

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO.11502 OF 2022

NAMDEO TUKARAM MOKASHE

VERSUS

MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION THROUGH
ITS DIVISIONAL CONTROLLER

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Advocates for Petitioner : Mr Pradeep Shahane and Mr Parag Shahane

CORAM : SANDEEP V. MARNE, J.

DATE : 22nd NOVEMBER, 2022

PER COURT :

1. By this petition, petitioner challenges the Judgment and order dated 17.02.2022, passed by the Labour Court-I, Aurangabad in Reference (IDA) No. 50/2017. By that order, the Labour Court has answered the preliminary issue by Judgment Part-I holding that the enquiry conducted against petitioner was fair and proper and that the findings recorded by the Enquiry Officer are not perverse.

2. Mr Shahane, learned counsel for petitioner submits that there was violation of principles of natural justice in the enquiry as the disciplinary authority himself has acted as an Enquiry Officer. He further proceeded to act in the capacity of Presenting Officer by questioning the witnesses. Mr Shahane, would therefore submit that the disciplinary authority played multiple roles which was impermissible. They would rely upon the Judgment of this Court in ***Maharashtra State Road Transport Corporation Vs. Rajendra Mohanlal Chhangani*** (MANU/MH/3462/2019).

3. Mr Shahane would further submit that the disciplinary authority was not competent to initiate disciplinary proceedings against petitioner. He would further submit that petitioner was not granted an opportunity to examine his own witnesses despite a request being made to that effect. Lastly, Mr Shahane would submit that the findings recorded by the Labour Court that issue of perversity are erroneous and that there was no evidence to indicate the guilt of petitioner.

4. I have perused the impugned Judgment and order passed by the Labour Court and I have heard Mr Shahane at length.

5. The first point raised by Mr Shahane is about the disciplinary authority acting as an Enquiry Officer and further proceeding to across questions to the witnesses as if he was Presenting Officer. Mr Shahane in this regard has relied upon the Judgment of this court in ***Maharashtra State Road Transport Corporation*** (supra) in which it is held as under :-

4. Having perused the record and considering the arguments as advanced by learned counsel for the petitioner I, find that the order on pre-point passed by the learned Labour court dated 11-09-2012, holding that the enquiry was vitiated on account of the fact that the entire process of inquiry including issuing show cause notice, issuing the charge-sheet, the conduct of the departmental enquiry, the report or conclusion of the departmental inquiry and lastly show cause notice of punishment are done by one and the same person, whereby, the competent authority had acted in multiple roles while conducting inquiry against the complainant is clearly sustainable in law, as there is no warrant for such a procedure. The reliance placed by learned counsel Mr Wankhede on Rule 18 of the Discipline and Appeal Procedure of MSRTC, does not help him in any manner, as found by the learned Labour Court in paras 7 and 8 of its order on pre-point dated 11-09-2012, which read as under :-

“No doubt, the procedure followed by the enquiry officer on face appears to be proper but, the most fatal thing that has come to my notice is that all the process of enquiry including issuing show cause notice, issuing the charge-sheet, the conduction of the departmental enquiry, the report or conclusion of the departmental enquiry, and lastly, the show

cause notice of punishment are done by one and the same person. It is therefore, clear that the competent authority has acted into multiple roles while conducting the enquiry against the complainant.”

“It is therefore, though the proper procedure was followed during the course of departmental enquiry, but the fact remains that all the roles are discharged by one and the same person. This fact itself goes to the root of the enquiry and turn it into unfair, illegal unwarranted.”

6. Mr Shahane has placed on record copy of the Discipline and Appeal Rules formulated by the respondent-Corporation. Rule 18 provides that the appointing authority or authority above him is competent to initiate disciplinary enquiry, to conduct enquiry and to impose punishment. Thus, the Rules specifically permit the disciplinary authority to conduct enquiry against an employee. Therefore, no error is committed by the disciplinary authority by acting as an Enquiry Officer in the present case. Even otherwise, there is settled law that the disciplinary authority may delegate the power to hold disciplinary enquiry to an Enquiry Officer. However, this does not mean that the disciplinary authority cannot himself act as an Enquiry Officer. So far as the disciplinary authority acting in the capacity of Presenting Officer is concerned, no serious infirmity can be said to have been committed. No grievance was raised by petitioner during the course of enquiry in that regard. No prejudice is caused to him by that action.

7. Coming to the issue of competency of disciplinary authority, Mr Shahane has sought to raise this issue for the first time before this Court after I called upon him to produce copy of the Discipline and Appeal Rules for examining whether the disciplinary authority could act as an Enquiry Officer After noticing provisions of Rule 18 Mr Shahane sought to press into service the submissions that in the respondent-Corporation, the Divisional Controller is an appointing authority whereas the proceedings have been initiated by the Divisional Traffic Officer. He would therefore contend that the Divisional Traffic

Officer was not competent to conduct the disciplinary enquiry against petitioner.

8. I have perused the statement of the claim filed by petitioner before the Labour Court and find that no contention with regard to the competency of disciplinary authority was raised therein. If petitioner was to make out the case of incompetency of the disciplinary authority to initiate disciplinary proceedings, he ought to have made specific averments in the statement of claim and demonstrate before the Labour Court as to how the Divisional Controller had appointed him and not the Divisional Traffic Officer. Neither any pleading was raised much less in evidence led. Petitioner therefore, cannot be permitted to raise the issue of competency of disciplinary authority directly before this Court in the present case. The contention is therefore rejected.

9. The next contention of Mr Shahane is that petitioner was not granted an opportunity to examine his own defence witnesses. This contention is referable to question No. 1 put across to petitioner during the course of enquiry held on 27.11.2006 as to whether he desired to produce any oral or documentary evidence. To that query of petitioner responded in affirmative stating that he did desire to examine the four passengers. However, there is nothing on record to indicate that after 27.11.2006, petitioner produced the said four passengers for examination in the enquiry. After the enquiry report was drawn and supplied to them, he failed to file response to the same. It is statement of the claim filed before the Labour Court, there was no averment to the effect that petitioner was not given an opportunity to examine defence witness. Therefore, petitioner cannot be permitted to raise this issue directly in this Court. Even otherwise, the desire to examine four passengers as defence witnesses appears to have been expressed by petitioner in a casual manner. It is highly doubtful whether he knew names and contact details of the four passengers for summoning them as witnesses. Respondent-Corporation has not examined them as witnesses and it

was the responsibility of petitioner entirely to produce them in the enquiry. No attempt seems to have been made by him to contact the said four passengers in any manner. Therefore, merely because a desire was casually expressed by petitioner to examine the said four passengers, it cannot be stated that there was any denial of reasonable opportunity of defence to him on account of non-examination of the said four passengers.

10. Even otherwise, examination of the passengers in my view was inconsequential. Petitioner was facing the charge of reissuing the tickets which were already issued to the passengers in past. The four passengers to whom the reissued tickets were issued by petitioner would not be in the position to know whether the tickets issued to them were already sold or not. The charge is held to be proved on the basis of the entries made by petitioner in the way bill. The passengers therefore would not be in a position to throw light on the factum as to whether tickets issued to them were fresh tickets or were already issued to other persons. Therefore, contention of Mr Shahane in this regard also deserves to be rejected.

11. Coming to the last contention of Mr Shahane that the findings recorded by the Labour Court in para Nos. 12 to 14 of the impugned Judgment and order are unsupported by evidence, I find that the charge levelled against petitioner is found to be proved on the basis of the entry made by petitioner himself in the way bill to the effect that the ticket numbers 255034 to 255049 were already sold in the earlier trip. It shows that the ticket bearing No. 255034 to 255049 were also already sold and therefore, petitioner could not have issued tickets bearing Nos. 255046 to 255047, 255048 and 255040 to the passengers in question in the next trip. The charge is thus clearly supported by the documentary evidence.

12. In the result, I do not find any error in the impugned Judgment and order of the Labour Court. The writ petition is devoid of merits and the same is dismissed with no order as to costs.

[SANDEEP V. MARNE, J.]

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