

(1996) 03 BOM CK 0057

Bombay High Court

Case No: O.O.C.J. Writ Petition No. 1457 of 1993

Municipal Corporation of Greater
Bombay

APPELLANT

Vs

Sopan Yashwant Mohite and
Others

RESPONDENT

Date of Decision: March 12, 1996

Acts Referred:

- Bombay Industrial Relations Act, 1946 - Section 42, 79
- Constitution of India, 1950 - Article 226

Citation: (1996) 5 BomCR 717 : (1996) 74 FLR 2090 : (1996) 2 LLJ 1156 : (1996) 1 MhLJ 1009

Hon'ble Judges: J.K. Chandrashekara Das, J; G.R. Majithia, J

Bench: Division Bench

Judgement

1. The petitioner, Municipal Corporation of Greater Bombay, has challenged order passed in Application (BIR) 276 of 1986 by 8th Labour Court, Bombay, dated December 31. 1992, and order passed in Appeal (IC) No. 13 of 1992, and Appeal (IC) No.16 of 1992 by the Industrial Court, Maharashtra, Bombay, dated June 23, 1993, in this writ petition under Article 226 of the Constitution of India.
2. The 1st respondent (hereinafter "the respondent") was employed as Bus Conductor in the BEST Undertaking. He was charge-sheeted under Clauses 20(b) and 20(d) of the certified Standing Orders. A domestic enquiry was held. The charge was found to have been proved and punishment of dismissal from service as imposed by the disciplinary authority.
3. The respondent challenged the order in an application u/s 79 read with Section 42(4) of the Bombay Industrial Relations Act, 1946 (for short "the Act") before the Labour Court. The Labour Court, keeping in view the rival contentions of the parties, formulated the following points for determination :-

1. Whether the findings of the misconduct are justified by the evidence led during the course of enquiry ?

2. If yes, whether the punishment is shockingly disproportionate ?

3. If not, what relief ?

Point No. 1 was answered in the negative, Point no. 2 was held to be not surviving in view of the finding under Point No. 1. The order of dismissal from service was set aside, The Labour Court ordered reinstatement with continuity of service and with 50% backwages from the date of dismissal, viz. February 23, 1985.

4. The order of the Labour Court was challenged in Appeal (IC) No. 13 of 1992 filed by the respondent-workman and in Appeal (IC) No. 16 of 1992 filed by the General Manager, BEST Undertaking before the Industrial Court. The Industrial Court held that the charge against the workman was that he had pelted stones on a bus between the junction of Mankhurd Railway Station Road and Sion-Trombay Road. The evidence produced by the petitioner was categorised as doubtful. The finding arrived at by the Enquiry Officer on the evidence produced before him was held not justified. The Industrial Court upheld the finding of the Labour Court. On the question of punishment, the Industrial Court differed with the relief granted by the Labour Court and held that the workman should be reinstated in service with full backwages. He consequently accepted the appeal filed by the workman and dismissed the appeal filed by the petitioner. Aggrieved against the orders of the Labour Court and the Industrial Court, the petitioner has come up to this Court.

5. We have heard the learned counsel for the parties. Learned counsel for the petitioner could not point out any flaw in the reasoning and conclusion arrived at on a point of fact by the Labour Court and affirmed by the first appellate Court. The Labour Court, after examining the Enquiry Officer's report and the proceedings of the enquiry, came to the conclusion that the conclusion arrived at by the Enquiry Officer that the charge levied against the workman stood proved, is not justified from the evidence brought before him. It also found that the punishment of dismissal from service was wholly unwarranted. It accordingly ordered reinstatement of the workman in service as stated above. We have examined the order of the Labour Court and we do not find any infirmity therein. The finding and conclusions arrived at by him are unexceptional.

6. The Industrial Court upheld the finding of the Labour Court in all respects except on the quantum of punishment. The Industrial Court felt that once the dismissal is set aside and reinstatement is ordered, the workman is entitled to reinstatement with continuity in service and full backwages.

7. There is no dispute that the normal rule is that once the dismissal is set aside, the workman has to be reinstated with continuity in service and full backwages. The Labour Court in its own discretion ordered reinstatement with continuity in service

with 50% backwages. The discretion exercised by the Labour Court is not found to be unjust, unwarranted or unfair by the Industrial Court. The Industrial Court, after affirming the finding of the Labour Court that the evidence produced in the domestic enquiry did not prove that accusation levelled against the workman and that the punishment of dismissal from service was wholly unjustified, hastened to observe that the Labour Court was in error in allowing only 50% backwages.

8. There can be no dispute that the Court of Appeal can mould the relief in its discretion. In the instant case, we have found that the discretion exercised by the Labour Court was just and fair and it should not have been lightly interfered with by the Industrial Court unless good cause for interference was made out. Resultantly, we allow the writ petition to the extent the Industrial Court has interfered with the quantum of punishment imposed by the Labour Court and set aside the order to that limited extent. In all other respects, we affirm the orders of the Labour Court and that of the Industrial Court

9. For the reasons stated above, we issue the following directions :-

- i) The arrears of salary as ordered by the Labour Court will be deposited with the Prothonotary and Senior Master of this Court within one month. On the deposit being so made, the Prothonotary and Senior Master will invest that amount in fixed deposit initially for a period of 3 years in any scheduled Bank. The workman will be entitled to withdraw the amount after the expiry of 3 years. During this period, he will be entitled to withdraw annual interest accruing on the deposit. If he wants to withdraw the interest amount, he will make appropriate application to the Prothonotary and Senior Master in this behalf.
- ii) The petitioner will make the deposit of past arrears of salary from the date of dismissal till December 31, 1995 and from January 1, 1996 onwards, the workman will be entitled to draw the full salary as and when he present himself for duty.
- iii) We make it optional for the petitioner to apply for reviewing this order if it is found that the workman has misbehaved after his reinstatement in service.
- iv) Rule is made absolute in the above terms. No order as to costs.