Jorsingh Govind Vanjari vs Divisional Controller Maharashtra ... on 6 December, 2016

Equivalent citations: AIR 2017 SUPREME COURT 57, 2017 (2) SCC 12, 2017 (2) ABR 127, (2017) 1 CURLR 526, AIR 2017 SC (CIVIL) 1279, (2017) 1 ALLMR 473 (SC), (2017) 1 SERVLJ 220, (2017) 1 PAT LJR 229, (2017) 2 BOM CR 62, (2017) 2 SCT 12, (2017) 1 JCR 203 (SC), (2017) 3 MPLJ 502, (2017) 1 JLJR 61, (2017) 1 KER LJ 61, (2017) 1 KER LT 60, (2017) 152 FACLR 127, (2017) 2 SERVLR 209, (2017) 1 ORISSA LR 507, (2017) 1 CGLJ 56, (2017) 3 MAH LJ 497, (2017) 1 KCCR 49, (2016) 12 SCALE 511, (2016) 4 LAB LN 571

Bench: Rohinton Fali Nariman, Kurian Joseph

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11807 OF 2016
(Arising out of S.L.P.(C) No. 26366 of 2016)

JORSINGH GOVIND VANJARI ... APPELLANT (S)

VERSUS

DIVISIONAL CONTROLLER MAHARASHTRA,
STATE ROAD TRANSPORT CORPORATION,
JALGAON DIVISION, JALGAON ... RESPONDENT (S)

J U D G M E N T

KURIAN, J.:

Leave granted.

The appellant, aggrieved by the termination from service, raised an industrial dispute leading to the award in Reference IDA No. 42 of 2007 dated 20.06.2013 of the Labour Court, Jalgaon, Maharashtra. The Labour Court set aside the dismissal order dated 26.08.2002. However, noticing that the appellant had already crossed the date of superannuation, viz., 31.05.2005, it was ordered

that from the date of termination to the date of superannuation, the appellant would be entitled to all service benefits except back wages which were limited to 50 per cent. The respondent challenged the award before the High Court of Bombay. As per the impugned judgment dated 08.07.2015 in Writ Petition No. 3268 of 2014, the award was modified by granting only a one-time compensation of an amount equivalent to 50 per cent of the back wages as awarded by the Labour Court. Thus aggrieved, the appellant is before this Court. The charge against the appellant was that he had collected fare from six passengers while he was working as a conductor on 06.09.2001 in bus No. MH- 20/J-4714 on its trip from Chalisgaon to Patanagaon, without issuing tickets. The inspecting team also found that there was a shortage of cash in his cash bag. A domestic inquiry followed and the inquiry officer found the appellant guilty, and on that basis, he was terminated from service. Before the Labour Court, four issues were framed:

> "1. Does the second party prove that the departmental enquiry held against him is unjust, unfair, improper and against the principles of natural justice, and the findings of Enquiry Officer are perverse?
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> 2. Does the second party prove that, the termination of his service is illegal, violating the provisions of law?
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> 3. Whether the second party is entitled for the relief as sought for?
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> 4. What order?" The Labour Court found that:
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> "... As the alleged passengers have not been examined, an opportunity of cross examining them is not availed to the second party. The one and the same authority has issued charge sheet, conducted enquiry and suggested the punishment. Accordingly, serious prejudice is caused to the second party. One and the same authority is not expected to play the role of Enquiry Officer and disciplinary authority, which is inconsistent to the provisions of law. Accordingly, with biased mind enquiry has been conducted. Despite of not examining the witnesses the enquiry officer considered their statements recorded on the spot and concluded that, charges of misconduct have been proved against the second party. Besides this, the reporter has not stated before the Enquiry Officer in terms of his report. Accordingly, the enquiry officer has recorded his findings on the basis of no evidence and therefore, the findings recorded by the Enquiry Officer appears to be perverse one. ..." On issue no.2, it was noted that:
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> "... in the light of findings on issue no.1 that, the enquiry held against the Complainant was fair, proper and legal and the findings of enquiry officer are perverse, then it is for first party to prove the alleged charges of misconduct before this court. It is pertinent to note that, in their written statement the first party has not made prayer that, if the court arrived at the conclusion that the enquiry held against the Complainant was not fair, proper and legal and the findings of enquiry officer are perverse, then they may be permitted to prove the misconduct of second party before

this court by leading evidence. But, they failed to do so. No witness is examined by the first party. Hence, the alleged misconduct of second party has not been proved before this court." Still further, the Labour Court proceeded further and found that: "14. In a case before me, testified evidence of second party at Exh. U-8 & U-13 reflect that, he was working with first party as a bus conducted since 05.04.1971 at Chopda Depot. Thereafter he was transferred to Amalner Depot and Chalisgaon Depot. However, without considering his meritorious clean and unblemished service record, first party has dismissed him from service vide order dated 26.08.2002. On 06.09.2001 when he was performing his duties as a conductor on bus no. MH-20/J-4714 which is proceeding from Chalisgaon to Patanagaon, at that time his bus was checked by Inspecting squad at Balziri Phata and it is alleged against him that 6 passengers were found travelling in the said bus without tickets, though fare amount was paid by them to the second party-conductor. Those 6 persons were illiterate persons and inspecting squad as per their whims recorded their statements, as well as S.T. cash was found less by Rs.56. Had the second party actually recovered the amount from the very six passengers, then Rs.36/- ought to have been found excess in his cash bag. However, contrary to this, amount was found less with the second party and hence Respondent by making false allegations issued false charge sheet, conducted enquiry. Principles of natural justice have not been observed by the first party. The alleged passengers have not been examined and an opportunity of cross examining to them is not availed to the second party. The one and the same authority has issued charge sheet, conducted enquiry and suggested the punishment.

Accordingly, serious prejudice is caused to the second party. Accordingly, with bias mind enquiry has been conducted. Instead of examining the witnesses the enquiry officer considered their statements recorded on the spot and concluded that, charges of misconduct have been proved against the second party. Besides this, the reporter has not stated before Enquiry Officer in terms of his report. Report is not exhibited and duly proved before the Enquiry Officer, even though enquiry officer relied on it and concluded that, alleged misconducts have been proved against the second party. Thus, by violating the principles of natural justice, enquiry has been conducted and the findings drawn by the enquiry officer are perverse. On the basis of said report punishment of dismissal has been imposed which is extremely harsh and disproportionate. This oral testimony of the second party has not been shattered during cross examination.

15. After cross-examining the second party, the Respondent has an opportunity to lead evidence in support of the chargers levelled against the Complainant. Once, findings of the enquiry officer are held perverse by this court, then burden lies on Respondent to prove the misconduct by leading evidence before this court. But, instead of leading evidence in support of alleged misconduct of the second party, first party did not lead any oral evidence before this court, on the contrary filed pursis of closing their evidence at Exh. C-20. Therefore, it is crystal clear that, the misconduct of the second party is not proved before this Court by the first party. Therefore, it can safely be inferred that, the charges levelled against the second party are false and the said charge sheet was issued with an intention to victimize him. As the charges levelled against the second party are not proved either in the departmental enquiry or before this court, hence, the dismissal order issued by the first

party is nothing but in colourable exercise of employer's right, by falsely implicating the Complainant in a criminal case on false evidence, for patently false reasons, in utter disregard of the principles of natural justice in the conduct of domestic enquiry and with undue haste, amounting to unfair labour practice. Hence, I hold that the dismissal of second party is illegal, violating the provisions of law." (Emphasis supplied) On issue no.3, it was held as follows:

> "17. As to issue no.3:- So far as relief sought by the second party is concerned, the Ld. Counsel for second party has submitted that, the second party has attained the age of retirement on 31.05.2005 hence he may be given all the retiral benefits from the date of his illegal dismissal. It is pertinent to note that, in his statement of claim the second party has stated that, he will be going to retire from service on 31.05.2005. It means, already the second party has attained the age of retirement in the year 2005. Once his termination is held as illegal, second party is entitled for reinstatement with continuity of service and back wages. However, the second party has attained the age of superannuation i.e. 58 years on 31.05.2005. Accordingly, had he been in service then he would have been retired on 31.05.2005. The charges levelled in the charge sheet are not proved in enquiry or before this Court, therefore, second party is entitled for all the benefits, as if he was in employment of the first party-corporation. Therefore, the Ld. Counsel for second party argued that, despite directing reinstatement of the second party, the first party be directed to avail him all the monetary benefits till his superannuation and dues admissible as per rules. Considering all these aspects of attaining the age of superannuation by the second party, it will be proper to mould the relief as sought by him to the extent of availing him all the monetary benefit till his superannuation, which are admissible as per law. Once, it is held that, the findings of enquiry officer are perverse and first party has illegally dismissed him from service, therefore, certainly the second party is entitled for the relief. ...".

Thus, the Reference was answered in favour of the appellant setting aside the dismissal order. However, taking note of the fact that the appellant had crossed the age of superannuation, instead of reinstatement, 50 per cent of the back wages from the date of termination till the date of superannuation with all other service benefits were granted. The High Court, in the impugned order, took the view that the Labour Court went wrong in deciding the preliminary issue concerning the fairness of the inquiry and deciding all further issues in one stroke. To quote the relevant consideration which appears at paragraph-12 of the impugned judgment:

> "12. It is apparent that the Labour Court has erred in deciding the preliminary issues concerning the fairness of the enquiry and the findings of the enquiry officer along with all the issues while delivering the impugned judgment. The procedure laid down in law, which has been considered by this Court and followed in the case of Maharashtra State Roadways Transport Corporation, Beed Vs. Syed Saheblal Syed Nijam [2014 III CLR 547], has not been followed by the Labour Court. It could not have decided the preliminary issues along with all the rest of the issues in one stroke

while delivering the impugned award. For this reason alone, the impugned award is rendered unsustainable." In that view of the matter, it was held that the appellant would not be entitled to the gratuity but a one-time compensation of an amount equivalent to 50 per cent of the back wages, would be just and proper. To quote the relief portion:

"17. This Writ Petition is, therefore, partly allowed. The impugned award is modified by setting aside clause 1 and 2 of the order and by granting the 50% of the backwages as awarded by the Labour Court from 26.08.2002 till 31.05.2005 as quantified compensation. The Respondent shall be deprived of gratuity amount since the charge proved against him in the enquiry involves moral turpitude." Heard Learned Counsel appearing on both sides.

On facts, it clear that the High Court has gone wrong in holding that the Labour Court did not follow the procedure. It is seen from the award that the management had not sought for an opportunity for leading evidence. And despite granting an opportunity, no evidence was adduced after the Labour Court held that the findings of the inquiry officer were perverse. Therefore, the Labour Court cannot be faulted for answering the Reference in favour of the appellant.

The Labour Court, on the available materials on record, found that the termination was unjustified on the basis of a perverse finding entered by the inquiry officer. There was no attempt on the part of the management before the Labour Court to establish otherwise.

It appears that the High Court itself has granted compensation since the Court felt that the termination was unjustified and since reinstatement was not possible on account of superannuation. In case, the High Court was of the view that termination was justified, it could not have ordered for payment of any compensation.

In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude.

Thus, viewed from any angle, the judgment of the High Court cannot be sustained. It is hence set aside. The appeal is allowed. The award dated 20.06.2013 of the Labour Court, Jalgaon, Maharashtra in Reference IDA No. 42 of 2007 is restored. Consequently, the appellant shall be entitled to gratuity in respect of his continuous service from his original appointment till the date of his superannuation.

There shall be no orders as to costs.

.....J. (KURIAN JOSEPH) .....J. (ROHINTON FALI NARIMAN) New Delhi;

December 6, 2016.

REPORTABLE
