

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.85/2020

Gajendra S/o Vijayrao Ghodkar
..V/s..
Maharashtra State Road Transport Corporation, Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.V. Jagdale, Advocate for the petitioner.
Shri P.S. Gawai, Advocate for the respondent.

CORAM : RAVINDRA V. GHUGE, J.

DATED : 20.1.2020.

1] By this petition, the petitioner only prays that the protection granted by the Labour Court dated 13.12.2019, which would expire on 5.1.2020, be continued till further orders as the petitioner is in service. The learned Advocate now submits that as this Court had granted urgent circulation to the petitioner on 6.1.2020, the respondent M.S.R.T.C. has issued an order of dismissal from service by way of punishment.

2] It is in the above backdrop the petitioner canvassed all his contentions and prays for reinstatement.

3] The learned Advocate for the petitioner submits that he joined duties as a Conductor on probation on 4.6.2011. While he was discharging his

duties as a Conductor, the bus was subjected to a surprise check on 30.5.2013 at Tili Phata which is at a distance of 51 kilometers from Paratwada, Dist. Amravati. Five and half passengers were found to be ticket-less. He was charge-sheeted on 6.6.2013. He replied on 14.6.2013. The departmental enquiry was conducted and a second show cause notice dated 23.11.2013, was issued proposing the punishment of dismissal from service. He preferred complaint (ULP) No.51/2013 along with an application under Section 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971. On 28.1.2013, an ex parte *ad interim* protection was granted.

4] The learned Advocate further submits that after the M.S.R.T.C. filed its written statement on 31.12.2013, the Labour Court was pleased to allow application Exh.U-2 on 13.10.2014. Preliminary issues were framed as to whether the petitioner could prove that the enquiry is vitiated and whether the findings of the Enquiry Officer are perverse. By the part I order dated 5.1.2019, the enquiry was held to be vitiated and the findings of the Enquiry Officer were held to be perverse.

5] It is further submitted that the Labour Court, Amravati, after the parties led evidence on the charges levelled upon the petitioner, delivered a judgment on 21.12.2019 dismissing the complaint concluding that the

M.S.R.T.C. has proved the charges levelled upon the petitioner before the Labour Court. Protection was granted for 15 days to reply to the second show cause notice and he was protected for the said period.

6] It is then submitted that the petitioner approached the Industrial Court by filing revision (ULP) No.1/2020 on 1.1.2020, under Section 44. On the same day, the Industrial Court, by order dated 1.1.2020, rejected the application Exh.U-2 and refused protection to the petitioner.

7] The learned Advocate submits that once the enquiry was vitiated, the entire record and proceedings of the department enquiry will have to be ignored in view of the judgment delivered by the Hon'ble Apex Court in the case of *Neeta Kaplish V/s. Presiding Officer, Labour Court & Anr.* [1999 I CLR 219]. Contention is that the record and proceedings of the enquiry would not be relevant in view of paragraph 26 of the said judgment and fresh evidence will have to be led to prove the charges as is set out in paragraph 27. It is further submitted that as the passengers were not examined and the request of the petitioner that their addresses be furnished, was ignored by the management, no charge can be said to be proved against the petitioner in view of the judgment delivered by the Hon'ble Apex Court in the matter of Andhra Pradesh State Road Transport Corporation represented by Depot Manager V/s. G.

Murali [(2018) 12 SCC 41].

8] The learned Advocate for the corporation submits that after the enquiry was vitiated, the M.S.R.T.C. led fresh evidence and after the evidence was recorded before the Labour Court, the petitioner was found to be guilty of the charges levelled upon him. It is further submitted that as the Labour Court had earlier protected the petitioner, he continued as a bus Conductor. Despite 4 misconducts committed earlier, the petitioner once again committed similar misconducts by allowing passengers to travel ticket-less by collecting fare, on three occasions viz. 10.10.2014, 9.12.2017 and 24.3.2018.

9] He submits that the petitioner is habituated to indulging in cases of misappropriation and the incidents mentioned in the default card are those when the petitioner has been apprehended by a surprise checking squad. It is a matter of circumspection that the petitioner, who has not improved despite the 2013 case proposing the punishment of dismissal from service, must be habitually committing such misdeeds and it is only when he is apprehended that the M.S.R.T.C. notices his misconducts. The possibility that several such incidents may have gone unnoticed as the checking squad cannot follow a single bus Conductor every day when he is on duty. Such a flying squad causes surprise checks on buses, at random.

10] With the assistance of the learned Advocates for the respective sides, I have gone through the petition paper book. I find from the part I order dated 5.1.2019 that the Labour Court has set aside the enquiry as the ticket-less passengers were not examined. This issue is now crystallized by the judgments delivered by the Hon'ble Apex Court in the matters of *KSRTC Vs. B.S.Hullikatti*, (2001)2 SCC 574, *Divisional Controller, K.S.R.T.C. V/s. A.T. Mane* [2005 (1) Bom. LC. 80(SC)] and *State of Harayana and another V/s. Rattan Singh* [1977 2 SCC 491] and the conclusion of the Labour Court would be unsustainable.

11] It is now crystallized by the Hon'ble Apex Court that passengers need not be examined in an enquiry as it would be a herculean task to fetch such passengers in each enquiry, considering that hundreds of enquiries against the bus Conductors are being conducted every year by the M.S.R.T.C.. It is well settled that the reporter of the checking party would record the statements of the passengers and the said person can then depose in the enquiry.

12] Apparently, the Labour Court set aside the enquiry by applying parameters of evidence as are applicable to criminal cases, by concluding that there is a doubt as regards the statement of the passengers since they were not examined. However, this issue is now not

before this Court as the M.S.R.T.C. did not choose to challenge the part I order dated 5.1.2019 and proceeded to conduct an enquiry before the Labour Court. The documents which were recorded statements of the ticket-less passengers were before the Labour Court and fresh evidence was led to prove their contents.

13] The contention of the petitioner, on the basis of paragraph 26 in the case of *Neeta Kaplish V/s. Presiding Officer, Labour Court & Anr.* (supra), is misconceived as the said judgment does not lay down the law that the entire documents and reports in a domestic enquiry will have to be discarded as trash since the enquiry is set aside. Certain reports and statements which are pieces of documentary evidence pertaining to particular incidents or events of misconduct that have occurred, cannot be discarded. When the enquiry report is held to be perverse, it is on account of insufficiency or no evidence. For this, a *de novo* enquiry can be conducted in view of the judgment of the Hon'ble Apex Court in the matter of *KSRTC Vs. Laxmidevamma and another*, [2001(2) CLR 640].

14] The law is crystallized that bus passengers need not be examined in each enquiry and their statements are sufficient to hold that the bus conductor has not issued tickets. Charges in service jurisprudence are proved on the basis of some material being available and on preponderance on the principles of probabilities.

15] The bus was subjected to a surprise check after travelling for 51 kilometers as per the records of M.S.R.T.C.. There were 24 passengers in the bus which has a sitting capacity of 55 passengers and a permitted standing capacity of 11 passengers. The bus was therefore practically half empty. Five and half ticket-less passengers were found and they stated that they had paid the fare to the bus Conductor. The petitioner was found to have excess amount of Rs.501/- and under the supervision of the flying squad, after tickets were issued to the ticket-less five and half passengers, he still had Rs.40/- excess in his cash bag. The total was Rs.501/-.

16] I find the case of the petitioner to be unique. He joined duties on 4.6.2011 and within two months, while on probation, he was apprehended with collecting fare and allowing the passengers to travel ticket-less on 12.8.2011. His two annual increments were permanently withheld. Yet, on 4.12.2011, he was apprehended permitting two passengers to travel ticket-less and his new pay scale was again withheld for a period of six months. Undaunted, he indulged once again and he was apprehended permitting one passenger to travel ticket-less on 24.3.2012 for which, he was punished for the misconduct on 30.5.2013.

17] Insofar as this case is concerned, after the Labour Court granted protection to the petitioner, he again was apprehended permitting 9 passengers to travel

ticket-less on 10.10.2014, one passenger travelling ticket-less on 9.12.2017 and two passengers having been issued tickets of lesser denomination on 24.3.2018 for which his basic pay was reduced by one stage, permanently. In a period of one year under probation, he has committed three misconducts and in a period of 6 years of service, he has committed 7 misconducts, even after being in litigation due to the proposed punishment of dismissal from service.

18] Considering the crystallized principles of law, I find that the Labour Court has drawn a conclusion, which prima facie, does not appear to be erroneous or perverse. The Industrial Court considered the submissions of the litigating sides and declined to grant ad interim protection. In view of the above, despite the vehement submissions of the learned Advocate for the petitioner, I find that the impugned order of the Industrial Court in refusing to continue the protection granted by the Labour for 15 days, could not be termed as being perverse or erroneous.

19] This petition being devoid of merits is, therefore, **dismissed**. No costs.

(RAVINDRA V. GHUGE, J.)