Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 316 OF 2013
IN
WRIT PETITION NO. 5118 OF 2005

Jaising Nivrutti Sonawane …Appellant
Versus
Maharashtra State Road Transport Corporation …Respondent

Mr RV Govilkar, *with Mihir Govilkar & S Khan, for the Appellant.*
Mr GS Hegde, *with PM Bhansali, for the Respondent.*

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 21st July 2022

PC:-

1. The Letters Patent Appeal assails an order of 5th September 2005 of a learned Single Judge (AP Shah, J as he then was). The Writ Petitioner is the Appellant. He was a bus conductor with the Maharashtra State Road Transport Corporation Pune Division (**"MSRTC"**). On 12th December 1995, Sonawane was on duty on Bus No. MH12R1060, running on the Pune to Borivali route. It seems that inspections squad checked the bus at Lonavala. There were 50 adults and one child passenger on board. The inspection

squad found that Sonawane had wrongly punched the tickets. There was an excess amount of Rs. 24.90 in Sonawane's possession.

2. In particular, it seems that Sonawane punched the tickets as being from Borivali to Pune, i.e. the return journey, rather than Pune to Borivali for six of the passengers on the board. The ticket numbers were identified. So was the denomination of each ticket. Now the Borivali to Pune fare was Rs. 40 but the Pune to Borivali fare was Rs. 44 per passenger. The inspections squad found that in contract to these six tickets, other tickets were punched correctly and were correctly reflected in the Way Bill. But for the six tickets that he apparently wrongly punched there was no entry in the Way Bill at all. These tickets were seized. The wrong punching showed the incorrect starting point or origin of the journey.

3. The charge-sheet was issued to Sonawane and after conducting an inquiry, his services were terminated.

4. Sonawane filed Complaint No. 88 of 1996 under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (**"MRTU and PULP Act 1971"**). He ultimately withdrew this. He then filed complaint No. 21 of 1997 under the same Act. That was also withdrawn. Then he raised an industrial dispute and a reference came to be made to the Labour Court under Section 10(1) and 12 (5) read with Section 2A of the Industrial Disputes Act 1947. This was numbered as Reference No. (1DA) 379 of 2000. The Labour Court allowed both sides to lead evidence. It considered the rival submissions. It finally made an Award dated

11th February 2005 dismissing Sonawane's reference. Sonawane then filed Writ Petition No. 5118 of 2005 assailing the Labour Court Award.

5. Before AP Shah J, counsel for the Petitioner who appeared at that time made only one submission and that was relating to the disproportionality of the punishment. It was argued that a lenient view ought to have been taken and that a lesser punishment would serve the ends of justice.

6. As to the generality of the proposition that proportionality is crucial in any decision making process, there cannot be any doubt. But this does not mean that every infraction has to be allowed to be got away with just a slap on the wrist, as it was. When one assesses the doctrine of proportionality, one looks not only at the immediate cause inviting punishment but also at the entire context and, in a given case, a pattern or a history of conduct especially past conduct. The order of the Labour Court is abundantly clear. In paragraph 12 the Labour Court found that there was a *mala fide* intention on Sonawane's part to use these six tickets for a return journey. In other words, this means that there was some illicit intention for the journey in one direction. The argument by Mr Govilkar that there was no actual defalcation or misappropriation is less than impressive. It means that unless somebody actually commits theft, no action can be taken even if the person is apprehended while in the process of attempting a wrong doing. The Labour Court found there to be no satisfactory explanation at all from Sonawane as to why he had selectively wrongly punched only these six tickets and,

in the Way Bill not entered only these six tickets, while others were correctly punched and correctly entered. The Labour Court specifically negated the submission that there was an oversight or a *bona fide* mistake. It concluded that there was sufficient reason to conclude that there was an intention to wrongfully use these six tickets for the return journey. Actual misappropriation was not shown but this was not relevant especially when Sonawane was found to have some amount of excess cash, admittedly small, with him. AP Shah J read the order of the Lower Court. He noted that this was not a first or an isolated instance. In 1980, about fifteen years earlier Sonawane was terminated because at that time he had failed to issue tickets to passenger after collecting fare. He was reinstated. Six years later in 1986 three increments were withheld because of absenteeism. In 1991, he was terminated because he was found to be reissuing tickets and it is at that time that a lenient view was taken reinstating him. In 1994, his annual increment was withheld for two months.

7. For this reason AP Shah J declined to interfere and in our view quite correctly so. There is such a thing as too much leniency. The approach in this country of believing that when one works for government no action can ever be taken no matter how persistently one is found to be doing wrong is an approach that needs to now stop as fast as possible. Mr Govilkar attempted to argue that there was an additional point. We record that we decline to allow Mr Govilkar to argue any additional point. We find this practice quite unacceptable. It is settled law that if a decision does not reflect points actually argued and canvassed it is for counsel to make an application to the Judge, whether orally or by submitting a note

requesting that those arguments be recorded and be dealt with. Without doing this it is unacceptable and impermissible to assail an order either on the ground that the impugned order does not reflect an argument never made or does not reflect a submission or argument that was made. We see no reason to interfere with impugned order. The Appeal is dismissed. We choose to take a lenient view and not make an order of costs.

(Gauri Godse, J) **(G. S. Patel, J)**