

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2019 OF 2019

The General Manager, Brihan Mumbai Electric ... Petitioner
Supply and Transport Undertaking

Versus

Balaso Nanaso Khilari

...Respondent

Mr. Sudhir Talsania, Senior Advocate a/w. Mr. Rakesh Singh and Ms.
Heena Shaikh i/b. M.V. Kini & Co. for the petiitoner.
Mr. Laxman Kalel for the respondent.

CORAM: G. S. KULKARNI, J.
DATED: 9 January 2023

P.C.

1. This petition under Article 227 of the Constitution of India assails the judgment and order dated 23 November, 2017 passed by the Industrial Court, Maharashtra at Mumbai, whereby the Revision Application (ULP) No. 54 of 2015 filed by the petitioner has been dismissed. By the impugned order, the Industrial Court has partly confirmed the order dated 13 February, 2015 passed by the 8th Labour Court, Mumbai in Complaint (ULP) No. 139 of 2014, filed by the respondent/workman, granting him a relief.

2. The Complaint filed by the respondent before the Labour Court was partly allowed thereby declaring that the petitioner-BEST Undertaking had engaged in unfair labour practice under Item 1(a) of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 and had directed the petitioner to cease and

desist from engaging in such unfair labour practice in future. The Labour Court had ordered imposing a punishment of “reduction in grade by two steps permanently” in place of punishment of “dismissal of service” as awarded to the respondent. It was further directed that the respondent/workman be reinstated with continuity of service with effect from 27 June, 2012 without back wages.

3. The disciplinary proceedings against the respondent were initiated based on an incident of an accident which took place at night (1 a.m.) between 15 April, 2012 and 16 April, 2012 in which one motorcyclist tried to overtake the bus being plied by the respondent, when it was proceeding to Pratiksha Nagar depot from M.P. Chowk, Mulund. It has come on record that the motorcyclist was not wearing a helmet and he had fallen due to a collision of his motorcycle with the front right portion of the bus, near the wheel/mudguard.

4. Consequent to such accident, the petitioner initiated an enquiry on the ground that the respondent was negligent in discharging his duties as a bus driver. The enquiry culminated into a punishment of termination from service being awarded to the respondent.

5. The respondent in the aforesaid circumstances approached the Labour Court in Complaint (ULP) No. 139 of 2014 alleging that in terminating his service, the petitioner had engaged in unfair labour practices under Item 1(a),

(b), (c), (d), (f) & (g) of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The Labour Court after granting opportunity to the parties as also on permitting the parties to lead evidence, observed that on a perusal of the record and proceedings including the enquiry proceeding, it was noticed that the respondent had joined the employment of petitioner undertaking on 23 September, 2006 and till his termination, i.e, on 27 June, 2012, the respondent has completed six years tenure as driver with the petitioner. It was observed that the past service record of the respondent was clean, which was also admitted by the officers of the petitioner in the enquiry proceedings. It was observed that such spotless conduct of the respondent was of relevance in regard to the quantum of punishment as the punishment imposed on the respondent of termination was disproportionate considering the facts and circumstances. The Labour Court observed that on examining of the enquiry proceedings and police papers it was seen that it was a collision of two vehicles and purely an accident which had taken place in the midnight. It was observed that it also revealed from the enquiry papers that the motorcycle rider and the pillion rider were not wearing helmets as a result of which the motorcyclist sustained a head injury, which resulted into his death. The Labour Court examining all the materials observed that the record would demonstrate that the respondent was not solely responsible for the death of motorcyclist and it was a clear case of contributory negligence. It was also observed that it was

certainly not appropriate to record a clear finding that the respondent was rash and negligent in driving the duty vehicle. The Labour Court also observed that the respondent had deposed in his evidence that he was the sole bread earner for his family members, which consisted of his mother, wife and two sons and due to dismissal from service, his family members were facing starvation. It was observed that despite all efforts, he could not secure another job and such aspect was not considered by the petitioner while determining the issue of punishment. Considering the facts and circumstances and the relevant decisions on the position in law, the Labour Court opined that it was a clear case where the petitioner was engaged in unfair labour practice and accordingly, partly allowed the complaint of the respondent by following order:

“ORDER

(i) It is hereby declared that respondent undertaking is engaged in unfair labour practices under Item 1(a) of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971 and also hereby directed to cease and desist their unfair labour practice in future.

(ii) The punishment of “reduction in grade by two step permanently” to the complainant be replaced instead of punishment of “dismissal of service” awarded to the complainant.

(iii) The respondent undertaking is hereby directed to reinstate the complainant with continuity of service w.e.f. 27 06/2012 without back wages.

(iv) In peculiar circumstances, no order as to costs.”

6. Being aggrieved by the order passed by the Labour Court, the petitioner filed a Revision Application (ULP) No. 54 of 2015 as also there was a cross Revision Application (ULP) No. 85 of 2015 filed by the respondent. The petitioner was aggrieved by the order passed by the Labour Court granting reinstatement in service to the respondent, whereas the respondent was aggrieved by the order of the Labour Court imposing minor punishment. The Industrial Court after hearing the parties and examining the record, agreed that there was no error as also perversity in the findings as recorded by the Labour Court that the incident was an accident. It was observed that there was no material whatsoever to prove any negligence and accordingly did not find any merit in the revision as filed by the petitioner. Insofar as the punishment as awarded by the Labour Court to the respondent by substituting the punishment of 'dismissal from service' to 'reduction in grade by two steps permanently', however, was found to be an unacceptable exercise by the Labour Court considering the position in law. The operative part of clause (ii) of the order passed by the Labour Court which substituted the punishment of dismissal by imposing punishment of reduction in grade by two step permanently came to be set aside by the Industrial Court. The relevant observation of the Industrial Court as contained in the impugned order are required to be noted, which reads thus:

“8. This Court while exercising its jurisdiction under Section 44, has power to do so. Prima facie, the reading of Section 44 creates an impression that it gives limited powers to the Industrial Court to exercise its superintendence over Labour Courts, however, the law laid down by the Hon’ble Bombay High Court and the Supreme Court in catena of decisions establish that the revisionary powers under section 44 of the MRTU & PULP Act, empower the Industrial Court to set aside the order of the Labour Court in revision when the evidence on record reasonably read, is incapable of supporting the order. (*Vikas Textiles vs. Sarva Shramik Sangh* (I CLR Page 257). In another judgment, (2009 III CLR 868), *Subhash Ramchandra vs. Maharashtra State Cooperative*, it is held that if the Industrial Court in revision application finds that conclusions recorded by Labour Court are perverse, it can reappreciate the evidence and come to its own findings. In the circumstances, I do not think fit and proper to saddle either of the parties with costs. Hence order:

ORDER

- (i) The Revision No. 54 of 2015 is hereby dismissed with no order as to costs.
- (ii) The Revision No. 85 of 2015 is allowed.
- (iii) The order of the learned 8th Labour Court dated 13/02/2015 is hereby modified and accordingly, clause (ii) of the impugned order stands deleted and thereby, only clause (I), (iii) and (iv) are confirmed and they are renumbered as clauses (I), (ii) & (iii) of the order of para no. 1.”

7. Mr. Talsania, learned senior counsel for the petitioner in assailing the concurrent findings against the petitioner as rendered by both the Courts below, observing that there was no material to attribute any negligence to the respondent in regard to the incident in question, would submit that the respondent himself had stated in the enquiry proceedings that while plying the bus on the unfortunate night, he did not notice the motorcycle approaching close to the bus. Mr. Talsania submits that it is not possible to conceive that the respondent while driving the bus could not notice the motorcycle and hence

negligence needs to be attributed in the actions of the respondent, so as to justify the punishment awarded by the petitioner

8. It is not possible to accept such contention as urged by Mr. Talsania for more than one reason. The complexion of the accident itself was that on one hand it was the bus which was being plied by the respondent and on the other hand, it was the person riding a motorcycle, who collided with the bus. It would certainly be possible, as observed by both the forums below, that in such a situation on a collision between two such vehicles, no negligence could be attributed to the respondent unless there was strong material to indicate that there was an intention and an overt negligence on the part of the respondent, which would take within its ambit the respondent being rash, and such intentional act of negligence caused the accident in question. Certainly these are not the facts, as there was no material whatsoever even remotely to suggest that there was such negligence on the part of the respondent in driving the vehicle and/or the respondent not discharging his normal duties as a driver of the vehicle. Thus, I do not find any perversity in the observations made by the Courts below so as to interfere in such findings.

9. Insofar as Mr. Talsania's contention that the Industrial Court ought not to have set aside the punishment awarded by the Labour Court by substituting

the punishment of reduction in grade by two step permanently, in my opinion, such order as passed by the Industrial Court is in fact supported by evidence on record and certainly in the facts of the case it was an unwarranted exercise on the part of the Labour Court to have taken upon itself to substitute the punishment of dismissal by awarding a punishment of reduction in grade by two steps permanently, considering the facts and circumstances. It was rightly interfered and set aside by the Industrial Court.

10. In the light of the aforesaid discussion, no case is made out for interference in the order passed by the Industrial Court. The petition is devoid of merits. It is accordingly rejected. The petitioner is directed to implement the order, if not implemented, within a period of four weeks from the day a copy of this order is made available on the website of the High Court.

11. Writ Petition is dismissed. No costs.

G. S. KULKARNI, J