Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.-4478 OF 2023

Subhash Gulabchand Pawar,
Age-40 Years, Occ. Service
R/o-Wadval (Laxminagar),
Taluka Mohol, Dist. Solapur ...PETITIONER.

VERSUS

Maharashtra State Road Transport
Corporation, Ratnagiri Division,
Ratnagiri,Through its Divisional
Traffic Superintendent. ...RESPONDENT.

Ms. Pavitra Mahesh i/b Mr. Saurabh Mandlik, for Petitioner.
Mr. Yashodeep Deshmukh a/w Ms. Vaidehi Pradeep and Ms. Aditi Athawale, for Respondent.

CORAM:- N. J. JAMADAR, J.
RESERVED ON:- 24th APRIL, 2023
PRONOUNCED ON:- 17th JULY, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.

2) By this Petition under Article 226 and 227 of the Constitution of India the petitioner takes exception to a judgment and order dated 3rd March, 2023, passed by the learned Member Industrial Court at Kolhapur in Revision Application (ULP) No. 49 of 2018, whereby the Revision Application preferred by the petitioner assailing an order dated 27th April, 2018, passed by the Labour Court at Kolhapur on an application for interim relief (Exhibit-U-2) in Complaint (ULP) No. 59 of 2016, filed under Section 28 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the Act, 1971"), came to be rejected.

3) Shorn of superfluities the background facts can be sated in brief as under:-

(a) The petitioner-complainant has been working with the respondent as a Conductor since January, 2006 on 3rd July, 2014. The complainant was entrusted with a bus on Miraj-Mandangad route. Inspection squad had a surprise check of the bus at Nava Rasta stage No. 63/S. The inspection squad, *inter alia*, found that the complainant had not issued tickets to two passengers travelling from Miraj to Dudhare, despite having accepted fare of Rs.646/-, and two more passengers travelling

from Karad to Bharana Naka, despite having accepted Rs.352/-, and thereby committed misappropriation. The squad further noted that cash at hand with the complainant was found short by Rs.935/-. Lastly, after noticing the inspection squad, the complainant allegedly hurriedly took out four tickets for the passengers purportedly tranvelling from Malharpeth to Chiplun, when, in fact, no passenger was found traveling to the said destination.

(b) A charge sheet was served on the complainant on 4th July, 2014. Disciplinary proceedings were held. Post submission of Inquiry report, a notice dated 22nd September, 2016, to show cause as to why the complainant be not dismissed from service came to be issued. Thereupon, the complainant filed Complaint (ULP) No.59 of 2016 alleging unfair labour practices under Item 1 (a), (b), (d), (f) and (g) of Schedule-IV of the Act, 1971. It was alleged, *inter alia*, that the proposed punishment of dismissal was *prima facie* illegal and by way of victimisation and was also shockingly disproportionate.

(c) In the said complaint, the complainant preferred an application for interim relief (Exhibit U-2), seeking to restrain the respondent-Corporation from imposing any penalty against

the complainant till the final decision of the complaint. By an order dated 27th April, 2018, the learned Presiding Officer, Labour Court at Ratnagiri rejected the application for interim relief holding that *prima facie* enquiry appeared to have been conducted in adherence to the principles of natural justice and there was no material to draw an inference that the proposed punishment was an act of victimisation. As the complainant was *prima facie* found guilty of serious misconduct of misappropriation and in the past the complainant was visited with penalties on nine occasions, the learned Presiding Officer was of the view that the complainant was not entitled to any interim relief. However the said order was made effective with effect from 10th May, 2018.

(d) In the meanwhile, the complainant carried the matter in revision, in Revision Application (ULP) No. 49 of 2018. It seems the interim protection continued during the pendency of the Revision Application.

(e) By the impugned order the learned Member Industrial Court concurred with the view of the Labour Court. It was held that there was no material come to a prima facie conclusion that either the enquiry was not fair or proper, or the findings

perverse and the proposed punishment shockingly disproportionate. Resultantly, the Revision Application came to be dismissed. The Industrial Court further directed the parties to maintain status quo till 3rd April, 2023.

(f) Being aggrieved the petitioner has invoked the writ jurisdiction.

4) By an order dated 17th April, 2023, this Court has continued the status quo ordered to be maintained by the courts below.

5) In the aforesaid backdrop, the core question that warrants consideration is whether the complainant is entitled to interim protection during the pendecy of the complaint of unfair labour practice. Since the interim protection has been in operation right from the filing of complaint, the Court considered it appropriate to delve into the aspect of entitlement to and continuation of interim protection though there are concurrent decisions holding that the petitioner-complainant does not deserve the exercise of discretion in his favour.

6) I have heard Ms. Pavitra Mahesh, the learned Counsel for the petitioner, and Mr. Yashodeep Deshmukh, the learned Counsel for the respondent-Corporation at some length.

7) The learned Counsel took the Court through the orders passed by the Courts below and the material on record.

8) Ms. Pavitra Mahesh strenuously submitted that the Labour Court as well as the Industrial Court did not appreciate the allegations of unfair labour practice, resorted to by the respondent-Corporation, and the fact that the findings recorded by the Inquiry Officer were patently perverse. It was submitted that Mr. Sachin Surve, who headed the inspection squad, had recorded the statements of the passengers to suit the department and falsely implicate the complainant. In the face of the said contention, the Inquiry Officer could not have placed implicit reliance on the evidence of Mr. Surve and it was incumbent upon the department to examine the passengers from whom the complainant had allegedly accepted the fare and not issued the tickets.

9) The learned Presiding Officer, Labour Court and the learned Member Industrial Court, according to Ms. Pavitra, lost sight of the fact that the indictment against the complainant was that a sum of Rs.935/- was found short. The said fact is *prima facie* inconsistent with the imputation that the complainant had accepted fare from four passengers without

issuing tickets to them. It was further submitted that the Courts below were in error in declining to protect the employment of the petitioner as the respondent would immediately terminate the service of the petitioner during the pendency of meritorious complaint of unfair labour practice. Ms. Pavitra would thus urge that though the learned Member Industrial Court justifiably directed the Labour Court to decide the complaint in a time bound manner, yet erred in not protecting the services of the complainant during the pendency of the complaint.

10) In opposition to this, Mr. Deshmukh stoutly submitted, in a case of this nature, where the employee has been issued a notice to show cause to the proposed penalty, it was incumbent on the employee to furnish explanation and not rush to the Court with a complaint of unfair labour practice. Mr. Deshmukh would urge that, even otherwise, in the face of the material on record no case was made out to grant interim relief. The Inquiry Officer has arrived at the conclusion that the misconduct was proved on the basis of evidence adduced by the Corporation. Non-examination of passengers, according to Mr. Deshmukh, can in no case be a ground to discard the Department's version

in the face of undisputed fact that the inspection squad checked the bus and found the discrepancies. The findings recorded by the Inquiry Officer can not be said to be perverse by any standard, urged Mr. Deshmukh.

11) I have given anxious consideration to the rival submissions. I am mindufl of the fact that the Petition arises out of the orders passed by the Industrial and Labour Court declining to grant interim relief. A meticulous evaluation of the evidence and material, at this stage, is neither warranted nor permissible, especially in exercise of a writ jurisdiction against an interim order. The Court has to only consider whether the Courts below have correctly exercised the discretion. As noted above, the fact that the interim protection has been in operation since the year, 2016, impelled me to consider the matter in a little detail.

12) Broadly, there are three grounds on which the petitioner sought interim relief, one, the enquiry was not fair and proper. Two, the findings recorded by the Inquiry Officer were perverse. Three, the proposed penalty was grossly disproportionate to the misconduct. The learned Presiding Officer, Labour Court and the learned Member, Industrial Court have not found any *prima*

facie case on any of the counts. Whether the exercise of discretion is justifiable ?

13) On the first count of the enquiry being not fair and proper, the Labour Court and Industrial Court have recorded a *prima facie* finding that the respondent-Corporation adhered to the prescriptions in Discipline and Appeal rules and the principles of natural justice. The complainant was provided an efficacious opportunity of hearing. Mr. Surve, against whom allegations were made, was subjected to lengthy cross-examination. *Prima facie*, there is no substance in the contention on behalf of the complainant that the enquiry was not fair and proper.

14) On the aspect of the findings being perverse, the Courts below have recorded a *prima facie* view that the findings are not perverse. This being a finding of fact and that too at an interim stage, I do not find any reason to take a different view of the matter, in exercise of the writ jurisdiction. Nonetheless, two of the contentions, which were forcefully canvassed on behalf of the petitioner deserve to be dealt with.

15) Firstly, it was urged that the Inquiry Officer could not have returned a finding of misconduct in the absence of the evidence

of the passengers from whom the complainant had accepted the fare but not issued the tickets. Secondly, the proposed punishment was shockingly disproportionate.

16) The learned Member Industrial Court was of the view that, examination of the passengers was not necessary to prove the misconduct. The issue turns upon the standard of proof in a disciplinary proceedings. It is trite, in a disciplinary proceeding, the strict rules of evidence do not apply. Nor the adequacy of sufficiency or material is a matter which can be evaluated in exercise of judicial review by the Courts and Tribunals. What has to be considered is, whether the domestic tribunal has based its finding on some evidence and material ? Is the finding based on no evidence ? Has the domestic tribunal discarded evidence and material, which bears upon the charge against the employee ? Has the domestic tribunal arrived at a conclusion which no prudent person, on the basis of available evidence and material, in a given case, could have arrived at ? On these parameters, the findings of the domestic tribunal are required to be tested. It is not open for the Tribunals and Courts to substitute their subjective opinion in the place of the conclusion arrived at by the domestic tribunal.

17) Was there, *prima facie*, material for the Labour and Industrial Court to hold that the findings of the Inquiry Officer were *prima facie* perverse. The Inquiry Officer has arrived at the findings that the misconduct is proved on the basis of the inspection report, statements of the passengers, evidence of Mr. Surve and the report that the complainant declined to furnish a proper explanation and raked up quarrel with the officers. *Prima facie*, the aforesaid material qualifies as the evidence which can be sustain the findings of the domestic tribunal. Non-examination of the passengers cannot be pressed into service to question the justifiably of the findings arrived at by the Inquiry Officer on the basis of such material.

18) It has been consistently held that in an indictment of misappropriation by a Conductor of a State Transport Bus, the non-examination of the passengers is not a ground to throw the charge of misconduct overboard. A profitable reference, in this context, can be made to a Three Judge Bench judgment of the Supreme Court in the case of **State of Haryana and Another Vs. Rattan Singh**[1]**,** wherein, in an identical charge of not issuing tickets despite accepting the fare from the passengers by a Conductor of a State Transport Bus, the Industrial adjudicator

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1 (1977) 2 SCC 491

had ruled against the termination of the service of the Conductor based on the findings of the domestic tribunal on the ground, *inter alia*, that none of the passengers were examined by the Department, the Supreme Court illuminatingly postulated the quality of evidence required in a domestic enquiry and the principles which govern interference therein in exercise of judicial review. The observations in paragraph Nos. 4 and 5 read as under:-

> "....4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. Ail materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding,even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based

> upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a ending is certainty available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.
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> 5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal in conclusion, we do not think the courts below were right in over-turning the finding of the domestic tribunal....."
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> (emphasis supplied)

19) In the case of **Devendra Swamy Vs. Karnataka State Road Transport Corporation**[2], the Supreme Court enunciated that the

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2 (2002) 9 SCC 644

punishment of dismissal in the context of the charge of misconduct manifested in misappropriation of the fare collected from the passengers to whom tickets were not issued, was not disproportionate. The Supreme Court followed the previous pronouncements, including the judgment in the case of **Ranttan Singh** (supra). Paragraph No. 7 reads as under:-

> "...7. The Division Bench of the High Court relied on the decisions of this Court in State of Haryana v. Rattan Singh ; U.P. State Road Transport Corporation v. Basudeo Chaudhary (1997 (11) SCC 370); U.P. State Road Transport Corporation v. Subhash Chandra Sharma and Ors. for forming opinion that unless punishment is shockingly disproportionate to the charge which has been proved the punishment awarded by the Disciplinary Authority should not be interfered in exercise of power of judicial review. In our opinion, the Division Bench was right in taking the view which it has taken. The opinion formed by the Labour Court that punishment of dismissal imposed by the management on the workman was too harsh and undeserved, was perverse finding and arrived at by ignoring the material as to previous acts of misconduct and punishments awarded to the appellant brought to the notice of Disciplinary Authority and the Labour Court. We are also of the opinion that the gravity of change of misconduct for which the disciplinary proceedings were initiated and which charge was found to be substantiated by the Labour Court seen in the light of previous service record of the appellant fully justified the punishment awarded by Disciplinary Authority…. "

20) In the case of **Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane**[3], again a contention was raised on behalf of the

3 (2005) 3 SCC 254

employee-Conductor therein that it was incumbent upon the Corporation to have examined the passengers for the purpose of establishing the charge of misappropriation. Repelling the contention, the Supreme Court observed, inter alia, as under:-

> "...7. The fact that the respondent was carrying Rs.93/- in excess of the amount is a fact proved. This itself is a misconduct over and above that the courts below ought not to have insisted on examination of the passengers. Since the respondent did not have any explanation for having carried the said excess amount, this omission also is was sufficient to hold the respondent guilty.
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> .....
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> 9. From the above it is clear once a domestic tribunal based on evidence comes to a particular conclusion normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh (supra) is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh's (supra) has since been followed by this Court in Devendra Swamy vs. Karnataka SRTC.
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> 10. Since the only ground on which the finding of the domestic tribunal has been set aside being the ground that concerned passengers are not examined or their statement were not recorded, in spite of there being other material to establish the misconduct of the respondent, we are of the opinion, the courts below have erred in allowing the

> claim of the respondent. In our opinion, the ratio laid down in the above case of Rattan Singh (supra) applies squarely to the facts of this case....."
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> (emphasis supplied)

21) The aforesaid enunciation of law, makes it beyond cavil that it is too late in the day to urge that the findings of the Inquiry Officer can be termed as perverse merely for non-examination for the passengers from whom the complainant allegedly collected fare but did not issue tickets. The aforesaid pronouncements also indicate that once misappropriation is established, the punishment of dismissal from service cannot be said to be disproportionate, albiet, regard should be had to be circumstances of the given case, including the past conduct of the delinquent.

22) In the case at hand, the Courts below have noted that in addition to the misconduct in question there were nine punishments to credit of the complainant. Therefore, the proposed punishment cannot be said to be *prima facie* grossly disproportionate. In my view, the Labour Court and the Industrial Court were justified in declining to exercise the discretion in favour of the petitioner.

23) It is true the petitioner has enjoined the interim protection all along. However, that cannot be the reason for continuation of

the interim protection till the final decision of the complaint as the petitioner has failed to make out a strong *prima facie* case. Undoubtedly, if the respondent-Corporation is found to have indulged in unfair labour practice and/or the Labour Court eventually finds that the punishment (which may be imposed by the respondent-Corporation) is shockingly disproportionate and interferes with the same, the petitioner would be entitled to appropriate redressal. However, there does not seen any justification, at this stage, to restrain the respondent-Corporation from passing appropriate order on the basis of the enquiry report.

24) The conspectus of aforesaid consideration is that the Petition deserves to be dismissed.

25) Hence, the following order.

-:ORDER:-

i) The Petition stands dismissed.

ii) The interim protection stands vacated.

iii) It is however made clear that the Labour Court shall decide the complaint (ULP) No.59 of 2016 on its own merits and in accordance with law without being influenced by any of the

observations made hereinabove and the observations made by the revisional Court as the consideration is confined to entitlement to grant of interim relief during the pendency of the complaint.

iv) Rule stands discharged.

v) No costs.

[N. J. JAMADAR, J.]