

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1971 OF 2019

Divisional Controller, Maharashtra State Road Transport Corporation, Division Office at Akola

-vs-

Sheshrao s/o Motiram Jadhav

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri V. G. Wankhede, Advocate for petitioner.
Shri P. N. Verma, Advocate for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : November 04, 2019

Challenge raised in the present writ petition is to the adjudication by the Labour Court dated 11/01/2011 in the complaint filed by the respondent herein under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By the said judgment the Labour Court has set aside the order of termination that was issued to the respondent and directed his reinstatement in service. That order has been confirmed by the Industrial Court in exercise of its revisional jurisdiction.

2. Shri V. G. Wankhede, learned counsel for the petitioner submitted that the Labour Court was not justified in observing that the charge-sheet issued to the respondent was contrary to

the procedure prescribed. Referring to the said charge-sheet he submitted that all necessary details were stated therein and after supplying all relevant documents and by examining necessary witnesses the charges were duly proved. The Labour Court was not justified in observing that there was a breach with regard to the manner in which the charge-sheet was served on the respondent. It was further submitted that since a detailed charge-sheet was issued to the respondent the Courts were not justified in holding that the charge-sheet ought to have been filed under Appendix-5(E). Without considering the aspect that all details had been mentioned in the charge-sheet and all relevant documents were also annexed thereto it was wrongly held that the charge-sheet served on the respondent was defective. It was therefore submitted by relying upon the decisions in *Regional Manager, U.P. SRTC, Etawah and ors. vs. Hoti Lal and anr. (2003) 3 SCC 605* and *North West Karnatak Road Transport Corporation vs. H.H. Pujar (2008) 12 SCC 698* that the impugned order directing reinstatement along with back-wages was liable to be set aside.

3. Shri P. N. Verma, learned counsel for the respondent supported the impugned order. According to him the order

dated 08/01/1993 was not challenged by the petitioner and infact the petitioner accepted the said order and reinstated the respondent in service. Despite liberty granted to the petitioner to prove the charges by leading evidence the same was not done. The witness examined by the Corporation was not permitted to be cross-examined and therefore it was a case of no evidence being led by the petitioner. Placing reliance on the decision in *Neeta Kaplish vs. P.O. Labour Court and anr. (1999) 1 SCC 517* it was submitted that in absence of there being any evidence on record the direction as regards reinstatement was justified.

4. I have heard the learned counsel for the parties at length and I have perused the material placed on record. It is undisputed that in the complaint filed by the respondent he had applied for interim relief and has sought reinstatement during pendency of the complaint. The Labour Court while considering that application noted that the charge-sheet served on the respondent was contrary to the procedure prescribed and it was not served as per the requirement of Appendix-5(E). As a consequence the Corporation was directed to reinstate the respondent by passing an interim order and the Corporation

was further directed to prove the charges before the Court. The respondent was accordingly reinstated in service. It is also not in dispute that the Corporation did not lead evidence despite directions given to it and therefore the Labour Court found that as the Corporation did not prove the charges levelled by it, it was a case of no evidence. As a consequence the services of the respondent were directed to be reinstated with continuity and back-wages.

5. In *Neeta Kaplish* (supra) it has been held by the Honourable Supreme Court that the record of enquiry held by the Management ceased to be “material on record” and the only course open to the Management is to justify its action by leading fresh evidence as directed by the Court. If such evidence is not led the Management has to suffer the consequences. The ratio of the aforesaid decision squarely applies to the case in hand. The Corporation accepted the order dated 08/01/1993 and reinstated the respondent. Though it examined one witness in support of its case that witness was not produced for cross-examination and hence the deposition of that witness did not carry any legal weight. In the light of this position I do not find any reason to interfere with the judgment of the Labour Court

as confirmed by the Industrial Court directing reinstatement of the respondent along with payment of back-wages. In absence of there being any jurisdictional error the impugned orders do not call for any interference.

The Writ Petition is accordingly dismissed with no order as to costs.

JUDGE