

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6123 OF 2023

Pune Mahanagar Parivahan Mahamandal Limited ...Petitioner

vs.

Ajaykumar Nivruttirao Chavan

...Respondent

Mr. Rohit Sakhadeo, for the Petitioner.

CORAM : N. J. JAMADAR, J.

DATE : JULY 25, 2023

ORDER

1. Heard the learned counsel for the petitioner.

2. The petitioner/employer invokes writ jurisdiction being aggrieved by the judgment and order dated 18th February, 2019 passed by learned Member, Industrial Court, Pune in Revision Application (ULP) No. 130 of 2018 whereby the Revision Application preferred by the petitioner assailing the legality, propriety and correctness of the judgment and order dated 17th August, 2018 passed by the learned Judge, Labour Court at Pune in Complaint (ULP) No. 66 of 2017 came to be dismissed confirming the order of the Labour Court setting aside the termination of the respondent/employee and directing the petitioner to reinstate the employee with continuity of service and other consequential benefits.

3. The respondent was working as a Conductor with the petitioner since 26th October, 2008. Allegedly on 13th April, 2017, while the respondent was discharging his duties, at Rajguru Nagar, Pune, the destination stop, the cash with the respondent was checked and excess amount of Rs. 70/- was found with the respondent. It was alleged that the said amount was misappropriated by the respondent by not issuing tickets to the passengers despite accepting the fare. It was the stand of the respondent that one of the passengers had alighted from the bus without collecting the balance amount, after tendering Rs. 100/-.

4. Eventually, a charge-sheet was served on the respondent on 17th April, 2017. Disciplinary proceeding commenced. Post conclusion of the inquiry, the respondent came to be dismissed from service vide order dated 19th May, 2017.

5. The respondent challenged the termination by filing a complaint alleging unfair labour practice under Item 1(a)(b)(d)(f) and (g) of the Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971). The learned Judge, Labour Court passed an order on preliminary issues on 2nd November, 2017 and declared that the

inquiry conducted against the respondent was legal, fair and proper and in accordance with the principles of natural justice. The learned Judge, Labour Court, however, returned a finding that the findings of the Inquiry Officer were perverse and the charge of misconduct was not proved. Liberty was given to the petitioner to adduce evidence to prove the misconduct before the Court, if it desired to. The petitioner did not avail the said liberty and adduce any further evidence in proof of misconduct before the Labour Court.

6. By a judgment and order dated 17th August, 2018, the learned Judge, Labour Court declared that the respondent indulged in an unfair labour practice under Item 1(a)(b) and (g) of the Schedule IV of the Act, 1971 and directed the petitioner to cease and desist from the same, quashed the order of termination dated 19th November, 2017 and directed the petitioner to reinstate the respondent on the post which he held with continuity of service and other consequential benefits, if any.

7. Being aggrieved, the petitioner carried the matter in revision before the Industrial Court. By the impugned judgment and order, the learned Member, Industrial Court declined to interfere with the

order passed by the Labour Court. It was, inter alia, noted that the petitioner did not adduce evidence, despite opportunity to prove the misconduct, and thus it was not open for the petitioner to assail the legality and correctness of the order passed by the Labour Court that the findings of the Inquiry Officer were perverse and that, on merits as well, there was no evidence to prove the misconduct.

8. Mr. Sakhdeo, learned counsel for the petitioner, made an earnest endeavour to draw home the point that the learned Member, Industrial Court did not properly appreciate the grounds raised in the Revision Application and proceeded to dismiss the revision on the sole ground that the petitioner had not availed the opportunity to adduce the evidence before the Labour Court. Such an approach is legally infirm. It is not an immutable rule of law that employer must adduce the evidence where the findings of the Inquiry Officer have been found to be perverse and it is open for the employer to rely upon the very material before the Inquiry Officer to prove the misconduct, urged Mr. R. Sakhdeo. Therefore, the Courts below were in error in returning a finding that the petitioner indulged in unfair labour practice and directing the reinstatement of the respondent. The fact that the charge was of misappropriation of the fare collected from the passengers could not have been lost

sight of by the Courts below, submitted Mr. Rohit Sakhadeo.

9. I have carefully perused the order on preliminary issues, the final judgment and order passed by the learned Judge, Labour Court, Pune and the impugned judgment and order. The endeavour of Mr. Sakhdeo to draw home the point that the revisional authority has merely proceeded on the premise that the failure on the part of the employer to adduce the evidence in proof of the misconduct before the Labour Court, dented its case, is not borne out by the impugned order. Indeed the learned Member, Industrial Court had adverted to the said fact. But, the learned Member, Industrial Court has also considered the merits of the matter, in the light of the material pressed into service on behalf of the employer and arrived at a conclusion that there was no evidence in support of the misconduct.

10. In any event, the learned Judge, Labour Court and learned Member, Industrial Court after appraisal of the material on record have arrived at a finding of fact that the misconduct was not proved by the employer. In contrast, the explanation offered by the employee in respect of having been found in possession of excess amount of Rs. 70/-, was found to be justifiable. I do not find any

reason to interfere with these findings of facts as they cannot be said to have been arrived at on the basis of no evidence or by discarding the evidence which bears upon the issue. Hence, the petition does not deserve to be entertained in exercise of extraordinary writ jurisdiction.

11. Petition stands dismissed.

(N. J. JAMADAR, J.)