

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 5589/2006**

% **Date of Decision: 03rd August, 2009**

The Management of M/s. Delhi Transport Corporation
..... PETITIONER

! Through: Ms. Arti Mahajan, Advocate

VERSUS

\$ Shri Suresh Kumar
.....RESPONDENT

^ Through: Mr. G.S. Charya, Advocate

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The management of Delhi Transport Corporation (hereinafter referred to as 'the petitioner') has filed this writ petition seeking to challenge the award dated 10.05.2005 in I.D. No. 6/1996 passed by the Industrial Adjudicator directing reinstatement of the respondent with full back wages.

2. Briefly stated the facts of the case relevant for the disposal of this writ petition are that the respondent was appointed as a Conductor with the petitioner since 1978 and he was served with a charge-sheet dated 27.07.1993, a copy of which is Annexure P-3 at page 52 of the Paper Book. The charges against the respondent employee were that on 9/10.07.1993, he was on duty on Delhi Transport Corporation's Bus No. 9582 Route No. 052 (Night Service from ISBT to Devli). His bus was

checked by the checking staff at IIT Gate. Checking staff found two passengers who disembarked at IIT Gate traveling without ticket and on enquiry from them, the checking staff was told by those two passengers that they had paid a fare of Rs. 5/- to the respondent who had not issued any tickets to them.

3. One of the charges against the respondent was that he had collected Rs. 5/- from the two passengers who had boarded the bus from Yusuf Sarai and had disembarked at IIT Gate, the respondent had collected Rs. 5/- from them against the fare of Rs. 6/- to be charged from them and that after collecting Rs. 5/- from the passengers he had not issued tickets to them.

4. The second charge against the respondent was that when his cash was checked by the checking staff on that day, the cash was found short by Rs. 13.25 paise.

5. A domestic enquiry was held against the respondent for both the above-mentioned charges in which he was found guilty of the said charges. The disciplinary authority after considering the report of the Inquiry Officer and taking into account other attendant circumstances decided to remove the respondent from its service and he was accordingly removed from the service of the petitioner on 28.07.1994.

6. At the time the respondent was removed by the petitioner from its service, an industrial dispute relating to general demand raised by the union of the employees of DTC was pending adjudication before the Industrial Tribunal and for that reason the petitioner Corporation filed an application under Section 33(2)(b) of Industrial Disputes Act, 1947, for approval of termination of the respondent and the said approval application was allowed by Shri B.B. Chaudhary, then Industrial Tribunal-II, Delhi vide order dated 31.01.2002 and accordingly approval was

granted to the petitioner for removal of the respondent from its service.

7. The respondent, thereafter, raised an industrial dispute with regard to his removal from the service of the petitioner which was referred by the appropriate Government for adjudication to the Labour Court and was registered as I.D. No. 6/1996. The Labour Court vide its order dated 16.10.2004 decided the inquiry issue against the petitioner Corporation and asked the petitioner Corporation to lead evidence on the point of gainful employment of the respondent. Since the petitioner Corporation could not produce any evidence of gainful employment of the respondent, the Court below vide its impugned award has directed reinstatement of the respondent with full back wages.

8. The petitioner Corporation aggrieved by the impugned award of the Court below and also aggrieved by its order on inquiry issue dated 16.10.2004 has filed the present writ petition seeking setting aside of both these orders.

9. I have heard arguments advanced by the learned counsel for both the parties and have given my anxious consideration to their arguments.

10. Ms. Arati Mahajan, learned counsel appearing on behalf of the petitioner has raised three-fold arguments and they are (i) the findings of the Labour Court contained in the order on inquiry issue dated 16.10.2004 are totally perverse, (ii) the conclusion arrived at by the Labour Court that the shortage of cash detected by the checking staff at the time of checking the bus on which the respondent was on duty on the date of incident does not amount to mis-conduct, also suffers from perversity as the respondent has not placed any circular or regulation or rule to show that shortage of cash found from the Conductor on first three occasions does not amount to mis-conduct and (iii) that in case the Labour Court was right in holding that the findings of the Inquiry Officer

were perverse then the Labour Court should have afforded an opportunity of hearing to the management (petitioner Corporation herein) to prove the mis-conduct against the workman (respondent herein) because the management in its written statement (at page 89 of the Paper Book) had taken an additional plea on this aspect that it should be afforded the opportunity to prove the mis-conduct of the workman in case the inquiry issue is decided against it.

11. On the other hand, Mr. G.S. Charya, learned counsel appearing on behalf of the respondent has contended that the findings recorded in the impugned award are fully justified and according to him, the respondent cannot be blamed for the mis-conduct alleged against him. Except this, Mr. Charya has not advanced any other argument.

12. On giving my anxious consideration to the rival arguments advanced by learned counsel for the parties, I could not persuade myself to agree with the submissions made on behalf of the respondent.

13. I have gone through the impugned order on inquiry issue dated 16.10.2004 as well as the impugned award dated 10.05.2005 with the assistance of counsel for the parties. On going through the same, I find that the findings recorded by the Labour Court in the impugned order/award suffers from perversity for the reasons to follow hereinafter.

14. In fact, it is the order on the inquiry issue dated 16.10.2004, which is the foundation of the impugned award dated 10.05.2005 by which respondent has been granted relief of reinstatement with full back wages. The order on inquiry issue has dealt with both the charges levelled by the petitioner against the respondent. As far as the first charge, that the respondent had collected fare of Rs. 5/- against the normal fare of Rs. 6/- without issuing any ticket to the two passengers, is concerned, the findings recorded by the Labour Court in the impugned

award is extracted below:

"I have gone through the evidence on record. No doubt the workman has participated in the enquiry and got enquiry report, and he was issued a Show cause Notice and therefore principle of natural justice was apparently followed. I have also gone through the enquiry report. However, I find from the facts and circumstances of the case that the workman could not have been charged for any misconduct in this case.

Admitted facts are that the bus No. 9582 on Route No. 052, was a night service on which a minimum fare was Rs.3/-. It is also admitted that the passengers were two boys of young age who boarded the bus from Yusuf Sarai for going to IIT Gate which is only about a kilometer or less. The normal fare for this distance was Rs. 1/-. However, since the passengers had boarded the night service for which minimum fare was Rs. 3/-, the conductor demanded Rs. 6/- from the passengers. As against this demand of Rs. 6/-, passengers paid Rs. 5/- and entered into an argument about the fare. The conductor in his reply to the charge sheet, at first opportunity explained that there was argument with the passengers on the amount of fare between Yusuf Sarai and IIT Gate, where these boys had to alight and were caught by checking staff without ticket. In my considered view if the ticket was for Rs.3/- each and for two passengers Rs.5/- were tendered in place of Rs. 6/-, no tickets could have been issued, and therefore, there cannot be any charge for not issuing tickets after charging Rs. 5/-. It is obvious from the statement of passengers recorded at the spot that they had tendered Rs. 5/- and they had to get down at IIT Gate and instead of paying Rs.1/-more, they got off from the moving bus at IIT Gate without paying the balance of Rs.1/-. In these circumstances, it can be said that the passengers made an abortive attempt to save Rs.1/- by getting off from the bus without getting tickets in stead of tendering balance of Rs.1/-. In such circumstances, the conductor could not have done anything more. He cannot be said to have committed any misconduct."

15. The conclusion of the Court below that the respondent in view of the above, could not have done anything more is based on unfounded assumptions. A reading of the above portion of the findings contained in the impugned order on inquiry issue would show that even the Court below accepted that the respondent had charged Rs. 5/- from the two passengers and had not issued any ticket to them. This is not even disputed before me by the learned counsel appearing on behalf of the

respondent. I have even gone through the statement of the passengers recorded by the checking staff on the date of incident, a typed copy of which is at page 109 of the Paper Book. Both the passengers who were found traveling without ticket at the time of checking of the bus on the date of incident have stated in their statement that they had paid Rs. 5/- to the respondent who had not given any ticket to them. The observations of the Court below that the passengers had made an aborted attempt to save Re. 1/- by getting off from the bus instead of tendering balance of Re.1/- is only imaginative. It shall be relevant to note that the Court below by reference to the statement of the passengers has observed that the passengers who were found by the checking staff traveling without ticket had got off from the moving bus at IIT Gate. Neither the passengers who were found traveling without ticket, nor the checking staff had stated in their statements that the passengers had made an attempt to get off from the moving bus at IIT Gate. I fail to understand from where these words that the passengers had got off from the moving bus at IIT Gate have been imported by the Court below in the impugned award. There was an overwhelming evidence available before the Inquiry Officer to conclude that the respondent had charged Rs. 5/- from the two passengers without issuing any tickets to them at the time his bus was checked by the checking staff. There was no reason with the Court below to tinker with the said finding contained in the inquiry report.

16. It is not the case of the respondent that the domestic inquiry against him was not held by following the principles of natural justice. In fact, on this aspect of the matter, the Court below has given its verdict against the workman (respondents herein). The relevant portion of the impugned order dated 16.10.2004 relating to inquiry aspect is extracted below :-

"I have gone through the evidence on record. No doubt, the workman has participated in the enquiry and got enquiry report and he was issued a show cause notice and, therefore, principle of natural justice was apparently followed."

17. On the basis of the above, there cannot be any other conclusion except to hold that the first charge against the respondent was adequately proved against him in the domestic inquiry held against him.

18. Now coming to the second charge that cash of Rs. 13.25/- was found less from the respondent at the time his bus was checked by the checking staff, it will be relevant to refer to the findings of the Court below on this aspect which are extracted below :-

"Second charge against the workman is that his cash was Rs. 13.25 ps., less. It is argued by AR for the workman that this charge is incomplete as three times shortages of cash in a month for a particular amount is allowed and the workman/conductor has to deposit shortfall within 48 hours. In this case, it was the only instance mentioned in the charge sheet and in any case it was duty of the conductor to account for the tickets if there was a short fall and he could have been charge sheeted only after he failed to deposit. The Enquiry Officer has also failed to apply mind properly to the facts and circumstances of the case and failed to consider the probability of the circumstances in which the workman was placed. He has been dismissed for a conduct which could not properly described as misconduct and he has been awarded extreme punishment of removal without in any manner caring for the past conduct. I hold the whole process of the charge sheet as perverse and based on non application of the mind, and decide the enquiry issue in favour of the workman and against the management."

19. Ms. Arti Mahajan, learned counsel appearing on behalf of the petitioner, has vehemently argued that the findings of the Court below that the shortage of cash of Rs. 13.25/- from the respondent at the time of checking of his cash by the checking staff does not amount to misconduct suffers from total perversity because according to her, the respondent had not placed any document on record to show that unless

shortage of cash from a conductor is found on more than three occasions, the same cannot be treated as misconduct. The Court below in its impugned order has observed that since the cash of Rs. 13.25/- was found short from the respondent for the first time, therefore, it does not amount to misconduct. I have specifically asked Mr. Charya, counsel appearing on behalf of the respondent to show me any rule or order of the petitioner Corporation which provide that shortage of cash noticed by the checking staff on checking cash of a conductor on first three occasions does not amount to misconduct, he could not show me any such rule or regulation. I also asked Mr. Charya, whether any such rule or regulation was placed by the workman before the Labour Court to which his response was in the negative. I fail to understand how the Court below, in the absence of any rule or regulation, has returned a finding that the shortage of cash found from the respondent was not a misconduct as it was a first instance. There was no material before the Court below to arrive at this conclusion.

20. Under the circumstances, the above conclusion arrived at by the Court below cannot be said to be anything but suffering from perversity. It shall also be significant to mention that the Court below in its impugned award dated 10.05.2005 has formed an opinion that the punishment of removal awarded to the respondent was disproportionate to the misconduct committed by him.

21. This necessarily implies that the respondent was guilty of misconduct, but in the opinion of the Court below, the punishment of removal from service awarded to him by the petitioner Corporation was disproportionate to the misconduct alleged against him. On going through the entire record, I find that the charges against the respondent were duly proved against him in the domestic inquiry which was held in

conformity with the principles of natural justice which cannot be faulted with on any account whatsoever. The material on record shows that the respondent was not fit to be retained in the service of the petitioner Corporation which is a public utility department. By not issuing tickets to the passengers after collecting fare from them, he has acted dishonestly and for that reason, he does not deserve any sympathy of the Court.

22. Since the charges against the respondent are found to have been proved, no useful purpose is going to be served by remanding the case back to the Labour Court because no further evidence to prove the misconduct of the respondent is required in the case.

23. For the foregoing reasons, I have no hesitation in holding that the impugned order on inquiry issue as well as the impugned award dated 10.05.2005, both suffers from perversity and both these orders/award are, therefore, set aside.

24. This writ petition is, therefore, allowed with no order as to costs.

AUGUST 03, 2009
'bsr/ma'

S.N.AGGARWAL, J