

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9219 OF 2019

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Ahmednagar Division,
Kothale, Sarjepura, Ahmednagar. ...Petitioner

Versus

Ashok Suvalal Marothe,
R/i At. Post Sutar Galli,
Tq. Rahata, Ahmednagar. ...Respondent

.....
Mr. M.K.Goyanka, Advocate with Mr. M.D.Shinde, Advocate
for the Petitioner.
Mr. P.V.Barde, Advocate for the Respondent.

.....

CORAM : RAVINDRA V. GHUGE, J.
DATE : 09-08-2019.

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. The petitioner is aggrieved by the Judgment and Award dated 4.8.2018 delivered by the Labour Court by which Reference (IDA) 24/2011 has been partly answered in the affirmative. The dismissal of the respondent-workman dated 15.12.2006 has been held to be unsustainable and therefore, quashed and set aside. The respondent has been

granted continuity in service and 25% back wages from the date of termination till the date of his superannuation in 2013.

03. The undisputed factors in this case can be summarized as under :

(a) The respondent joined duties as a bus conductor on 6.11.1984.

(b) On 10.12.2005, an FIR was registered against him with regard to the incident of he having been apprehended with original MSRTC bus tickets, which were not allotted for the journey which he was to conduct as a bus Conductor.

(c) The M.S.R.T.C. gathered information that the tickets which were not allotted for particular journeys were found in his possession and the use of such tickets was unauthorized that led to misappropriation of amounts, that were not accounted for.

(d) A charge-sheet was issued on 10.1.2006 and a fulfilled domestic enquiry was conducted.

(e) On 20.11.2006, a second show-cause notice proposing the punishment of dismissal from service was served on him.

(f) He filed Complaint (ULP) No. 52/2006 before the Labour Court and was initially granted protection.

(g) On 14.12.2006, before the fairness of the enquiry and the findings of the Enquiry Officer could be adjudicated upon, his application for interim relief Exh. U-2 was rejected.

(h) The M.S.R.T.C. therefore, issued the Order of dismissal from service, by way of punishment, on 15.12.2006.

(i) On 16.10.2007, the Labour Court framed the first two issues with regard to the fairness of the enquiry and the fairness of the findings of the Enquiry Officer.

(j) On 16.10.2007, the workman filed an application seeking amendment to the complaint so as to challenge the dismissal Order dated 15.12.2006

(k) Before the amendment could be allowed, he withdrew the complaint on 19.3.2008 stating in the purshis that he is not in a position to pursue the matter on account of personal reasons.

(l) The workman was facing about 7 criminal cases and he was acquitted in all the 7 cases by the Court of criminal jurisdiction on 17.11.2009, 23.2.2010 and 9.2.2010.

(m) On 2.8.2010, the workman raised an industrial dispute for challenging his dismissal dated 15.12.2006, under Section 2(A) of the Industrial Disputes Act, 1947.

(n) On 27.1.2012, he filed his statement of claim before the Labour Court.

(o) On 6.12.2012 the MSRTC filed it's written statement for opposing all the prayers putforth by the complainant. However, a right to conduct a de-novo enquiry in the event the domestic enquiry is vitiated, was not reserved by the petitioner- MSRTC in the written statement.

(p) By the Part-I Judgment dated 19.7.2014, the Labour Court concluded that the enquiry was vitiated and therefore stood set aside.

(q) The petitioners sought adjournments on 25.8.2014, 22.9.2014, 27.10.2014, 24.11.2014 and 16.12.2014.

(r) The respondent workman attained the age of superannuation on 5.3.2013.

(s) On 7.1.2015, the MSRTC filed an application Exh. C-16 praying for permission to conduct a de-novo enquiry and the said application was instantly allowed on the same day, without calling for the say of the workman with the observations "*Considering contention permission granted.*"

(t) The complainant workman filed Exh. U-15 on 21.1.2015 praying for recalling the Order dated 7.1.2015.

(u) Exh. U-15 was 'filed', on the same day by the Labour Court concluding that as Exh. C-16 has been granted. Exh. U-15 deserves to be filed.

(v) The complainant-workman approached this

Court in Writ Petition No. 3576 of 2015, which was partly allowed by Judgment dated 23.10.2015 holding that Exh. C-16 could not be casually allowed and it needs to be considered within the ambit of the law laid down in **KSRTC V/s Laxmidevamma, (2001 2 CLR 640)**.

(w) Pursuant to the above, application Exh. C-16 was rejected by the Labour Court on 2.1.2017. This Order has not been challenged by the corporation and has attained finality.

(x) By the impugned Judgment dated 4.8.2008, the Labour Court has quashed the dismissal and granted continuity in service with 25% back wages and other consequential service benefits.

(y) The petitioner corporation has questioned the filing of the reference case by the workman on the ground that it is struck by the bar of Section 59 of the MRTU & PULP Act, 1971.

04. It is contended that the respondent workman had filed a complaint (ULP). He had suffered an adverse Order when his application for interim relief Exh. U-2, was rejected. It, therefore, means that effective steps were taken in the said case and the raising of an industrial dispute under the Industrial Disputes Act, 1947, which is known as the Central Act, was prohibited.

05. I find that the respondent workman had approached the Labour Court against his apprehended dismissal and not his actual dismissal. He had filed the ULP complaint seeking a relief that he should not be dismissed from service and the second show-cause notice be stayed. The Labour Court had not framed any issue as regards the fairness of the enquiry and had initially protected the workman. By the Order dated 14.12.2006, it refused protection against the apprehended termination. On 15.12.2006, the petitioner was awarded the punishment of dismissal from service which was the final and ultimate act of the MSRTC.

06. In the above backdrop, it is evident that the respondent workman had approached the Labour Court for preventing his dismissal and for quashing the second show-cause notice dated 20.11.2006 proposing the punishment of dismissal from service. Once, he was dismissed from service, the cause of action of termination / dismissal apprehended, was put to rest and such apprehension no longer remained in existence. Had he continued with the complaint (ULP) as it is, his complaint would have been dismissed for being infructuous as he had not challenged a new cause of action originating from the Order of dismissal from service dated 15.12.2006.

07. It is therefore, obvious that the apprehension of dismissal and challenge to the second show-cause notice, did not exist in the eyes of law and a new cause of action in the form of dismissal from service, arose on 15.12.2006. This cause of action was yet to be challenged as the workman had merely filed an application for amendment to the Complaint ULP. The case had not progressed any further.

08. In the matter of **MSRTC V/s Yadao and Ors. (1985 LIC 1012)**, the learned Division Bench of this Court at Nagpur considered the effect of the language used in Section 59. It was held in paragraph Nos. 6, 7, 8, 12 and 13 as under :

6. Section 59 of the ULP Act reads : If any proceeding in respect of any matter failing within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter with in the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act.

7. As the long title to the ULP Act suggests, the Act was intended inter alia to facilitate collective bargaining and to define and provide for the prevention of certain unfair labour practices and to constitute independent machinery for carrying out the purposes of the Act. Needless to say, the legislature was aware of the existence of the I.D.Act of 1947 when it enacted the ULP Act of 1971 and the presumption would be that the legislature did not create an impotent, unworkable machinery under the ULP Act.

8. The ambit of the bar of proceedings under Section 59 of the ULP Act can best be understood by comparing it with the text of the next following Section 60 of the same Act which bars the civil Courts from entertaining "any suit which forms or which may form the subject-matter of the complaint under the Act". In contradiction to the language of Section 60, the Act in Section 59 adds an additional prerequisite, namely that the proceedings should be "in respect of any matter falling within the purview of this Act." That is to say, the bar under Section 59 of the ULP Act is not an absolute one-not impervious, impregnable wall to all manner of sorts of proceedings – but a sieve through which certain type of proceedings can permeate. It only prohibits duplicating of proceedings if some, in respect of matter which falls within the purview of ULP Act, are already pending under the I.D.Act.

12. In contrast, while drafting Section 59 of the ULP Act, the legislative draftsman has avoided using words of the widest amplitude like 'other industrial action' which would provide a fertile ground for various interpretations of that phrase. The according like quality of that phrase becomes evident from Power Packing Case Makers Ltd. V/s Faust (C.A.(1983) 2 WLR 439 at 443 wherein Stephenson L.J. When called upon to pronounce whether refusal of workman to do overtime constitutes an industrial action said :

"If he merely refused to do something which he is not contractually bound to do, he cannot be taking part in industrial action. I would agree that if he refuses because he has private commitment to visit a sick friend, or a personal preference for a football match, he is not taking industrial action. But that is not this case. If he refuses because he and others who refuse with him hope to extract an increase of wages out of his employers because their business will be disrupted if they do not grant it, that continued application of pressure is industrial action in the common sense of the words.

13. Thus in a situation arising out of the English Art, the Court will have to delve into the mind of the worker and conclude whether the worker is refusing overtime to exert pressure on the employer or whether he has a date at it

football match or movie theatre. All such factual inquiry has been done away with by Section 59 which asks a simple question; Does the action of the employee fall within the purview of the ULP Act ?

09. It is therefore, obvious from the present facts of the case in the light of the law laid down in MSRTC (Supra) that a new cause of action arose on account of the dismissal of the workman. In the matter of **Prakash Kashiram Sawant V/s M/s Motherson Advanced Tooling Solutions Ltd. & Ors. (in Writ Petition No. 12119 of 2016 decided on 3.7.2019)**, it is concluded that every termination is an independent and distinct cause of action. The ULP complaint filed by the respondent workman was on the basis of a second show-cause notice and apprehended dismissal. It would constitute an independent cause of action in view of the Judgment delivered by the Honourable Apex Court in the matter of **Hindustan Lever V/s Ashok Vishnu Kate, (1996 AIR 285 = 1995 SCC (6) 326)**. The Honourable Apex Court held that an apprehended termination / dismissal can be challenged under item 1 of Sch. IV of the MRTU & PULP Act, 1971 and an employee need not wait till the employer issues the Order of dismissal from service which would be a cause of action as regards severing of employer-employee

relationship.

10. In **Consolidated Pneumatic Tool Company (India) Ltd. V/s R.A.Gadekar & Ors., 1986(1) Bom.C.R. 484 = 1986 Mh.L.J. 238**), the learned Division Bench of this Court concluded that if a complaint is withdrawn before effective steps were taken, Section 59 would not apply. The word institute as noticed under Section 59, would mean setting in motion an enquiry which amounts to something more than mere filing of a complaint.

11. It was held in **Consolidated Pneumatic** (Supra) in paragraph No. 5 as under :

5. In this context it is also pertinent to note that the withdrawal of the complaint was not unconditional. The complaint was withdrawn since references were made by the State Government covering a larger area. However, it is contended by Shri Kaka, learned Counsel appearing for the petitioner that once it is shown that the proceedings in respect of the same matter were instituted under the MRTU & PULP Act, then the Industrial Tribunal has no jurisdiction to entertain the references under the Central Act in view of the specific wording of Section 59 of the MRTU & PULP Act. It is not possible for us to accept the broad proposition. The word "institute" as used under Section 59 can be taken as meaning "setting on foot an

enquiry" which means something more than mere filing of complaint. Where the applicant does nothing more than filing a complaint under the Act and withdraws it before any effective steps are taken, then in our view the provisions of Section 59 of the MRTU & PULP Act will not apply. Obviously as to what could be termed as effective steps will again depend upon the facts and circumstances of each case. Similar expressions seems to have been used in Section 3 sub-Section (5) of the Workmen's Compensation Act. The expression institute as used in the said Act i.e. Workmen's Compensation Act fell for consideration of the Madras High Court in **AIR 1957 Madras 216 (S. Suppiah Chettiar V/s V.Chinnathurai & Anr.)** wherein after making a reference to the meaning assigned to the said term of Law Lexicon by Ramnath Iyer and other law dictionaries, the Madras High Court held that the word institute means something more than mere filing of a claim. We are in respectful agreement with the view taken by the Madras High Court. Therefore, if an applicant does nothing more than filing the complaint under the Act, and withdraws it before any effective steps are taken, then it cannot be said that the proceedings were instituted under the MRTU & PULP Act: In our view such a meaning will have to be given to the said term. If the interpretation and construction suggested by Shri Kaka is accepted then it will result in palpable injustice and absurd inconvenience. It

is well settled principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice or absurd inconvenience or anomaly. In the circumstances, if a complaint filed is withdrawn by consent of the parties and that too in view of the reference made under the Central Act, then for all practical purposes it will have to be held that in law no proceedings were instituted under the MRTU & PULP Act. In any case, having regard to the facts and the circumstances of the present case the present petitioner-company is estopped by its own conduct from raising such a contention.

12. The learned Full Bench of this Court dealt with a similar bar under Section 59 in **C.S.Dixit V/s Bajaj Tempo Ltd. (2001(2) Bom.C.R. 289 = 2000(4) Mh.L.J.)**. It was held that effective steps would mean such steps which would affect the subsequent proceedings on the same point. If no effective steps were taken in the earlier case, the bar of Section 59 would not apply. But, if effective steps were taken, the bar would apply.

13. It was held in paragraph Nos. 19, 20, 21 and 22 in **C.S.Dixit's** case (Supra) as under :-

19. In our opinion, there is no question of bar of Section 59 being invoked when the matter sought to be agitated is based on a

new cause of action. As the matter was pending before the Industrial Court under the said Act, obviously it was not dealing with the said new cause of action.

20. In our opinion, therefore, mere filing of a complaint under the said Act without anything done in the matter will not attract the bar of Section 59. If the statute of limitation is successfully invoked in matter before the Industrial Court under the said Act, the bar will not apply. About the new cause of action, also as noted above, there is no question of invoking the bar at all.

21. We are further of the opinion that if before any effective steps are taken by the Industrial Court under the said Act when the matter is withdrawn then also the bar would not apply. As to what could be the effective steps, the question is to be decided as to the facts and circumstances of the case. It is obviously not possible to enumerate all possible set of circumstances, which in a given case, will induce us to conclude that the effective steps are not taken. At the same time, if effective steps are taken, bar under Section 59 would certainly apply. No party can be permitted to either shop the forum or avoid outcome of its own action on the ground of exigency of convenience.

22. For the aforesaid reasons, in our opinion, the decision in the case of the

Mukhtyar Ahmeds (Supra) will not lay down the correct law. As per the views expressed in the case of Consolidated Pneumatic Tool Company (Supra), we answer the reference accordingly. Ordinarily we would have sent the matter back to the learned Single Judge to take a decision. However, in view of the fact that, only on this point the Award has been rejected, we allow the petition and make the rule absolute.

[Emphasis supplied]

14. It is thus obvious, in view of the crystalized position of law, that if a matter is being agitated on a new cause of action, the bar of Section 59 can not be invoked. In the case in hand, barring the rejection of the interim prayer for directing the MSRTC not to dismiss him, the complaint ULP had not progressed in any manner which could mean that effective steps were taken in the case. It was an interlocutory Order passed and the workman had sought temporary relief. The two issues with regard to the fairness of the enquiry and the findings, were not framed. Naturally, the evidence led in the enquiry and the record and proceedings, were not considered.

15. After the reference case was registered and the pleadings were completed, the Labour Court framed the two

issues for the first time and it allowed the parties to address the Court on the first two issues. The enquiry was set aside.

16. An identical situation has been considered by this Court in **Nanasaheb Eknath Suryawanshi V/s The Pune District Central Co-op. Bank Ltd., (2016(3) All MR 849=2000 CLR 719)**. It was noted in paragraph No. 8 as under :

8. Leaving aside the question as to whether or not further steps were initiated in the original complaint filed by the petitioner under the MRTU & PULP Act, what is important to note here is that the complaint related to a disciplinary enquiry initiated by the Respondent and the termination action likely to be taken by the Respondent on the basis of such disciplinary enquiry. After the Petitioner failed to obtain any interim relief from the Labour Court, the Respondent actually proceeded further with the disciplinary action and actually terminated the services of the Petitioner. It is that "matter" namely, termination of the Petitioner by an Order dated 16.01.1999, which is the subject matter of the present proceedings under the B.I.R. Act. The proceedings earlier filed before the Labour Court under the MRTU & PULP Act were in respect of the disciplinary enquiry and a possible termination on the basis of such enquiry,

whereas the proceedings before the Labour Court under the B.I.R. Act was in respect of breach of standing orders under that Act occasioned by the actual termination of services purportedly contrary to the standing orders. These two are evidently different "matters" and the bar of proceedings under other Central or State Acts within the meaning of Section 59 of the MRTU & PULP Act does not apply to the present proceedings under the B.I.R. Act.

17. Considering the above, I do not find that the contention of the petitioner - MSRTC could be accepted. The bar prescribed under Section 59 would not apply to this case and the reference proceedings initiated by the respondent workman after his dismissal from service, which is a new cause of action, would not be affected by the bar of Section 59.

18. In so far as the issue as regards filing Exh. C-16 for leading evidence before the Labour Court without reserving a right in the written statement to conduct a de-novo enquiry, is concerned, I find that this case is squarely covered by Judgment delivered by this Court on 8.8.2019 in the matter of **Rohidas Nakaliram Dulgach V/s Nanded Waghala Municipal Corporation, (Writ Petition No. 563 of 2019 decided on 8.8.2019.** This Court has relied

upon catena of Judgments of the Honourable Apex Court as well as of this Court, including the Judgment in **Laxmidevamma** (Supra) delivered by the 5 Judges Bench of the Honourable Supreme Court, that an employer has to reserve its right to conduct a de-novo enquiry in the written statement. There is no challenge, in this petition filed by the corporation, to the rejection of application Exh. C-16. As such, no fault can be found in the impugned Judgment delivered by the Labour Court, especially in the backdrop of the respondent workman having not challenged the same.

19. The learned Advocate for the petitioner corporation informs that the respondent workman had approached the Controlling Authority under the Payment of Gratuity Act and his claim has been allowed.

20. The learned Counsel for the petitioner has strenuously contended that the quantum of backwages granted by the Labour Court, which is 25% of the total backwages, is unjustified. He submits that the past service record of the respondent is blemished. He was punished on three occasions in 1986, 1988 and 1990 for allowing passengers to travel ticketless.

21. Notwithstanding the above contentions, the fact situation in this case is that Exh. C-16, seeking

permission to conduct a de-novo enquiry has been rejected and the MSRTC has not challenged the said Order. Moreover, it is trite law that once an enquiry is vitiated and if de-novo enquiry is not conducted, the case stands on a footing of charges not being proved against the employee. The Honourable Apex Court has arrived at this conclusion in the matter of **Jorsingh Govind Vanjari V/s Maharashtra State Road Transport Corporation, Jalgaon, (2017) 2 Supreme Court Cases 12** and has even granted gratuity to the worker, as the charges were not proved before the Labour Court or any Superior Court. In these circumstances, the contention of the petitioner is unsustainable.

22. As such, this petition being devoid of merits is therefore, dismissed. Rule is discharged.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-