

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7035 OF 2000

Maharashtra State Road Transport Corporation	.. Petitioner
Vs.	
Nisam Yasin Shaikh	.. Respondent

Mr.G.S.Hegde, for the Petitioner.
Mr.I.R.Kulkarni, for the Respondents

CORAM : M.S.KARNIK, J.

DATE : 16th APRIL, 2019

ORAL ORDER :

. The Petitioner – Maharashtra State Road Transport Corporation by this Petition filed under Articles 226 & 227 of the Constitution of India is challenging the award dated 25/01/1999 passed by the Third Labour Court at Thane, aggrieved by the reinstatement of the respondent with full back-wages and continuity of service with effect from 17/01/1994.

2. According to the petitioner, the respondent was on

duty as a driver on 02/08/1993. He was to ply the bus on the Bhiwandi Ratnagiri route. The respondent refused to take charge of the bus, as a result, the said bus which was to ply on this route had to be cancelled. It is the contention of the respondent that the bus was having several defects. According to him, signal indicator was not working, spring in front of the driver's seat was open. Further defects as pointed out includes the absence of first aid box and even the horn was not working. For all these reasons, according to the respondent, he was justified in refusing to ply the bus. When the petitioner tried to engage some other driver, it is alleged that the respondent obstructed the other driver to take over. According to the respondent, it was dangerous to drive the bus in the condition in which it was and there was every possibility of the bus being involved in some mishap.

3. The respondent was suspended pending enquiry by order dated 06/08/1993. A disciplinary enquiry was conducted. The enquiry officer returned the finding that the misconduct

alleged against the respondent is duly proved. Based on the enquiry officer's report, punishment of dismissal was imposed.

4. The reference was made to the Labour Court challenging the dismissal. Before the Labour Court, the respondent challenged the enquiry as being not fair, legal and proper and that findings are perverse. He further submitted the punishment of dismissal is shockingly disproportionate to the proved misconduct.

5. There was default on the part of the petitioner in contesting the proceedings before the Labour Court. The pleadings on behalf of the respondent remained uncontroverted. The respondent was not cross examined. The Labour Court proceeded exparte and by the impugned award granted reinstatement with full back-wages and continuity of service from 17/01/1994.

6. Learned Counsel for the petitioner submitted that

the Labour Court should have given an opportunity to the petitioner to contest the proceedings. In the submission of the learned Counsel for the petitioner, the affidavit of evidence which was filed on behalf of the respondent was not served on them and therefore, they were deprived of an opportunity to cross examine the respondent. Learned Counsel would further submit that even if the contentions of the respondent are correct, the defects pointed out by the respondent for not plying the bus are not such that the respondent was justified in refusing to ply the bus on that particular route. Moreover, in his submission, the respondent obstructed the other driver from driving the bus. He would submit that as a result the bus had to be cancelled causing inconvenience to the passengers. For all these reasons, he submitted that the petitioner be granted an opportunity to contest the matter before the Labour Court and prayed for setting aside the exparte award. An application made for setting aside exparte award before the Labour Court was rejected. An objection is raised by the learned Counsel for the respondent that the application for setting aside the exparte

award was not rejected, but what was rejected was an interim application made in the application for setting aside exparte award.

7. Be that as it may, the application for setting aside exparte award has been disposed of by the Labour Court. The petitioner in this Petition has challenged the award of the Labour Court as well.

8. Learned Counsel for the respondent submits that there is no reason to interfere with the impugned order. He submits that adequate opportunity was available to the petitioner to represent themselves. They have been not diligent in representing their case. In his submission, now the respondent has retired and therefore at this late juncture, it would not be appropriate to entertain the Petition and remand the matter back to the Labour Court for giving opportunity to the petitioner to contest the reference.

9. Heard learned Counsel for the parties. Labour Court has passed exparte award in favour of the respondent. For refusal on the part of the respondent to ply the bus, the petitioner dismissed the respondent from service after holding a departmental enquiry. On 18/12/2000 when this Petition was admitted, this Court had directed the petitioner to deposit the amount of back-wages as ordered by the Labour Court. By the order dated 15/02/2001, the respondent was permitted to withdraw the amount deposited in this Court subject to furnishing two solvent sureties. Thereafter the respondent filed application for grant of wages under section 17-B of the Industrial Disputes Act, 1947 which was allowed. The petitioner - Corporation reinstated the respondent with effect from 18/07/2003. The respondent has since retired.

10. In this view of the matter, in the interest of justice, I am not inclined to consider the prayer made by the petitioner to set aside the exparte award. The respondent has not only withdrawn the back-wages so deposited, but has since been

reinstated and now stands retired. Even otherwise there are no justifiable grounds for interfering with the exparte order.

11. In the facts of the present case, I am inclined to observe that the respondent will not be entitled to any further amount towards back-wages as he has already withdrawn the amount of back-wages deposited in this Court and he has also received the 17-B wages prior to his reinstatement. With these observations, I am not inclined to interfere with the order passed by the Labour Court as no case is made out for setting aside the exparte award.

12. Subject to what is observed above, the Petition is dismissed. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)