



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

248 WRIT PETITION NO. 4096 OF 2002

. Gangadhar Pandharinath Torkadi,
Age: 39 years, Occu.: Service,
R/o. Dhandarphal Bk.,
Tal.: Sangamner, Dist.: Ahmednagar .. **Petitioner**

Versus

1. Maharashtra State Road Transport
Corporation, Kothala Maidan Road,
Ahmednagar
2. The Depot Manager, M.S.R.T.C. Akola Depot,
Akole, Dist. Ahmednagar .. **Respondents**

...
Advocate for the Petitioner : Mr. V. N. Upadhye
Advocate for Respondents No.1&2 : Smt. R. D. Reddy
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 29th FEBRUARY, 2024

ORAL JUDGMENT:

1. Heard.
2. In the present writ petition, the petitioner is challenging the order passed by the Industrial Court in Revision (ULP) No.34 of 1999 filed by the respondent against the order of the labour court directing reinstatement of the petitioner with full back-wages. The Revision (ULP) No.34 of 1999 is filed under section 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 and the

revisional court has partly allowed the revision and imposed a punishment of forever stoppage of 2 increments of the petitioner / employee.

BRIEF FACTS OF THE CASE

3. The petitioner was an employee working as a permanent bus-conductor and posted at Akola depot. During his course of employment, It is alleged that the petitioner remained absent from duty from June 1992 to November 1992, on intervening days for 64 days. As such, the charge-sheet was issued dated 24.11.1992 and a domestic inquiry was conducted and the charges being proved he was dismissed from service with effect from 22.12.1993.

4. The employee challenged the order of dismissal before the labour court in Comp. (ULP) No. - 26 of 1994. On consideration of the material before the labour court, the labour court set aside the inquiry holding it to be unfair. Evidence of misconduct was thus lead before the labour court. The labour court on appreciation of evidence held that the charges are not proved and it has set aside the dismissal order and direct reinstatement of the petitioner employee with full back-wages.

5. The said order of the labour court is challenged by the respondent by filing Revision (ULP) No.34 of 1999 under section 44 of

the MRTU & PULP Act. On consideration of the material, the industrial court held that on admitted facts the present petitioner employee was absent for 64 days, as such, it held that the employee guilty of charges of absenteeism. However, while partially allowing the revision petition, the industrial court maintained the petitioner's reinstatement with continuity of service from 27.12.1993 and awarded substituted punishment of forever stoppage of 2 increments from 17.12.1993. Against the said impugned order dated 08.03.2002, passed in Revision (ULP) No.34 of 1999, the petitioner / employee filed the present writ petition.

6. It is primary contention of the petitioner that a reasoned order is passed by the labour court and the labour court has elaborately discussed the evidence as regards absenteeism; it has held that the misconduct as is proved by the respondent after the inquiry was vitiated since the inquiry was not fair. In the evidence led before the labour court the witnesses, examined on behalf of the Corporation has just given the report of absenteeism but there is no evidence brought on record regarding the absenteeism without permission. No leave-register is produced. There is no record to show what procedure is followed in rejecting the leave application by the corporation.

7. The Labour Court also held that admittedly the absenteeism for 64 days is admitted by the complainant but there is a specific stand taken by the petitioner that the petitioner was rather disturbed due to family problems and, therefore, the petitioner was constrained to proceed on leave and that leave application was submitted by the petitioner and before the labour court no record was produced to show whether any leave was sanctioned or leave was to the credit of the petitioner or not.

8. The labour court has also observed that there has been an earlier order of the industrial court of unfair labour practice, as such, the petitioner / complainant was reinstated for just 2 to 3 days and, thereafter, dismissed from service and the court further held that the dismissal in said situation amounted to unfair labour practices.

9. However, in the Revision Petition, the industrial court has relied solely on the admission given by the petitioner / employee and reversed the finding of fact without taking into consideration the other facts taken by the labour court in rendering the finding of absenteeism.

10. Mr. V. N. Upadhye, learned counsel for the petitioner / employee further submits that unless the finding of the labour court is perverse in exercise of the revisional jurisdiction the industrial court does not have the power to re-assess the evidence and render an alternate

finding of fact and it has been consistently held by this court that the powers of the revisional authority is limited and it is not available to re-assess the findings.

11. Per contra, Smt. R. D. Reddy, learned counsel for the respondents / Maharashtra State Road Transport Corporation / employer submits that there are admitted facts that the complainant / employee was absent for 64 days between 12.06.1992 to 19.11.1992. Since, it is an admitted fact that there was no need to establish the absenteeism of the employee and the industrial court has only granted punishment of forever stoppage of 2 increments from 27.12.1993, as punishment to the respondent / employee. The learned counsel submits that in the admitted fact situation the punishment is appropriate and should not be interfered by this court.

12. Smt. R. D. Reddy, learned counsel for the respondents / employer submits that the industrial court has held that it is just and proper to substitute the punishment of stoppage of 2 increments forever.

13. Smt. R. D. Reddy, learned counsel for the respondents has relied upon the judgment of the **Maharashtra State Road Transport Corporation Vs. Kantrao, Gyanbarao Dabhale, LAWS (BOM) 2000 6 39**, so also, **Divisional Controller, Maharashtra State Road Transport**

Corporation, Nagpur Vs. Member, Industrial Court, Nagpur, LAWS (BOM) 2004 10 176. The learned counsel for the respondents relying upon the judgment of the **Maharashtra State Road Transport Corporation Vs. Kantrao, Gyanbarao Dabhale** (supra), at para 9, submits that there could be modification of the order of the labour court by the industrial court. It is permissible for the industrial court to substitute the appropriate punishment in the fact situation. The learned counsel for the respondents relying upon the judgment of the **Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur Vs. Member, Industrial Court, Nagpur** (supra), at para 5, submits that the industrial court can rely upon admission to pass appropriate orders.

14. The relevant provisions of Section 44 of the Industrial Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 reads as under:-

“44. Industrial Court to exercise superintendence over Labour Courts:- The Industrial Court shall have superintendence over all Labour Courts and may,-

- (a) call for returns;*
- (b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act, and in particular, for securing the expeditious disposal of cases;*
- (c) prescribe forms in which books, entries and accounts shall be kept by officers of any such Courts; and*
- (d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.”*

15. The scope of section 44 is discussed in the case of **The Maharashtra State Road Transport Corporation Vs. Kantrao, Gyanbarao Dabhale**, LAWS (BOM) 2000 6 39, at para 6, as under:-

“6. It is surprising that in its exercise of supervisory jurisdiction under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971 the learned Member of the Industrial Court has interfered with the reasoned order of the Labour Court after reappraising and appreciating the whole evidence and material before the Labour Court. The learned Member of the Industrial Court has come to an entirely different finding which is not permissible under the narrow supervisory jurisdiction conferred on it under Section 44 of the Act. This position is very well established by the catena of decisions on this point:

“Mahila Griha Udyog (Lijat Papad), 1983 I LLN 643 Hindustani Prachar Sabha and Ors. v. Dr. (Ms.) Roma Sen Gupta and Anr., 1994-III-LLJ (Suppl)-34 (Bom) Vikas Textiles v. Sarva Shramik Sangh, 1991-II-LLJ-451 (Bom-DB) Vithal Gatlu Marathe v. Maharashtra State Road Transport Corporation and Ors., 1996-I-LLJ-494 (Bom-DB)”

In the case of Marathe (supra) the Division Bench has given the essence of the law on the point and, therefore, I cannot resist my temptation to reproduce the whole judgment itself here 1996-I-LLJ-494 at 494, 495:

“1. Heard learned counsel for the appellant as well as the learned counsel for the respondents. Perused the judgments of the Industrial Court and also the Labour Court. The Industrial Court was moved against the judgment of the Labour Court under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The provisions of Section 44 are almost in pari materia with the provisions of Article 227 of the Constitution of India. This is not so much a revisional jurisdiction, but jurisdiction of superintendence. It has been settled for about four decades that in exercise of this

jurisdiction of superintendence and supervision, the Court cannot go to appreciate or reappreciate the materials on record. It may be that in a given case or cases, we have, in our anxiety to do justice, have done so on occasions. But that is a different matter. 2. After hearing the strenuous arguments of Mr. Sawant for Respondent Nos.1 and 2, we have not been able to persuade ourselves to agree that in exercise of limited jurisdiction under Section 44 of the said Act, the Industrial Court can re-appreciate evidence and overturn findings of fact however erroneous those findings may be. 3. It is apparent from the judgment of the Industrial Court that it has overturned the judgment of the Labour Court on findings of facts based on reappreciation of evidence. This, we do not think to be permissible to any Court having such circumscribed jurisdiction. We must accordingly hold that the Industrial Court was wrong in exercising such jurisdiction and overturning the findings and decision of the Labour Court. We accordingly set aside the order of the Industrial court and confirm the decision of the Labour Court. Accordingly, appeal is allowed, but without any order as to costs. 4. Issuance of certified copy of this order is expedited.”

16. In the instant case, the labour court has held that the respondent has indulged in the unfair labour practices for the reason that the petitioner was reinstated by the order of the industrial court for just two to three days and, thereafter, dismissed from service and that the dismissal from the service would amount to an unfair labour practice.

17. The labour court has also held that the petitioner has admitted that he was absent for 64 days and had applied for leave. But, although, the petitioner was absent for 65 days and leave was applied

nothing is brought on record to show that the leave was not sanctioned or that there was no leave left to the credit of the petitioner. Leave record was not produced, so also, the leave register was not produced. It is also not known whether any permission was granted for leave. As such, the labour court proceeded to hold that although the employee was absent for 64 days, in absence of production of any other record to indicate that the absence was unauthorized, the labour court held that the charge of absenteeism is not proved and the respondent had indulged in unfair labour practices.

18. The industrial court only took into consideration the fact of absence for 64 days but did not consider the fact as regards whether absence was unauthorized. There is no material produced by the respondent corporation to show that the absence was unauthorized and that there was no leave left to the credit of the petitioner.

19. The finding of the labour court in the circumstances are reasonable and not perverse. As such, the industrial court in exercise of its supervisory jurisdiction cannot re-appreciate the whole evidence and come to a different finding.

20. The submission of the learned counsel for the respondent that the industrial court can substitute an appropriate punishment are of

no relevance as the labour court has rendered a finding that the respondent has not been able to prove the charge of unauthorized absenteeism and the respondent has indulged in unfair labour practice. The, interference in the finding of fact by the industrial court in the fact situation was not warranted. As such, the Judgments relied upon by the respondent that the industrial court can alter the punishment is of no assistance.

21. In view of the same, the impugned order of the Industrial court is quashed and set aside.

22. Rule is accordingly made absolute.

23. The Writ Petition is accordingly allowed and disposed of.

[ARUN R. PEDNEKER, J.]

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