Mahadeo Krishna Naik Vs Maharashtra State Road Transport Corporation

Court: Bombay High Court

Date of Decision: Nov. 30, 2018

Acts Referred: Code of Civil Procedure, 1908 â€" Order 47 Rule 1

Hon'ble Judges: S.C. Gupte, J

Bench: Single Bench

Advocate: Sudhir N. Deshpande, Nivedita Deshpande, G.S. Hegde, C.M. Lokesh

Final Decision: Allowed

Judgement

S.C. Gupte, J

1. Heard learned Counsel for the parties. This review petition seeks review of an order passed by this Court in Writ Petition No.154 of 2007. By the

order under review, this Court dismissed the writ petition filed against his employer by the original Petitioner, who is the Review Petitioner herein.

2. Since 19 April 1988, the Petitioner had been working as a bus driver with the Respondent. On 10 May 1996, the State Transport bus driven by the

Petitioner collided with a truck coming in the opposite direction, resulting into the death of two passengers and injuries to several others. The

Respondent issued a chargeÃ‚sheet against the Petitioner, alleging negligent and rash driving amounting to misconduct. The Enquiry Officer found the

Petitioner guilty of gross negligence in driving and held his misconduct causing severe damage and inconvenience to the Corporation and the public,

and in breach of departmental circulars/directives, to be proved. The Respondent, thereafter, issued a showÃ‚cause notice concerning the proposed

disciplinary action and after hearing him, dismissed him from service with effect from 27 May 1997. Being aggrieved by the dismissal, the Petitioner

raised an industrial dispute, which was referred as Reference (IDA) No.811 of 1998 to IV Labour Court at Mumbai. The Labour Court held the

enquiry to be fair and proper, findings not to be perverse, and quantum of punishment proportionate, rejecting the reference.

3. The subject matter of challenge in the original petition involved three aspects, the first being fairness and propriety of the enquiry, the second, actual

proof of misÃ‚conduct and the third, the propriety of the disciplinary action itself from the standpoint of principles of natural justice. This Court, after

considering the requirement of principles of natural justice, as applicable to domestic enquiries, held that the Labour Court's conclusion that the enquiry

could not be said to be unfair or improper, was a plausible conclusion based on evidence and not vitiated on account of disregard of any relevant or

germane circumstance or material or consideration of any irrelevant or nonÃ‚germane circumstance or material. There is no case made out in the

review petition so far as this conclusion is concerned.

4. Coming now to the disciplinary action and its propriety, the case urged before the Court on behalf of the Petitioner was that the person issuing the

chargeÃ‚sheet and conducting the domestic enquiry had himself acted as a disciplinary authority and passed the dismissal order. In other words, the

person acted as complainant, prosecutor and judge combined. This Court did not agree with the Petitioner's contention. Nothing is pointed out to show

that that part of the order calls for any review under Order 47 Rule 1 of the Code of Civil Procedure or analogous principles.

5. The third and the most important aspect of the matter, which concerns proof of misconduct of the Petitioner workman, directly bears on the

propriety of the conclusion drawn by the Enquiry Officer and the Court. On this aspect, this Court noted in its order under review that the Labour

Court, on the issue of proof of misconduct, had accepted the management's case on the basis of a report submitted by the reporter, panchnama and

other relevant documents as also oral evidence led by the parties. This Court noted that the Labour Court's conclusion was indeed based on some

material before the Court, which can support it. This Court, in this context, also referred to the Petitioner's own evidence before the Labour Court,

observing inter alia that the explanations given by the Petitioner workman were matters of assessment of evidence. What this Court concluded

basically was that based on the material before the Court, namely, report of reporter, panchnama, statement of witnesses and evidence of the

workman himself, it could not be said that the conclusions drawn by the Court were such as no reasonable person duly instructed in law could have

ever arrived at. In other words, this Court did not find any perversity in the conclusions of the Labour Court. What is now pointed out before this

Court in the present review petition is that the Respondent Corporation itself had made a sworn statement in its written statement filed before the

Motor Accidents Claims Tribunal at Mumbai in Application No.2901 of 1996 that the accident was caused entirely due to the negligence on the part of

the lorry driver, who carelessly and negligently and without observing traffic from the opposite side, drove his lorry into the bus. The narration of the

incident in the Respondent's own words is quoted below :Ã‚â€‹

Ã¢â‚¬Å“That on 10.05.1996 at about 22.45 hrs, the S.T. Bus no. MHÃ‚12Ã‚ QÃ‚8712 was proceeding from Mumbai to Kankavali side along Mumbai Goa

Highway. The driver of the said Bus was driving the said vehicle at a moderate speed, with care, caution and proper lookout and by the correct side of

the road. The said S.T. Bus was fully under the control of the Bus Driver of this Opp. Party. When the said S.T. Bus came near Pen Phata, at

Nagothane, at that time one M/Lorry bearing Registration No.MRL8226 which was being driven by the driver of the Opp. Party No.2, at a fast speed,

rashly, negligently and without any care, caution and proper lookout from the opposite direction of the S.T. Bus, could not control his vehicle, came on

the wrong side of the road and dashed against the Bus very heavily. The impact was so heavy that the right portion of the S.T. Bus from the driver's

side was tore and the passenger i.e. the deceased sustained injuries. The S.T. Bus driver, on seeing the M/Lorry coming towards the Bus, tried to

save his vehicle to his left side to avoid the accident. However, as the driver of the Opp. Party No.2 came abruptly in front of the Bus in a rash and

negligent manner, it came in contact of the right side of the S.T. Bus which was on the correct side of the road. The deceased who was passenger in

the S.T. sustained injuries and was moved to the hospital. It will thus be observed that there was no negligence whatsoever on the part of the S.T. Bus

driver, but it was the sheer negligence on the part of the driver of the Opp. Party No.2 who drove his M/Lorry rashly, carelessly and negligently

without observing the traffic from the opposite side that has caused the above accident.Ã¢â‚¬â€‹

Not only this, but the Respondent went on to lead evidence of the conductor, who was in charge of the illÃ‚fated bus. The conductor, in his evidence,

unequivocally stated that the S.T. bus involved in the accident was on the left side of the road; the lorry came from the left side in great speed and

dashed against the middle portion of the right side of the S.T. bus; the accident happened because the lorry came on the wrong side of the road. The

conductor unequivocally claimed that it was the lorry driver, who was responsible for the accident. The Applicant before the Accident Tribunal also

led evidence of a witness, who was a passenger in the illÃ‚fated bus. Even he gave evidence to the effect that the lorry was in great speed and it

dashed against the S.T. bus. He denied any suggestion that the lorry was going on the correct side of the road. In its judgment delivered on 9 July

2004, the Accidents Tribunal accepted the case of the Respondent Corporation, holding in no uncertain words, after discussing the evidence and

reasons in support of such finding, that the accident took place because of rash and negligent driving of the truck.

6. Apropos of what is stated above, it is conspicuous to note that all this material was suppressed from the Labour Court by the Respondent

Corporation. It is important to note that the issue, namely, whether the first party (the Respondent Corporation) had proved the misÃ‚conduct alleged

against the workman (i.e. the Petitioner herein) in the enquiry or in the Court was framed for the first time by the Labour Court on 9 December 2005.

It was, thereafter, that the parties, including the Corporation, led evidence before the Labour Court on the proof of misconduct. The written statement

of the Respondent Corporation before the Accidents Tribunal is dated 4 July 2002. The evidence of the passenger was led before the Accidents

Tribunal on 14 October 2003, whereas the evidence of the conductor was recorded on 20 November 2003. The award of the Accidents Tribunal

came on 9 July 2004. In other words, all this material was available before the Respondent Corporation when, for the first time, evidence was led

before the Labour Court on proof of misÃ‚conduct of the Petitioner and, sadly, this whole lot of material, which has a very crucial, and, if I may say so,

a near conclusive bearing on the subject matter before the Labour Court, was not placed before the Court.

7. One of the measures of perversity of an order, as considered by the Supreme Court in the case of Associate Builders vs. Delhi Development

Authority(2015) 3 SCC 49, is disregard of a vital piece of evidence, which has a material bearing on the controversy before the Court. It is a foregone

conclusion that the material referred to above was the most vital evidence to be placed before the Labour Court. The whole material was disregarded

by the Court, of course, not because of its own fault, but because the Respondent Corporation failed to produce it before the Court. This Court has no

doubt that had this material been placed before the Labour Court, it, as much as this Court, would have come to a conclusion that there was no case to

proceed against the Petitioner for his alleged misconduct in driving the S.T. bus in a rash and negligent manner.

8. Learned Counsel for the Respondent submits that conclusion of another tribunal, in this case the Motor Accidents Tribunal, is not binding on the

Labour Court. Of course, it is not. But that does not mean that the Respondent's own case solemnly pleaded before the Court and supported by

evidence of its employee, who was not merely travelling in the illÃ‚fated bus, but was actually conducting it, based on which the Accidents Tribunal

came to its finding, can be disregarded. Admission of a party is probably the most important piece of evidence against it. Here, the admission was not

anywhere else but in its sworn pleading before a competent court, followed by positive evidence led by it in support of its case in the pleading. There is

no way this material could have been disregarded. If properly considered, it effectively clinches the issue.

9. Learned Counsel lastly refers to the Petitioner's own evidence before the Labour Court, which suggests that at the time of the accident, the bus had

swerved to its right. This evidence is certainly not decisive. It is one thing to say that this evidence is, by itself and without anything to the contrary

placed on record, capable of sustaining the finding and quite another that in the face of a categorical admission, supported by positive evidence, the

soÃ‚called admission can still justify the original finding. What this Court said in its order under review was the former. At that time, this additional

material was not before this Court. As I have observed above, in the face of this material, no court could have come to the finding that the Labour

Court did come to. And that is sufficient to review this Court's order upholding the Labour Court order.

10. The only question that may appropriately be asked of the Petitioner workman in this behalf is why did he not produce this material before the

Court earlier. The explanation of the Petitioner is that he came to know of the order of the Motor Accidents Tribunal in June 2017 and thereafter, on

his application, certified copies of the judgment and proceedings were made available to him on 23 June 2017. This is not disputed by the Respondent

Corporation by filing any reply. Though there was some delay after the Petitioner got the material, this Court, on the motion of the Petitioner, has

already condoned it by order dated 17 April 2018. There is no challenge to that order. That completes the Petitioner's case for review on the aspect of

unavailability of the material when the order was passed.

11. In the premises, I am of the considered view that the conclusion of the Labour Court calls for interference. Considering the material before the

Court, I am of the view that no useful purpose will be served by remanding the matter to the Labour Court, on the footing that it did not have occasion

to consider the material on account of its suppression from the Court by the Respondent Corporation. The material speaks for itself and I have no

doubt that it completely defeats the Respondent Corporation's case of negligence against the Petitioner.

12. Accordingly, the review petition is allowed. The judgment dated 7 February 2017 passed by this Court in Writ Petition No.154 of 2007 is recalled

and reviewed. The order of the Labour Court impugned in Writ Petition No.154 of 2007 is quashed and set aside. The Petitioner's challenge to the

reference before the Labour Court is answered in the affirmative and the termination of the Petitioner is quashed and set aside.

13. Since, during the pendency of Writ Petition No.154 of 2007, the Petitioner has superannuated, there is no question of his actual reinstatement. The

Respondent Corporation shall pay all benefits and emoluments including back wages on the basis of continuous service of the Petitioner from the date

of his wrongful termination, i.e. 27 May 1997, till his superannuation.

14. At the request of learned Counsel for the Respondent Corporation, it is ordered that this order shall not be executed for a period of six weeks from

today.