

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Writ Petition (Civil) 7022 of 2007**

Date of Decision: 28th August, 2008

DHARAM SINGH SINCE DECEASED & ORS. Petitioners
Through: Mr. H.D. Birdi, Adv.

versus

DELHI TRANSPORT CORPORATION Respondent
Through: Ravi Kant, Adv.

% **CORAM:**
HON'BLE MR. JUSTICE S. MURALIDHAR

1. Whether reporters of local papers may be allowed to see the judgment? ✓
2. To be referred to the Reporter or not? ✓
3. Whether the judgment should be reported in the Digest? ✓

J U D G M E N T

S. MURALIDHAR, J. (Open Court)

1. This writ petition is directed against an award dated 07.07.2007 passed by the Labour Court-X, Karkardooma, Delhi in I.D. No. 62/2007 declining to interfere with the quantum of punishment awarded to the deceased respondent-workman.

2. The facts as stated in the pleadings are that the deceased appellant-workman was a Conductor with the Delhi Transport Corporation (DTC). The further facts as set out in the counter affidavit filed by the DTC are as under:

"On 7-8-1992, he was performing his duty as conductor on bus plying on route No.404. His bus was checked by the Checking Official of the respondent at Kodia Pul and found that **the petitioner had issued a ticket of Rs.1/- despite having charged Rs.3/- from a passenger and which in fact was the fair amount for the distance**

9

which the passenger had traveled by the bus. It was further alleged that the petitioner had admitted his guilt and issued a ticket of Rs.2/- to the checking staff so as to make up the deficiency and when cash amount in possession of the petitioner workman was counted, it was found less by Rs.7.50/-. The checking staff recorded the statement of the passenger but the passenger refused to sign the same."
(emphasis supplied)

3. In the domestic enquiry the workman denied the charge. The Enquiry Officer held the workman guilty. Thereafter the punishment of removal from service was imposed on 03.02.1993. The resultant dispute raised by the petitioner workman was referred to the Labour Court. By an order dated 16.04.2003 the Labour court held that there was a material on record to show that the enquiry was not fair. The case was thereafter listed for arguments on the quantum of punishment. By an Award dated 10.09.2004 the Labour Court observed, albeit erroneously, that the preliminary issue on the validity of the enquiry had been decided in favour of the workman. On that basis it proceeded to hold that the petitioner's removal from service was illegal. Aggrieved by the Award dated 10.09.2004, the respondent-DTC filed Writ Petition (Civil) No. 1744/2005 in this Court. While setting aside the award dated 10.09.2004 by order dated 21.03.2007, this court remitted the case to the Labour Court for a decision on the quantum of punishment. Pursuant to the aforementioned order dated 21.03.2007, the Labour Court heard the parties on the question of the quantum of punishment and by the impugned Award dated 07.07.2007 upheld the removal of the petitioner-workman from service. The Labour Court relied, inter alia,

10

upon the decision the Supreme Court in ***Karnataka State Road Transport Corporation v. B.S. Hullikatti 2001-ILLJ SC 725*** and ***Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma 2002-I-LLJ SC 234.***

4. Learned counsel for the petitioner states that the petitioner workman died on 26.05.2000 and the present petition has been filed by his widow and four minor children, two of whom are daughters. He submits that the facts of the case show that the petitioner was charged with having a single ticket of Rs.1 to one passenger, despite collecting Rs.3/- which, in fact, was the fair amount for the distance which the passenger travelled. The shortage of cash detected was Rs.7.50. In the circumstances, the punishment of removal from service was unduly harsh and shocking to the judicial conscience. According to him, the Labour Court ought to have, in exercise of its powers under Section 11A of the Industrial Disputes Act, 1947 (ID Act) interfered with the punishment of removal from service and substituted it with a lesser punishment. He submits that the Labour Court proceeded on a misreading of the aforementioned decisions of the Supreme Court. Learned counsel for the DTC, while not disputing the facts as set out in its counter affidavit (as extracted hereinbefore), sought to support the impugned Award with reference to the decisions of the Supreme Court which will be referred to hereafter.

5. The facts as extracted from the counter affidavit of the DTC show that the charge against the petitioner was that he issued one

11

ticket of Rs.1/- instead of a ticket of Rs.3/- and that the shortage of cash detected him was Rs.7.50. The further fact was that the passenger in question refused to sign the statement allegedly made by him. He also did not appear in the enquiry. There is a long line of decisions recognising the power of a Labour Court under Section 11 A ID Act to interfere with the quantum of punishment when it is disproportionate and 'shocks the judicial conscience'. The question that then arises is whether on the above facts the punishment of removal from service is one that can fall under those categories calling for interference by the Court.

6. Fortunately, there is a sizeable body of case law on bus conductors issuing tickets of lesser denomination and the punishment to be awarded to them. In **B.S. Hullikatti** (supra) the conductor was charged the misconduct of collecting Rs.2.25 from 35 passengers but issuing tickets of the denomination of Rs.1.75 only. The Labour Court directed reinstatement with 50% back wages whereas the High Court ordered reinstatement with full back wages. The appeal by the transport corporation was partly allowed by the Supreme Court. Although it was of the view that the order of dismissal ought not to have been set aside, it was informed that the conductor had already superannuated in the meanwhile. Therefore, on the special facts, it was directed that the conductor would be reinstated without back wages. In **Ghanshyam Sharma** (supra) the conductor was charged with allowing 33 passengers to travel without a ticket. Following **B.S. Hullikatti** (supra), the Supreme Court held that the Labour Court

12

was not justified in interfering with the punishment of dismissal. Yet, the Supreme Court acknowledged that under Section 11A ID Act the Labour Court "has jurisdiction and powers in interfering with the quantum of punishment". It was however cautioned that "the discretion has to be used judiciously." It was further observed that "when the main duty of the conductor is still to issue tickets and collect fare and then deposit with the Road Transport Corporation which he failed to do so, it will be misplaced sympathy to order reinstatement instead of dismissal". In ***U.P State Road Corporation v. Suresh Pal 2006-III-LLJ SC 967*** 20 passengers were found travelling without tickets. It was held that the respondent there was a conductor holding position of trust and that if he "misappropriated the money by not issuing a ticket and pocketed the money thereby causing loss to the Corporation, then this is a serious misconduct." It was further observed that "Courts do not substitute the punishment unless they are shocking disproportionate and if the punishment is interfered or substituted lightly in exercise of their extraordinary jurisdiction, then it will amount to abuse of the process of Court. If such kind of misconduct is dealt with lightly and Courts start substituting the lighter punishment in exercising the jurisdiction under Article 226 of the Constitution, then it will give a wrong signal in the Society."

7. As against the above decisions, we have the one in ***Baldev Singh vs. Presiding Officer, Labour Court, Patiala AIR 1987 SC 104***, in which the Supreme Court declined to interfere with the order

13

of the Labour Court which held the punishment of termination of the services of the Driver of a Bus belonging to the Roadways for causing damage to the extent of Rs.22.50 on account of a deviation in the route to be disproportionate. The punishment was substituted by the Tribunal by directing reinstatement but without back wages.

8. Then we have the decision in ***U.P. State Road Transport Corporation v. Mahesh Kumar Mishra 2000 LAB IC 1031***, where on a sudden checking of the city bus it was found that 11 passengers were issued short distance tickets, although they were travelling a longer distance. The deficiency in the fare was Rs.1.50 for each passenger. In the domestic enquiry none of the passengers were examined. Also, their statements had not been recorded earlier. The High Court was held to be justified in interfering with the quantum of punishment of dismissal from service. The High Court had substituted the punishment of dismissal with that of reinstatement with 1/4th back wages. After referring to the judgment of the Supreme Court in ***B.C. Chaturvedi vs. Union of India 1995 (6) SCC 749***, the Supreme Court in ***Mahesh Kumar Mishra*** (supra) held:

"8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court. The law, therefore, is not, as contended by the learned counsel for the appellants, that the High Court can, in no circumstance, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

9. Another three-Judge Bench of this Court in ***Colour-Chem Ltd. v. A.L. Alaspurkar*** has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the court to interfere.

14
10. As pointed out earlier, the order of the High Court though extremely brief, must have been based on overall consideration of the facts of the case and it must have exercised its jurisdiction only when it was shocked to notice that though all the passengers had been issued tickets, the only dispute was with regard to the point at which they had boarded the bus for which the punishment of dismissal from service was highly disproportionate."

Apart from the two judgments of the Supreme Court in **Baldev Singh** and **Mahesh Kumar Mishra**, there are certain judgments of the High Courts including **Krishna Bhagwan Pandey v. UPP Prabhandak, Meerut Western Region, Meerut 2001 (91) FLR 989**, which have held, on similar facts, that the punishment of removal or dismissal from service is disproportionate.

9. Reverting to the facts on hand, this Court finds that the facts closely compare with those in **U.P. State Road Transport Corporation vs. Mahesh Kumar Mishra**. The deceased petitioner was charged with issuing just one ticket of Rs.1, whereas he should have issued a ticket of Rs.3. The passenger in question declined to sign any statement and was also not examined at the enquiry. The loss to the DTC purportedly was Rs.7.50. In the facts and circumstances, this Court has no hesitation in coming to the conclusion that the punishment of removal of the petitioner from service is one which shocks the judicial conscience. It is clearly harsh and disproportionate.

10. As this case demonstrates, a disproportionate punishment can destroy lives of persons dependant on the dismissed employee. This is

15

a factor that the Court cannot afford to ignore when called upon to decide if on the facts of a case the punishment is disproportionate. The deceased petitioner has left behind a widow and four minor children. He was dismissed from service in 1993 and during the fifteen years since his family has been pushed into poverty. Counsel for the petitioners informs the Court that the children are in fact, employed as child labour. The minor children must be enabled to shake of the enforced penury and lead a life of some dignity.

11. If the petitioner had been around and had not attained the age of superannuation, it is possible that this Court might have considered his reinstatement without back wages and some other minor penalty of stoppage of increments. Unfortunately, that option is no longer available.

12. Considering the facts and circumstances of the case, while setting aside the punishment of removal of the deceased petitioner from service, this Court directs that the respondent DTC will, within a period of eight weeks from today, pay his legal representatives (the substituted petitioners herein) a lumpsum compensation in the sum of Rs. 2 lakhs in lieu of reinstatement of the deceased workman without back wages. DTC will also compute and pay them the gratuity amount due to the deceased workman. The said amount, i.e. Rs 2 lakhs and the gratuity amount, will be kept in a fixed deposit in a nationalized bank in the name of the widow Smt. Om Wati, who will hold it for herself and her four minor children. The interest therefrom will be

16

credited to her account which she will be free to utilise for the expenses of herself and her family. The proportionate share of each of the children will, upon their attaining majority, be separated from the FD in favour of the mother and kept in a separate fixed deposit till each of them completes 21 years with the interest from such proportionate share being credited into a savings account for their use. After the last of the children attain majority, the mother will be free to utilise the balance money in the FD by closing it.

13. With the above directions, the writ petition is allowed and disposed of as such.



S. MURALIDHAR, J

August 28, 2008

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