

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8343 OF 2005**

Shri. Vijay Sitaram Aarekar

Age : About 40 Years, R/o Khanoli,

Tal - Vengurla, Dist - Sindhudurg

.. Petitioner

Versus

The Divisional Controller

M.S.R.T. Corporation

Sindhudurg Division, At & Tal - Kankavli,

Dist - Sindhudurg.

.. Respondent

...

Mr. Milind Parab a/w Ms. Hemangi D. Pathare for Petitioner.

Ms. Pinky M. Bhansali for Respondent.

...

CORAM : SANDEEP V. MARNE J.

RESERVED ON : 22 FEBRUARY 2024.

PRONOUNCED ON : 1 MARCH 2024.

JUDGMENT :-

1) By this Petition Petitioner challenges Order dated 29 October 2005 passed by Industrial Court, Satara in Revision (ULP) No. 38 of 2003. The Industrial Court has allowed the Revision filed by

Respondent and has set aside the Judgment and Order dated 24 February 2003 passed by Labour Court, Kolhapur in the Complaint (ULP) No. 174 of 1999. The Labour Court had allowed Petitioner's Complaint (ULP) No. 174 of 1999 and had directed Respondent to reinstate Petitioner in service with continuity and full back wages.

2) Briefly stated, facts of the case are that Petitioner came to be employed in the Respondent-State Transport Corporation on the post of conductor sometime in the year 1989. He was deployed on 8 January 1999 on Unjawade - Vengurla route as a conductor. The Bus was checked at Adely Textile Factory by the checking team when one passenger named Shri. Ravindra Sawant was detected with ticket of Rs.5/-, which was issued on previous date i.e. 7 January 1999. The Petitioner was also found with Rs.24 short in S.T. cash. Domestic enquiry was instituted against Petitioner by issuance of memorandum of charge sheet. The charge was held to be proved and Respondent imposed punishment of dismissal from service on Petitioner with effect from 1 May 1999.

3) Petitioner approached Labour Court by filing Complaint (ULP) No. 174 of 1999 challenging his dismissal Order. The Labour Court did not frame preliminary issues about fairness in the enquiry and perversity in the finding of the Enquiry Officer. It proceeded to answer all the issues together and delivered Judgment and Order dated 24 February 2003 allowing the Complaint. The Labour Court held that the enquiry was fair and proper, but the finding of the Enquiry Officer was perverse. The Labour Court therefore set aside the Order of dismissal and directed reinstatement of Petitioner with full backwages and continuity of service.

4) Respondent filed Revision (ULP) No. 38 of 2003 before Industrial Court at Satara challenging the Labour Court's decision. By Interim Order, the Industrial Court stayed the Labour Court's Order for payment of backwages but directed that in the event of Respondent-Corporation not willing to reinstate Petitioner, they were directed to deposit his wages from 24 February 2003 during pendency of the Complaint. Respondent-Corporation challenged the Interim Order of Industrial Court before this Court by filing Writ Petition No. 9291 of 2003. Ad-interim Order was passed by this Court on 22 December 2004 stating the Interim Order of the Industrial Court directing deposit of wages. The said Order was latter directed to be continued during pendency of Revision by disposing of Writ Petition No. 9291 of 2003 by Order dated 1 September 2005.

5) Industrial Court allowed Revision (ULP) No. 38 of 2003 by its Judgment and Order dated 29 October 2005 and set aside the Judgment and Order dated 24 February 2003 passed by Labour Court in Complaint (ULP) No. 174 of 1999. Aggrieved by the decision of Industrial Court, Petitioner has filed the present Petition. This Court admitted the Petition by Order dated 6 December 2005.

6) Mr. Parab the learned Counsel appearing for the Petitioner would submit that the Industrial Court has exceeded its jurisdiction under Section 44 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by reversing well-reasoned Order passed by the Labour Court. That the Labour Court had correctly taken into consideration the evidence of passenger Shri. Sawant recorded during the course of enquiry when he denied payment of any amount to the Petitioner or purchase of ticket from him. That the deposition of passenger Shri. Sawant before

Enquiry Officer clearly disproved the charge of issuance of sold ticket. That the evidence on record was rightly appreciated by the Labour Court for holding that the findings of the Enquiry Officer were perverse. That there was no valid ground for the Industrial Court to interfere in the findings of the Labour Court in exercise of revisionary jurisdiction under Section 44 of the MRTU and PULP Act.

7) Mr. Parab would submit that the Industrial Court erred in relying upon pre-recorded statements which are contrary to depositions in the enquiry. That the evidence recorded during enquiry prevails over the pre-recorded statements. That the Enquiry Officer had erred in relying on spot statements of Petitioner and passengers by ignoring the evidence appearing on record. That the Labour Court had correctly held the findings of the Enquiry Officer has perverse.

8) Mr. Parab would further submit that Petitioner had rendered over 10 years of service at the time when he was dismissed. That if Petitioner had misappropriated any amount by selling already sold ticket, there ought to have been Rs.5 excess in his S. T. cash. That on the contrary Rs.24 were found short in Petitioner's S.T. cash, which falsified the allegations of misappropriation. That Petitioner is currently 59 years old and is without any pensionary benefit on account of illegal Order of dismissal. He would pray for setting aside Industrial Court's Order and upholding decision of the Labour Court.

9) *Per contra* Ms. Bhansali the learned counsel appearing for the Respondent-Corporation would oppose the Petition and support the decision of the Industrial Court. She would submit that Petitioner admitted before the

checking team that he had issued a ticket to the passenger Shri. Sawant. That he gave a specific statement before the checking team for having issued ticket bearing No. 467064 to the passenger. That the passenger also gave a statement at the time of checking that the ticket was indeed issued by the Petitioner. That the Industrial Court has rightly appreciated the evidence on record while reversing erroneous Order passed by Labour Court. She would pray for dismissal of the Petition.

10) Rival contentions of the parties now fall for my consideration.

11) Petitioner faced serious charge of selling already sold ticket to the passenger Shri. Ravindra Sawant, who was travelling from Zarapi to Maruti Mandir. Ticket No. 467064 which was in a possession of passenger was issued on 7 January 1999 whereas the passenger was found travelling in the bus on 8 January 1999. Both Petitioner as well a passenger admitted in their statements recorded immediately after the incident that ticket No. 467064 was indeed issued by Petitioner to the passenger. The passenger however subsequently turned hostile and deposed in the enquiry that he neither paid any amount to Petitioner nor any ticket was issued to him. The Labour Court has believed the said deposition of the passenger for holding that the passenger had played a mischief by falsely stating before the checking squad that the ticket in its possession was issued by Petitioner. The Labour Court accordingly concluded that Petitioner did not issue the ticket which was found in the possession of passenger.

12) In ordinary course, prerecorded statements are required to be ignored and deposition of witnesses alone are required to be taken into consideration in proving charge levelled in a domestic enquiry. However, in

the present case the passenger turned hostile during the course of enquiry and disowned his statement given immediately after the incident to the checking squad. The Industrial Court has held that the Reporter who recorded the statement of Petitioner's passenger was not inimical to Petitioner who did not prove any grudge against him. There was thus no reason for the reporter to create false record against Petitioner. The statement of the passenger is recorded in his own handwriting. There is yet another factor which is noticed by the Industrial Court. Petitioner filed reply to the chargesheet but did not aver that his statement was recorded by force or coercion. He subsequently came up with a theory of non-issuance of ticket to Shri. Sawant when depositions were recorded. If Petitioner indeed had not issued ticket to Shri. Sawant and if his statement was recorded under coercion, he ought to have disowned the same immediate. The statement is recorded on 8 January 1999 and the reply to the chargesheet was submitted by him within four days on 12 January 1999. The fact that Petitioner did not disown his statement recorded by checking team in his reply dated 12 January 1999 speaks volumes about his conduct. The Industrial Court has rightly considered cumulative effect of various factors of:

- i) Statement of Petitioner's passenger recorded on 8 January 1999.
- ii) Absence of any animus of checking squad against Petitioner.
- iii) Failure on the part of the Petitioner to disown his statement in the reply dated 12 January 1999.

13) Labour's Court's finding about a mischief being played by the passenger is unsupported by evidence. If the passenger was indeed travelling ticketless, Petitioner did not depose so in the inquiry. He did not take a stand either before the checking team or during the enquiry that he did not issue any ticket to the passenger. If he indeed failed to issue ticket to him, he did

not explain the reason why he did so. Applying the test of preponderance of probability, it is proved that Petitioner issued the concerned ticket to the passenger, who produced the same before the checking team.

14) Possession of short cash of Rs. 24 by Petitioner cannot lead to automatic presumption that Petitioner did not issue already sold ticket to the passenger. Many times, artificial shortage is created by the ticketing staff to escape the charge of overcharging or issuing already sold tickets.

15) After going through the findings recorded by the Labour Court it is seen that the Labour Court had committed grave error in not taking into consideration the above three factors and concentrated only on evidence of hostile witness Shri. Sawant. Since there was gross error committed by the Labour Court, the Industrial Court has rightly exercised its revisional jurisdiction under Section 44 of MRTU and PULP Act. As the conclusion drawn by Labour Court was perverse, the revisionary jurisdiction exercised by the Industrial Court was within the contours of provisions of Section 44 of the Act.

16) After considering overall conspectus of the case no patent error can be traced in the Order passed by the Industrial Court. Writ Petition, being devoid of merits, is dismissed without any Orders as to costs. Rule is discharged.

[SANDEEP V. MARNE J.]

(Note : This Order is corrected as per Speaking to the minutes order dated 14 March 2014.)