

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

WRIT PETITION NO.1659 OF 2022

Vijay s/o Wamanrao Samudre

..VS..

Divisional Controller, Maharashtra State Road Transport Corporation, Yavatmal and anr.

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

Court's or Judge's orders

Shri A.J. Salway, Advocate for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 29/03/2022.

The petitioner is the complainant in Complaint ULP 19 of 2015, which seeks a declaration that the dismissal order dated 26.09.2015, is an unfair labour practice.

2. The complaint was initially instituted challenging the notice of dismissal, which was issued on the basis of the finding of guilt recorded in the departmental enquiry which was conducted to inquire into the allegations levelled in the charge-sheet dated 14.11.2014. The misconduct alleged is failure to issue tickets despite recovery of fare from the passengers and fraud and dishonesty or misappropriation in connection with the business or property of the Corporation. The misconduct is allegedly committed while performing duties as a Conductor.

3. The complainant was not able to secure interim

relief, with the result that the Corporation issued the order of dismissal. The complaint was amended to challenge the order of dismissal.

4. The Labour Court framed two preliminary issues. Issue (1) is whether the complainant proves that the enquiry conducted is not fair, proper and in accordance with the principles of natural justice and issue (2) is whether the findings of the Enquiry Officer, are perverse.

5. The learned Labour Court, by order dated 11.06.2019, answered both the preliminary issues against the complainant. Dissatisfied, the complainant preferred Revision, which is dismissed by the learned Industrial Court, Yavatmal, by judgment dated 28.01.2020.

6. The petitioner has not placed on the record the oral and documentary material, which is considered in the enquiry, and the only documents annexed to the Memo of Petition are the complaint, the order of the Labour Court on the preliminary issues, the Memo of Revision and the order of the Industrial Court. In the absence of the oral and documentary material on the basis of which, the Courts below have recorded the findings on the preliminary issue, I have no option but to consider the challenge to the concurrent views

on the basis of what is culled out, in the orders impugned.

7. The learned Labour Court considered the submission that the person who issued the charge-sheet, acted as an Enquiry Officer and issued the show cause notice. Relying, *inter alia*, on the decision of this Court in case of ***Shri Mahadeo Naik vs. Maharashtra State Road Transport Corporation 2018(7) All MR 889***, in which decision resume of the discipline and appeals Rules of the Corporation is taken, the learned Labour Court rejected the submission of the complainant. The ground that the principles of natural justice were not followed is considered by the learned Labour Court thus :

“17. As discussed earlier, the charge sheet along with necessary documents was served upon the complainant. The complainant has availed opportunity to cross-examine the witness. The complainant was asked to tender his defence statement and he was cross-examined on the same day. The copy of enquiry report along with show cause notice was served upon him prior to his termination. It is the fact on record that the evidence of witnesses and defence statement of the complainant was recorded on the same day. However, complainant has not shown as to how prejudice has been caused to him due to recording the statement of witness and defence statement on the same day. He has not raised any objection in that regard in the course of enquiry. Therefore, completion of recording evidence of witness and statement of defence of the delinquent on the same day is not the ground to term the enquiry as illegal.

18. Learned advocate for complainant has

vehemently argued that statements of passengers were not recorded in the enquiry nor statement of Shri. Chouthmal who recorded spot statement of complainant was not recorded in the enquiry. Their statement were not recorded though the complainant specifically applied for calling Shri Chouthmal as witness. In this regard, it is necessary to mention here that vide application dated 25/1/2015, the reason for calling shri. Choutmal as witness is that Shri. Chouthmal is verified the cash at the time of checking of the bus. The complainant wants to check authenticity of cash verification by Chouthmal. He had also applied for calling passengers who travelling without tickets. It is the matter of record that neither Shri. Chouthmal nor the passengers travelling without tickets were called upon to give evidence before the enquiry officer. However, it is settled legal proposition that enquiry not initiated in every case, due to non-examination of the passengers travelling without tickets.”

8. The Labour Court then noted the statement of the complainant Exhibit 24, in which there is an admission that tickets were not issued to three passengers, albeit the admission is qualified by the explanation that the complainant ‘forgot’ to issue the tickets.

9. Insofar as, the second preliminary issue is concerned, the consideration by the Labour Court, reads thus :

“20. It is vehemently argued on behalf of the complainant that there was no evidence in the enquiry to substantiate the charges levelled against the complainant. Therefore findings of the enquiry officer are perverse. The enquiry officer merely reproduced the proceeding of enquiry in his report. It is necessary to mention that fairness of enquiry officer’s findings is to

be assessed purely on the basis of his conclusions. It is to be seen that whether he has gone through evidence recorded in the enquiry and whether his findings are supported by reasons. If the findings are not supported by any evidence those findings can be not termed as perverse. In the case at hand, report of enquiry officer runs into almost 6 pages. On careful scrutiny of enquiry report and documents, it can be gathered that enquiry officer has considered the evidence of Shri. Mane and also considered documents like spot statement of the complainant. The complainant stated in his statement that he forgot to issue tickets to 3 passengers after collecting the fare from them. The enquiry officer has also considered the fact that distance of Khamgaon to Undri is 33 k.m. Out of 25 passengers boarded at Khamgaon, 3 passengers were found traveling without tickets after the bus traveled the distance of 33 k.m. It has also properly appreciated that the complainant issued tickets to other passengers who boarded at Khamgaon.

21. *It is also mentioned in the enquiry report, the complainant has not stated anything about the quarrel for change by some passengers. It is also considered by enquiry officer that there is no mention in the report submitted by reporter that the complainant has misappropriated the amount. However on scrutiny of the report it can be gathered that complainant was stated to responsible for loss of revenue of Rs.207/-. It is properly held that by not issuing the tickets to three passengers after receiving fare, the complainant misappropriated the amount of Rs.207/-. Therefore, in light of above circumstances, the complainant utterly failed to establish that findings of enquiry officer are not based on any evidence. Hence, in the light of above discussion, I have answered the Issue No.2 in the negative. Accordingly, I pass the following order.”*

10. Learned Industrial Court re-appreciated the

material on the record and concurred with the findings recorded by the Labour Court.

11. Apart from the fact, that the High Court is not expected to interfere in writ jurisdiction with findings of fact, even findings which are erroneous, unless there is a demonstrable perversity occasioning miscarriage of justice, there is an additional reason why I am declining to entertain the petition in writ jurisdiction.

12. The petition is directed against findings recorded on preliminary issues. It is well settled, *inter alia*, by the decision of the Supreme Court in ***Cooper Engineering Ltd. Vs. P.P. Munde(1975) (31) FLR 188*** that ordinarily industrial adjudication should be permitted to progress smoothly and expeditiously and interference in writ jurisdiction with adjudication on preliminary issues, must be shunned.

13. The underlying jurisprudential logic is that the employee or the employer, as the case may be, is always at liberty to challenge such findings, if the ultimate decision is adverse and there is an occasion to put to scrutiny the final decision. However, the learned Counsel for the petitioner invites my attention to a decision of the learned Single Judge in ***Mahindra and Mahindra vs. Suryabhan Avhad 2007 (6)Mh.L.J.436***, which according to him, articulates that it is

open for the High Court to interfere in writ jurisdiction, with orders on preliminary issues. I am afraid, the decision is totally misunderstood, if not misread.

14. Firstly, there was no specific objection raised that on the basis of the settled law the High Court ought not to interfere in findings on preliminary issues. It is true that the learned Single Judge has referred to certain decisions including the decision in *Cooper Engineering Ltd. Vs. P.P. Munde (supra)*. Perusal of paragraph 70 of the decision would reveal that the learned Single Judge has reasoned that since the findings recorded are perverse, the decisions which articulate that the High Court must be slow to interfere in findings on preliminary issues, can be distinguished. In paragraph 72, the learned single Judge does observe that normally this Court is reluctant to interfere at a preliminary stage. The learned Judge, however proceeds to interfere on the premise that the Courts below failed to perform their duty in accordance with law, and in view of the perversity, there was total miscarriage of justice.

15. In my considered view, the decision in *Mahindra (supra)* turns on the glaring facts of the case. In any event, I am respectfully bound by the articulation of the Hon'ble Supreme Court's decision in the case of *Cooper Engineering*

Ltd. noted *supra*, particularly in paragraph 22.

16. I see no reason to interfere in writ jurisdiction.

17. However, it is clarified that no observation made in this order, shall prejudice the case of the complainant.

18. The petition is dismissed.

JUDGE

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