, the Labour Court has allowed the application made by the complainant for interim relief. Aggrieved by this decision, the respondents preferred Revision before the Tribunal. In paragraph-7 the Tribunal noted the facts of the case. In paragraphs-9 and 10, the Tribunal noted that the complainant admitted that he had accepted Rs.1,000/- from four passengers . He returned Rs.40/- and retained Rs.960/- towards the fare of their journey from Satara to Vashi. The complainant has issued ticket on blank paper by writing thereon ticket number, value of one ticket and value of four tickets. He, however, did not sign thereon. In paragraph-10, the Tribunal noted that the complainant, who is working as a Conductor, has admitted the position that he had given the ticket to the passengers by mentioning ticket No.58471 and mentioning value of tickets as Rs.960/-. During the course of enquiry, the Enquiry Officer noted that the complainant admitted that he has not used manual tray to give tickets when entries were not recorded in the machine and blank paper came. Record speaks that the conductor has issued tickets from the same machine

later on. In other words, the defence of the complainant that the machine was defective and was not properly operating *prima facie* cannot be accepted at this stage.

5. For the reasons recorded in paragraphs-9 and 10 of the impugned order, I do not find that the Tribunal has committed any error in allowing the Revision preferred by the respondents.

6. In the case of **Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727**, the Apex Court in paragraph 14 has observed as under:

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary

conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. ...”

7. It is no doubt true that the Apex Court was dealing with Appeal from Order as contemplated by Section 104 read with Order XLIII of C.P.C. It is in that context, the Apex Court laid down the principles that are to be followed by the Appellate Authority while dealing with the proceedings challenging the discretionary order. In my opinion, the principles laid down therein are applicable in Revision filed under Section 44 of the Act before the Tribunal.

8. Applying the tests laid down in the above decision to the facts of the present case, I am satisfied that the Labour Court has exercised the discretion arbitrarily, capriciously and perversely. The Labour Court had ignored the settled principles of law regulating grant or refusal of injunction application. In view thereof, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. The Labour Court will decide the complaint on the basis of the evidence on record and in accordance with law uninfluenced by the observations made in the impugned order and in this order. Order accordingly.

(R. G. KETKAR, J.)