

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

+ **WP(C) No. 15523/2006**

% Judgment delivered on: 22.2.2010

Delhi Transport Corporation Petitioner

Through: Mr. Sumit Pushkarna for the petitioner

Vs.

Sh. Devender Singh Respondents

Through: Mr. Anil Mittal for the respondent.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. Oral:

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned award dated 16.1.2006 passed by the learned Labour Court in I.D. No. 941/1996.

2. Brief facts relevant for deciding the present petition are that the respondent workman was working as a conductor in the petitioner corporation and on 22.6.84, the respondent workman was on duty in Bus No.DLP-1215 on Delhi to Aligarh route where on inspection, the checking staff found one passenger traveling without a ticket and another passenger traveling on a ticket of lesser denomination and a third passenger inspite of asking for a ticket twice and paying the amount was not issued the ticket. Thus, a challan was prepared against the workman and an enquiry was initiated following a chargesheet where the charges leveled against the workman were proved and on 16.04.87, the respondent was removed from service. Thereafter, the respondent workman raised an industrial dispute bearing ID No. 941/96 where the Ld. Industrial Tribunal ordered reinstatement of the respondent workman with 50% backwages and consequential benefits. Feeling aggrieved by the said order, the petitioner has preferred the present petition.

3. Counsel for the petitioner submits that even if the petitioner had not taken the plea of leading the evidence to prove misconduct on the part of the respondent workman in the

written statement in the event of report of the enquiry officer being held against the management, still in view of the settled legal position, the petitioner management was entitled to lead evidence to prove misconduct of the workman. Counsel further submits that the evidence of the passenger was not necessary to prove the case against the workman as the labour court could have examined the other material, especially the material placed on record by the checking staff which in the present case sufficiently proved the misconduct on the part of the respondent workman. Counsel further submits that sufficient material with regard to cheating on behalf of the respondent workman was on record which could have been examined by the learned labour court before answering the reference and especially the admission part. In support of his arguments, counsel for the petitioner placed reliance on the judgment of the Apex Court in **V. Ramana Vs. APSRTC & Ors. AIR 2005 SC 3417.**

4. Refuting the said submissions of counsel for the petitioner, Mr. Mittal counsel for the respondent, submits that in spite of not taking a plea in the written statement, petitioner was given an opportunity to prove misconduct on the part of the

respondent workman, but still the petitioner did not choose to prove the same. Counsel thus submits that having failed to prove misconduct on the part of the respondent, the petitioner cannot be allowed to find fault with the impugned award as sufficient opportunity was given to the petitioner to prove the misconduct of the respondent workman. Counsel for the respondent further submits that on the enquiry issue, the learned labour court vide its order dated 6.5.2005 found the enquiry report as unfair and the said order of the learned labour court was not challenged by the petitioner. Counsel further submits that it is not the case of the petitioner that the enquiry was held to be unfair on the ground that the passenger witness was not examined by the enquiry officer, it is rather the evidence of the passenger witness which has gone against the management, therefore, the learned Labour Court found that there was not sufficient evidence on record to hold that the workman was guilty of misconduct.

5. I have heard learned counsel for the parties at considerable length.

6. A perusal of the order dated 6.5.2005 on the enquiry issue, shows that the court clearly found that one of the witnesses

produced by the petitioner did not support the case of the petitioner corporation and rather supported the version of the respondent workman. The labour court thus found that the enquiry officer in his report failed to appreciate the deposition of the said witness who did not support the case set up by the petitioner corporation. The court further found that the passenger himself had not given any statement in writing but the checking staff made a statement in his name which was duly signed by him, which on the part of the checking officer was found to be with mala fide intention so as to implicate the respondent workman.

7. It would be useful to reproduce the following paras from the order of the Labour Court dated 6.5.2005 here:

“.....I have gone through the evidence on record. Management witness has deposed that they had no personal knowledge of the case and he was deposing only on the basis of record though he denied that workman was not given full opportunity. Workman was also cross-examined by the management but his cross-examination is based and found only on procedural grounds and there is no challenge to his apprehension of false implication as Checking Officials which he brought to the notice of the management four days before the alleged checking. It is also silent about the complaint made by him after the challan. In his arguments, it has been streriously argued that it was a false challan and Inquiry Officer had made a false report by ignoring the relevant contents.

I have gone through the Inquiry Report and Inquiry proceedings. It is seen from the Inquiry proceedings that the statement of passenger Vijay Pd., was recorded which was examined as witness during inquiry. In his deposition, in the Inquiry, he has clearly stated that he boarded the bus from Khurja for Aligarh and paid Rs. 5.50 ps., to the

conductor and got the ticket which was afterwards collected by the Checking Staff who boarded the bus for checking purpose 5 km ahead from Khurja stand. He also deposed tht there was one passenger who had to got down at Khurja, was sleeping and had not got down at Khurja and when the checking staff awakened him, the passenger told the checking staff that he has to get down at Khurja and when the checking staff awakened him the passenger told the checking staff that he was to get down at Khurja but the checking staff did not agree and asked the conductor to give his way voucher and other relevant records for checking. They took the passenger with them up to Aligarh. He also deposed that checking staff asked his name and address which he gave. He was cross-examined by the workman who asked him if he given in writing any statement to the checking staff. He answered in negative. It is to be seen that this witness was examined by the management for proving its case, but this witness did not support the management and supported the version of the conductor which he has already brought to the notice of the management before start of the Inquiry by filing the complaint against wrongful challan. The Inquiry Officer in his report has not appreciated the witness who was not supporting the management version and has given the report against the workman holding that charges are proved. The main ground mentioned by him is that the workman was not able to complete the way voucher. The total reveal of the case and evidence clearly shows that the passenger has not given any statement in writing yet the checking staff made their statement in his name duly signed by him which appears to be a clear mala fide attempt to implicate the workman. Secondly, it is seen that despite all positive evidence from the witness of the management itself who is the passenger witness, the Inquiry officer has given a finding against the workman. I do not find any sufficient evidence on record to hold the workman guilty of any misconduct to the satisfaction of the charge when the workman also had the apprehension of false challan by the checking staff.

In these circumstances, I found that Inquiry Report as unfair and inquiry issue is decided in favour of the workman.”

8. Based on the above said observations, the labour court found that the enquiry report was totally unfair and consequently held the enquiry issue in favour of the respondent workman.

9. After the decision on the said inquiry issue, the petitioner

management was given an opportunity to lead evidence to prove misconduct of respondent workman although no such plea was taken by the petitioner management in their written statement. The petitioner thus cannot be heard to complain that because of the absence of the said plea in the written statement, no opportunity to lead evidence to the petitioner was granted. The judgment of the Apex Court relied by the petitioner in **V. Ramana's case(Supra)** does not help the case of the petitioner as the petitioner corporation was granted opportunity to prove misconduct on the part of the respondent despite having not taken any such plea in the written statement. It would be pertinent to refer to the judgment of the Apex Court in **DCM vs. Ludh Budh Singh (1972) 1 SCC 595** where it was held that:

"This observation clearly shows that the Enquiry Officer has missed the elementary principle of Jurisprudence that when allegations of misconduct are levelled against a person, it is the primary duty of the person making those allegations to establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty."

This was reiterated by the Apex Court in **Ajit Kumar Nag vs. G.M (PJ), Indian Oil Corpn. Ltd. (2005) 7SCC 764** where it said that:

*"It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". (vide **E.P. Royappa v. State of T.N.**)*

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*It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in **Gulam Mustafa v. State of Maharashtra** (SCCp. 802, para 2): "It (mala fide) is the last refuge of a losing litigant".*

Hence, applying the aforesaid principles to the instant case, once the petitioner itself had failed to prove misconduct on the part of the respondent workman before the labour court, therefore, no perversity can be attributed to the order of the labour court.

10. It is a settled legal position that the learned labour courts/tribunals are the final courts of finding of facts, and once the petitioner itself had failed to prove misconduct on the part of the respondent workman before the learned labour court, therefore, this court while exercising writ jurisdiction under Article 226 of the Constitution of India would not appreciate the facts which were never proved by the petitioner before the learned labour court. It would be relevant to refer to the judgment of the Apex Court in **Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S.Vishwanathan (2005)3 SCC 193**:

" Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article [226](#) or under Article [227](#) of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

11. Hence in the light of the above discussion, I do not find any merit in the present petition and the same is hereby dismissed.

FEBRUARY 22, 2010
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KAILASH GAMBHIR,J