

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2029 OF 2019

Maharashtra State Road Transport Corporation	.. Petitioner
Vs.	
Shri Sadashiv Narayan Chavan	.. Respondent

Mr.G.S.Hegde a/w Mr.C.M.Lokesh, for the Petitioner.
Mr.Meelan S.Topkar a/w Ms.Pavitra Mahesh, for Respondent.

CORAM : M.S.KARNIK, J.

DATE : 11th MARCH, 2019

P.C. :

. Heard learned Counsel for the petitioner and respondent. Rule. The respondent waives service. By consent, Rule made returnable forthwith and heard finally.

2. The petitioner - Maharashtra State Road Transport Corporation by this Petition under Articles 226 & 227 of the Constitution of India challenges the order dated 28/02/2017 passed by the Industrial Court No.1, Kolhapur whereby the

Complaint filed by the respondent under the provisions of M.R.T.U. & P.U.L.P. Act, 1971 is partly allowed.

3. The brief facts of the case are : The respondent joined the services with the petitioner as a Conductor. The bus while proceeding from Kankavli – Sawantwadi Depot was checked. At the time of checking, it was found that the respondent had accepted Rs.20/-from 2 passengers i.e. woman and her child and issued her ticket of Rs. 1/- each as fare. The respondent made some modification/ alteration on the amount of Rs.1/- and made it Rs. 9/-. The allegation therefore is that the respondent has misappropriated the amount of Rs.16/-. Even when S.T. cash was checked, it was found that amount of Rs.24/- was less than what was actually required. After departmental enquiry, show cause notice of dismissal dated 29/06/2009 came to be issued to the respondent. The respondent challenged the show cause notice of dismissal dated 29/06/2009 before the Labour Court, Ratnagiri. The Labour Court at Ratnagiri was pleased to allow the Complaint ULP filed

by the respondent thereby set aside the show cause notice of dismissal.

4. In revision filed by the petitioner against the said order of the Labour Court dated 17/03/2010, on the earlier occasion, the Industrial Court was pleased to allow revision and show cause for dismissal was restored. The petitioner was granted liberty to award any punishment other than dismissal after calling explanation from the respondent to the show cause notice for dismissal. Thereafter, the petitioner passed order dated 15/02/2013 by which the basic pay of the respondent was brought down by 3 stages permanently.

5. The respondent filed a complaint of unfair labour practice against the order dated 15/02/2013 bringing down the basic pay . It was one of the contention of the respondent that by passing order dated 15/02/2013, the petitioner Corporation did not take into consideration reply filed by him to the show cause notice.

6. The Labour Court was pleased to partly allow the Complaint filed by the respondent and by the impugned order dated 28/02/2017, quashed and set aside order dated 15/02/2013. It is further observed by the Labour Court that the petitioner Corporation is not precluded from considering the explanation of the complainant and then imposing punishment with proper reasons and application of mind.

7. Learned Counsel for the petitioner submitted that the Labour Court has adopted hyper technical approach while interfering with the order of the punishment dated 15/02/2013. According to him, the charges levelled against the respondent are serious in nature in as much as on 7 prior occasions he was found guilty of similar misconduct. In his submission, though the petitioner- Corporation would be justified in imposing punishment of dismissal, nonetheless, in deference to the order passed by the Industrial Court on the previous occasion, lenient view was taken and order dated 15/02/2013 bringing down the basic pay of the respondent by 3 stages permanently was passed.

In his submission, interference by the Court in this order was uncalled for.

8. On the other hand, learned Counsel for the respondent supported that the impugned order. He submitted that the issuance of a show cause notice for imposing a punishment would be empty formality, if explanation offered by him to the said show cause notice not taken into consideration. He would submit that his explanation is not at all adverted to before passing order dated 15/02/2013. He would submit that the finding of the Labour Court cannot be regarded as perverse.

9. Having considered the submissions made by learned Counsel, I am of the opinion that the impugned order does not warrant any interference. Having issued the show cause to which an explanation was duly furnished by the petitioner Corporation, the explanation should have been duly considered before passing order. This approach of the Labour Court cannot be said to be unreasonable or unwarranted. In any case, the

Industrial Court while interfering with the order of punishment has made it clear that the petitioner – Corporation is not precluded from considering the explanation of the respondent and then imposing punishment with proper reasons and upon application of mind. This approach of the Industrial Court cannot be said to be perverse so as to warrant interference. Keeping liberty of the petitioner open to consider the explanation of the respondent and then imposing the punishment in accordance with law, present Petition is dismissed. With these observations, Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)